



Canadian Association of Counsel to Employers
Association canadienne des avocats d'employeurs

December 13, 2004

Sent Facsimile and mail

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Dear Minister Sorbara:

Re: Labour Relations and the Ontario Health Premium

We are writing to you in our capacity as directors of the Canadian Association of Counsel to Employers (CACE). CACE is a newly-incorporated association of practicing lawyers who devote the majority of their time to the representation of employers in labour and employment law matters. CACE is designed to provide a forum for such counsel to share information and to provide them with a vehicle to express their views on matters of importance. CACE's current membership is well in excess of 200 lawyers, who, indeed, collectively represent most of the employers in this country.

The purpose of this letter is to express our Ontario members' concerns and perspective with respect to the wording of Bill 106 and its impact upon labour relations in the province.

As you are doubtless well aware, the question of whether the cost of the new Ontario Health Premium is to be borne by unionized employers is currently a hotly-contested issue. We refer specifically in this regard to those collective agreements which provide for employer payment of Ontario Health Insurance Plan (OHIP) "premiums". This sort of language is contained in very many collective agreements in the province – including, ironically, many agreements in the health care sector. These types of clauses were negotiated years ago, when Ontario required individuals to pay monthly, fixed OHIP premiums. Many employers simply left such language in their agreements following 1990 when OHIP premiums were abolished. Many unions are now invoking such language to claim reimbursement for the new tax created by Bill 106. The use of both of the words "premium" and "tax" in Bill 106 has resulted in confusion regarding whether the new Ontario Health Premium is indeed a "premium" as contemplated by these collective agreements.

It is our suggestion that this confusion can be easily resolved by using consistent language throughout Bill 106. Faced with the choice between “premium” and “tax”, the removal of all references to “premium” is the option which best adheres to the stated intention of your government – namely, that the Ontario Health Premium is a tax to be paid by individuals.

A brief history of this matter lends support to the necessity for change and the simplicity of the answer suggested. To begin, the first mention of this issue occurred not during the debates on Bill 106, but during the Committee hearings on Bill 83. There, Ms. Tasha Kheiriddin of the Canadian Taxpayers Federation stated: “In other words, there’s a great degree of uncertainty attached to the payment of this new tax. In a labour relations context, uncertainty is never a good thing.” Similar sentiments were expressed by both the Ontario Federation of Labour and the Association of Municipalities of Ontario.

Shortly thereafter, you confirmed the government’s intention on this point. On June 24, 2004, in response to questions posed by Mr. Jim Flaherty in the legislature, you are quoted as having stated: “...this premium does not come within the four corners of those pre-existing collective agreements.”

Despite this stated intention, a number of grievances were filed once employers began to deduct the prescribed amounts from the paycheques of their employees. To date, there have been four decisions handed down by Ontario arbitrators in response: one decision found the employer liable to pay the Ontario Health Premium on behalf of its employees (the award of Arbitrator Barrett); the other three decisions found the employer not liable, based upon the wording of the respective collective agreements (the awards of: Arbitrator Teplitsky; Arbitrator Shime; and Arbitrator Tims). A key issue for the Arbitrators was the consideration of whether the Ontario Health Premium is a “premium” or a “tax”.

A number of other arbitrations remain pending on this matter in the province; they affect tens of thousands employees.

In response to the release of contradictory decisions, both you and Premier McGuinty reiterated that it is not the government’s intention that the cost of the Ontario Health Premium be borne by employers under the pre-existing collective agreement language that made reference to the long abolished OHIP premiums. In particular, the Premier is quoted as having said the following in the legislature on October 27, 2004: “If, at some point in time, we need to do something to inject further clarity into this matter, then we will, but our intention has always been that this should be paid by taxpayers.”

We suggest that the time to inject such clarity is now, while Bill 106 travels through the legislative process. The continued litigation on this point is unnecessary, and may well lead to further contradictory decisions, with consequent costs to employers, including employers in the health care sector. The continued expense of arbitral and judicial resources is unnecessary. And the continued uncertainty in the labour relations environment is unnecessary and unhealthy.

The stated intention of your government is clear; and clear and unambiguous effect can be given this intention by removing all uses of the word “premium” from Bill 106. Because this would not be a substantive amendment to the Bill, our suggestion is also procedurally simple. We urge you to make this simple housekeeping amendment to Bill 106 to remove the current uncertainty and put an end to the ongoing litigation which our members' clients are facing.

Yours very truly,

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