

**A Consultation Paper on Employment Agencies in  
Nova Scotia**  
June 2010

**A Discussion Paper Presented By:**



The Association of Canadian Search, Employment & Staffing Services

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## **ACSESS**

The Association of Canadian Search, Employment & Staffing Services

On May 25<sup>th</sup>, 2010, Nova Scotia Labour and Workforce Development launched a consultation to determine if there are suitable protections for workers employed by temporary agencies. The issues raised in the discussion are of great interest to the staffing services industry. The Association of Canadian Search, Employment and Staffing Services (ACSESS) is a national association representing the vast majority of Canada's staffing service firms and the only industry group representing the very unique and qualified position of the industry. We support the intent of the consultation which is to look into employment agency licensing and ensure that existing legislation recognizes the needs of temporary employees, and staffing firms that employ them, in a fair and balanced way. After a thorough review of the Consultation Paper, ACSESS is pleased to respond with our recommendations on the issues raised for discussion.

## **1. An Introduction to ACSESS**

ACSESS is the single voice for the employment, recruitment and staffing services industry in Canada. ACSESS promotes Advancement & Growth of the Industry by:

- Providing services to, and communicating with, members of the employment, recruitment and staffing services industry;
- Assuming a leadership role in industry licensing and regulation;
- Coordinating educational programs and conferences, assisting in the development of required standards of professional performance;
- Promoting best business practices, and adherence to both the spirit and letter of all applicable employment legislation and regulations;
- Developing pertinent statistics for the purpose of identifying economic and socio-economic trends.

A primary objective of ACSESS is to actively represent the industry and our membership before governments by providing input on employment legislation and regulations at the national and provincial levels. At the same time, ACSESS assumes a leadership role in ensuring that industry

members are aware of legislation and regulatory changes which may affect their businesses and responsibilities as employers.

Professional development and certification are core services delivered through ACSESS. ACSESS provides and administers the [CPC Certification Program](#). Practitioners must meet core requirements which include post-secondary education, length of service in the industry, compliance with the Code of Ethics, complete a series of specialty courses and then successfully complete CPC exams. On successful completion, these professionals may use the designation CPC (Certified Personnel Consultant).

ACSESS promotes regular educational events, including our annual conference, training and seminars, and district programs, which are held across Canada.

ACSESS member companies pledge to uphold the Associations [Code of Ethics & Standards](#). They are committed to an industry which gives clients the ability to respond to business realities and changing technologies; and to giving workers - at all levels - an ever-increasing range of employment opportunities.

## 2. ACSESS Supports Meaningful and Effective Regulation

The Association of Canadian Search, Employment and Staffing Services has always taken a leadership role in industry licensing and regulation.

The membership of the Canadian staffing industry will support any improvements to existing legislation, improved enforcement or any form of meaningful and effective new legislation or regulations that will:

- Promote the principles of integrity, professionalism and fair practice in dealing with clients, candidates, employees and all regulatory authorities;
- Protect and respect confidentiality of records in accordance with law and good business practices;
- Promote and enhance the effectiveness of all applicable human rights and employment laws and regulations including the abolishment of discriminatory ordering and hiring practices;
- Require any person or company (agent) to have express authorization of representation from a job seeker before the agent may represent their application for employment;
- Require any person or company (agent) to have express authorization of representation from a company or employer before the agent may advertise or make representation on behalf of the employer;
- Require all employers and agents to provide complete and accurate information prior to employment, regarding terms of employment, job descriptions and workplace conditions;
- Restrict any employer or Employer's Agent from making direct or indirect charges of fees to employment candidates or employees unless specified by a license;
- Promote free enterprise and restrict acts of unfair competition;

- Simplify or improve administrative compliance requirements to existing laws;
- Improve enforcement of laws;
- Impose appropriate fines penalties and restrictions upon those who violate existing laws.

### 3. Background: History of Employment Agency Licensing in other provinces

There are currently no licensing requirements for employment agencies in Nova Scotia. Anyone can set up a business and offer recruitment or placement services to employers and job seekers. Several provinces including Manitoba, Alberta and British Columbia require the licensing of employment agencies.

Employment agency licensing was originally introduced in Ontario prior to 1968. Over the years, the province made minor administrative amendments to the Act including the requirement for a financial bond in 1990. The Employment Agency Act of Ontario was repealed in its entirety in January, 2001. The pre-existing Employment Agencies Act was intended to license companies that recruit full time workers of behalf of their clients. “Employment Agencies” provide this service as a middle party between the candidate and the employer. They do not hire or employ the candidates directly and they do not perform any administrative duties associated with pay to the workers. The “Employment Agency” augments a company’s hiring process by assisting their client in researching, discovering, attracting, assessing recommending and representing qualified candidates to their client.

The pre-existing Employment Agency Act was not intended to, nor did it ever apply to temporary staffing services. Temporary staffing services are recognized as the employer of record; they hire a workforce of their own, perform all administrative duties associated with payroll administration, conform to all relevant employment laws and send their workers to perform services at their client worksites.

The pre-existing Employment Agencies Act of Ontario was intended to accomplish the following limited objectives:

- Ensure that Agency owners had character references prior to qualifying for a license;
- Ensure that Agency owners could purchase a \$500 insurance bond (Financial);
- Regulations - Required Agencies to have authorization from a candidate before the candidate is represented or presented to a client;
- Regulations through classifications of licenses ensured that candidates are not charged a fee in exchange for a job.

In 1999, over 1,200 Ontario Employment Agency licenses were issued. Licenses were never required by temporary staffing service companies unless they also engaged in the business of Employment Agency Recruitment.

## Ineffectiveness of the Previous Employment Agencies Act

During the 30 year history of Ontario Employment Agency Licensing, never was a license revoked for infractions and never was the “Bond” or insurance provision called upon as a result of infractions. The absence of fines and revocations were due to several factors:

- Poorly worded legislation which did not clearly stipulate the specific objectives and violations of the Act;
- Few complaints that fell within the scope of the legislation;
- An inability of the Ontario Government to effectively monitor, investigate and enforce the legislative requirements;
- Difficulty verifying complaints;
- Inadequate provincial government funding.

In 1999 and in years prior, ACSESS repeatedly expressed concerns to the Ontario Ministry of Labour about the ineffectiveness of the Ontario Employment Agency Licensing system. Unless it could be strengthened and effectively enforced, it was believed that the existence the Employment Agency Licensing Act was more misleading than meaningful. The existence of a government issued license misled individuals in believing that the government had verified that the business was financially viable, acting in accordance with all laws and had met a reasonable standard of conduct. In reality, there were no meaningful standards necessary to acquire or retain a license. Furthermore, the licensing system diminished the ability of credible operators to differentiate themselves from unscrupulous operators. The existence of a licensing system was misleading to both job seekers and employers.

During 1998 and 1999, ACSESS aggressively sought improvements in the Employment Agency Licensing system and also expressed great interest in government approval of a **mandatory Professional Self Regulatory System**. ACSESS has been very effective in dealing with complaints and violations of the industry association Code of Ethics and Standards and could be even more effective if the government would support the notions of mandatory membership, greater authority and increased government interaction with ACSESS concerning licensing and regulation.

The names of all individuals and businesses holding a license are posted on the Employment Standards website. The offence of recruiting without a license is subject to fines from \$25,000 to \$50,000. If a licensed recruiter is found to have been involved in the charging of a fee to a foreign worker, the

recruiter will be ordered to repay the fees, will have his or her license revoked and will be fined. If an employer is involved, the employer will be ordered to repay the fees and the recruitment registration will be cancelled.

## 4) ACSESS Response to Issues Raised in Discussion Paper

### A) A Licensing Regime for Employment Agencies

There are currently no licensing requirements for employment agencies in Nova Scotia. By requiring businesses or persons who provide recruitment-related and temporary staffing services in Nova Scotia to be licensed, the government would acquire information about this sector which could help enforce the relevant legislation.

Employment agency licensing must be meaningful and effective and serve to accomplish specific objectives. Licensing must also be administratively sound and transparently managed.

#### ACSESS Recommendations – Legislative Framework

##### General Fee Prohibition – Amendment to the *Labour Standards Code*

*The fee prohibition must be sufficiently expansive to include all parties involved in recruiting workers for employment in Nova Scotia. Effective enforcement mechanisms are key to ensuring compliance. Prohibited fees must be fully recoverable under employment standards legislation.*

*No person should be able to request, charge or receive – directly or indirectly – from workers or prospective workers any payment (fee) for employment or obtaining employment for the person seeking employment, or for providing information about employers seeking employees.*

#### Proposed Structure of Employment Agency Licensing Act

##### Employment Agency Licensing

A separate licensing Act for employment agency licensing must have clearly identifiable objectives. General requirements for employment agencies may include the following:

- Mandatory ACSESS Membership - Promote the principles of integrity, professionalism and fair practice in dealing with clients, candidates, employees and all regulatory authorities;

- Protect and respect confidentiality of records in accordance with law and good business practices;
- Proof of Commercial General Liability Insurance;
- Obligation to provide 3 character references;
- Proof of various registrations (HST, business registration, WCB Clearance certificate);
- Attestation to the veracity of information provided (verify the identity of owners and principals);
- Financial Component;
- Require any person or company (agent) to have express authorization of representation from a company or employer before the agent may advertise or make representation on behalf of the employer;
- Record Keeping: Require all employers and agents to provide complete and accurate information prior to employment, regarding terms of employment, job descriptions and workplace conditions;
- Restrict any employer or Employer's Agent from making direct or indirect charges of fees to employment candidates or employees unless specified by a license;
- Promote free enterprise and restrict acts of unfair competition;
- Simplify or improve administrative compliance requirements to existing laws;
- Improve enforcement related mechanisms;
- Impose appropriate fines penalties and restrictions upon those who violate existing laws;

All employment agencies must be required to register with the appropriate Business Registration Unit prior to engaging in any recruitment efforts. All employment agencies should be required to provide information about their company, the types of positions they are recruiting, and information about any third parties involved in the recruitment process.

The names of all businesses holding a license should be posted on the Ministry website. The offence of recruiting without a license should result in significant fines and penalties being imposed. . If a licensed employment agency is found to have been involved in the charging of a fee to a worker, the employment agency will be ordered to repay the fees, will have their license revoked and will be fined.

The *Designation of Trades and Businesses Regulation* which falls under the *Fair Trading Act* stipulates that any person who is engaged in the activities of securing persons for employment in Alberta, securing employment for persons within Alberta or evaluating or testing persons for employers who are seeking employees where the individual or the position is in Alberta, is an employment agency for the purposes of the regulation.

The Alberta Government has enacted further regulation of employment and recruitment under the *Employment Agency Business Licensing Regulation*. All employment and recruitment-related agencies are required to be licensed, including those located out-of province and abroad, if they assist employers to find employees, help employees to find work in Alberta or evaluate or test potential employees for Alberta employers.



## B) Prohibition on fees charged to employees by Employment Agencies

No fee should be charged to employees under any circumstances. We fully support Nova Scotia's fee prohibition contained in the Employment Agencies Act and would encourage the adoption of strict penalties and other enforcement related mechanisms to support this provision.

ACSESS would fully support the adoption of a general fee prohibition to be incorporated in the Labour Standards Code. The fee prohibition must be sufficiently expansive to include all parties involved in recruiting workers for employment in Nova Scotia. Effective enforcement mechanisms are key to ensuring compliance.

No person should be able to request, charge or receive – directly or indirectly – from workers or prospective workers any payment (fee) for employment or obtaining employment for the person seeking employment, or for providing information about employers seeking employees. Any monies under these provisions should be recoverable under the Labour Standards Code.

ACSESS member companies pledge to uphold the Association's Code of Ethics & Standards. Our Code includes a "fee prohibition" which reads as follows: We will derive income only from clients and make no direct or indirect charges to candidates or employees".

Note section 9 of *Alberta Fair Trading Act* and General Fee Prohibition below.

9(1) No business operator or person may directly or indirectly demand or collect a fee, reward or other compensation (a) from a person who is seeking:

- (i) employment, or
- (ii) information respecting employers seeking employees,

or (b) from a person

- (i) for securing or endeavoring to secure employment for the person, or (ii) for providing the person with information respecting any employer seeking an employee.

What Nova Scotia Labour wants to know:	ACSESS Response:
<b>1) Are there any categories of individuals that should be exempt from any prohibition on fees?</b>	No.
<b>2) Are there any categories of recruiters that should be exempt from any prohibition on fees?</b>	Certain professions, such as Athletic and Artistic Agents, may require exemption to the general prohibition on fees, based on existing legitimate business practices.
<b>3) Should a recruiter be allowed to charge other job seekers for help in finding employment?</b>	<b>No.</b> It is important to note that the new s.74.8 (1) of the Ontario ESA ( <i>Temporary Help Agencies</i> ) does not prohibit employment agencies from charging fees to candidates. The government failed to extend the protection to workers being placed directly with employers.
<b>4) Are there specific ways in which the government could impose a fee prohibition to make it more effective?</b>	The fee prohibition must be general and sufficiently expansive to include all parties involved in recruiting workers for employment in Nova Scotia. Effective enforcement mechanisms are key to ensuring compliance. No person should be able to request, charge or receive – directly or indirectly – from workers or prospective workers any payment (fee) for employment or obtaining employment for the person seeking employment, or for providing information about employers seeking employees. Any monies under these provisions should be recoverable under the ESA.

### C) Barriers to Permanent Employment

The advantages of temporary work are recognized by workers, businesses, economists and policymakers. It affords flexibility, training, supplemental income - and a bridge to permanent employment for those who are out of work or changing jobs.

The Discussion Paper states that “*Some stakeholders have raised concern that temporary agency employees may face barriers to permanent employment some of which may include “temporary to permanent fees” charged to client businesses of agencies or assignment employees or contract rules that prevent assignment employees being hired by client businesses*”.

Fees charged to clients vary and are determined by market conditions. Any imposed legislative restriction would be contrary to the principle of freedom of contract and would unfairly impose restrictions that do not apply to other employers. Temporary help agencies incur significant recruitment and background/screening costs for the purpose of finding and placing the best candidate on assignment.

Any attempt to limit our members ability to charge fees to clients would represent inappropriate government interference with legitimate business commercial terms between a service provider and client regarding the value of the services and the payment terms for the services provided.

In November, 2009, Ontario became the first province to impose a limitation on our members ability to charge temporary to permanent fees to clients. Since the implementation of Bill 139, the Ontario *Employment Standards Amendment Act (Temporary Help Agencies), 2009* our members have had multiple clients enter directly into **temporary employment arrangements** with assignment employees. Interestingly and ironically none have entered into or shown interest in entering into permanent employment arrangements. This is causing significant harm to temporary employees and has offered no benefit to Ontario workers.

Many of our Nova Scotia members are low volume quality providers of accounting and finance professionals to client companies who regularly require a cost effective alternative to the large public accounting firms and consulting/Chartered Accountancy firms (the same argument could be extended to the IT and legal services segments). Staffing firms meet this market demand by providing the same degree of expertise offered by these firms at a fraction of the cost. At the same time, our members business models allows for their “assignment employees” to be more generously compensated than their public accounting counterparts. Imposing a legislative limitation on our members ability to charge fees to clients will not provide any meaningful benefit to low wage workers and will significantly damage the largest percentage of the industry providing important services in the areas of information technology, accounting engineering, medical services and other professional services.

Due to the serious and devastating implications, I urge you to consider 1) the impact of a limitation on fees on temporary employees and 2) the impact this provision is having on professional services staffing agencies in Ontario.

We would like to take this opportunity to respond to the specific questions outlined in the Discussion Paper.

What Nova Scotia Labour wants to know:	ACSESS Response:
<p><b>1) Should an agency be able to charge a fee to a client business or agency employee if the client wants to hire an assignment employee permanently? If so, should there be a limitation on how long an agency can charge a fee?</b></p>	<p>No fee should be charged <u>to employees</u> under any circumstances. We fully support Nova Scotia’s fee prohibition and would encourage the adoption of strict penalties and other enforcement related mechanisms to support this provision.</p> <p>Fees charged <u>to clients</u> vary and are determined by market conditions. Any imposed legislative restrictions would be contrary to the principle of freedom of contract and would unfairly impose restrictions that do not apply to other employers.</p>

	<p>Any attempt to limit our members ability to charge fees to clients would represent inappropriate government interference with legitimate business commercial terms between a service provider and client regarding the value of the services and the payment terms for the services provided. This represents a misuse and misapplication of Labour Standards legislation in the area of Consumer and Commercial transactions. The <i>Labour Standards Code</i> governs the relationship between employers and employees in Nova Scotia. The Act should not dictate or attempt to interfere with established contractual agreements between staffing firms and their clients. Temporary help agencies incur significant recruitment and background/screening costs for the purpose of finding and placing the best candidate on assignment. These costs will not be recovered without a significant increase in the Bill Rate for temporary labour, or without some protection against hiring even after 12 months. This provision will fail to provide any meaningful benefit to workers and has the potential to cause significant hardship and irreparable harm to staffing service companies and, by extension, clients.</p>
<p><b>2) Should an agency be able to state in its contract with a client business that the client cannot hire its employees permanently?</b>  <b>a) If so, should there be a limit to how long such a restriction could apply?</b></p>	<p>See above.</p>
<p><b>3) Should an agency be able to state in its contract with an employee that the employee cannot take a permanent job with its client business?</b>  <b>a) If so, should there be a limit on how long such a restriction could apply?</b>  <b>b) If so, should the restriction be limited to a client business (es) where the employee was assigned by the agency, or should it extend to other clients of the agency?</b></p>	<p>No.</p>

## D) Liability for Labour Standards Code Violations

**Under provincial employment standards legislation, the staffing firm is recognized as the employer of record.** Staffing firms exercise absolute control in the process of recruitment, selection, offers of employment, wage determination, assignment of work and both directly and indirectly determine how, when and where the work is to be performed.

The Nova Scotia Discussion Paper raises the concern that a staffing firm will sometimes close its business before an employee has been paid, or otherwise unfairly refuse to pay an employee for work that has already been performed for its client.

What Nova Scotia Labour wants to know:	ACSESS Response:
<p><b>1) Should both employment agencies and their client businesses be liable for violations of the LSC, such as unpaid wages or improper termination without notice?</b></p>	<p>The relationship between staffing firm and the worker is that of employer and employee and is governed by the Labour Standards Code. Temporary Staffing Services are required to abide by all applicable provincial and federal employment legislation and regulations. The issues commonly raised pertaining to Temporary Staffing Services and other employers of contingent, part-time, contract and short-term workers, are addressed through existing legislation such as the <i>Labour Standards Code</i> and Human Rights legislation. ACSESS members are very proud of their adherence to all employment legislation and regulations.</p> <p>Employees in the industry benefit from all the same recourses under the Act as other employees in the province of Nova Scotia. From January to April, 2007, the Ontario Ministry of Labour conducted province wide inspections on temporary staffing services to review compliance with the Ontario <i>Employment Standards Act</i>. This intense industry review was performed by approximately 20 auditors during the months of January through April 30, 2007. Inspectors reviewed all aspects of employment standards obligations with a focus on vacation pay, public holiday pay, hours of work, overtime, minimum wage and related administrative issues. The summary report of this provincial initiative revealed positive results in all areas. <u>Ministry reports and inspection findings revealed that the staffing services industry has not witnessed an increase in complaints filed/violations under the ESA.</u></p> <p>Unfortunately, bankruptcy is a reality and occurs in all sectors of the economy. In the unlikely event that a staffing firm is forced to close</p>

	<p>its doors, there is a recourse for employees to claim (as preferred creditors) unpaid wages under the Canada Business Corporations Act. It would be unfair to employers in the staffing industry and contrary to employment standards legislation in other provinces to make both parties liable (essentially having 2 employers) under the Act.</p>
<p><b>2) What would be the impact of joint liability on assignment employees, employment agencies and client businesses of agencies?</b></p>	<p>This would cause significant confusion for all parties.</p>
<p><b>3) Are there standards of LSC for which client businesses should not be liable such as special leaves?</b></p>	<p>The staffing firm is the employer of record and assumes all related responsibilities.</p>

## E) Information to Agency Employees about Assignments

ACSESS members are encouraged to explain to all employees prior to assignments their wage rate, applicable benefits, hours of work, and other assignment conditions—and to comply or exceed the terms of their employment standards obligations. Our members also work hard to ensure that employees are assigned to work sites that are safe, that they understand the nature of the work the client has called for and can perform such work without injury to themselves or others, and that they receive any personal safety training and equipment that may be required.

ACSESS members take prompt action to address employee questions, concerns, or complaints regarding unsafe work conditions, discrimination, or any other matter involving the terms and conditions of their employment.

Our association has worked in partnership with several provincial Ministries on Joint Communication campaigns and we would fully support any initiative taken by Nova Scotia Labour to support our efforts and to ensure that all employers in the province are effectively communicating information to their employees.

## Conclusion

We respectfully present this accurate and complete response to the Nova Scotia Discussion Paper. The Association of Canadian Search, Employment and Staffing Services would be pleased to reply to any questions and provide any additional information required. We look forward to having an opportunity to meet with government as part of the formal consultation process.

*Mary McIninch*

*Director of Government Relations*

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