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October 14, 2016

C. Michael Mitchell  
The Honourable John C. Murray  
Special Advisors  
Changing Workplaces Review, ELCPB  
400 University Ave., 12th Floor  
Toronto, ON M7A 1T7  
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Dear Mr. Mitchell & Mr. Murray,

ACTRA Toronto is pleased to respond to the Ministry of Labour's invitation for comment on The Changing Workplaces Review.

Respectfully submitted,

A handwritten signature in black ink that reads "Sue Milling".

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## **Overview**

ACTRA Toronto commends the Special Advisors on their Interim Report. It comprehensively reviews a broad range of issues and seeks feedback to assist in the development of final recommendations aimed at modernizing labour relations and employment standards legislation in light of changes in the modern workplace. Most importantly, the Special Advisors rightly keep the key focus of the Interim Report on vulnerable workers in precarious jobs and the need for legislative amendments to address some of the issues facing these workers, many of whom work in non-standard employment.

As referenced in the Interim Report, the arts, entertainment and recreation industry, which includes workers in the media industry, has the highest incidence or concentration of workers in non-standard employment.<sup>1</sup> Just as in the construction industry, employment relationships in the media industry are typically ephemeral, projects are short-term and the only stability for the worker comes from union membership. Simply put, media industry workers, and performers in particular, are the epitome of vulnerable workers in precarious work.

As a result, and since the release of the Interim Report, ACTRA Toronto, along with other unions and guilds that collectively represent over 50,000 workers in the live and recorded media industry in Ontario, have been working collaboratively to develop proposals that address the unique and diverse needs of the media industry.

What follows below is ACTRA Toronto's response to the Interim Report on behalf of its 15,000 plus members that it represents in the recorded media industry (film, television, radio and new media) throughout Ontario, except the National Capital Region.

### **Labour Relations Act, 1995**

#### ***4.6.1 Broader-based Bargaining Structures***

ACTRA Toronto recommends the Advisor's Option 9 -- the application of the provisions of the *Labour Relations Act (LRA)* to the recorded media industry as special provisions affecting artists and performers.

We note that the Interim Report suggests that performers in the Arts sector are presumed not to be employees under the *LRA* and agreements appear to fall outside the scope of the *LRA*. To the extent that these comments were meant to apply to performers represented by ACTRA in the recorded media industry, ACTRA Toronto respectfully disagrees.

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1 Interim Report at p. 37.

Notwithstanding the atypical nature of their work arrangements, the little jurisprudence that exists suggests that performers in the recorded media industry are "employees" with the right under provincial labour statutes to select an exclusive bargaining agent and to bargain collectively under the protective umbrella of the unfair labour practice regime.<sup>2</sup> Indeed, ACTRA has been expressly recognized as a trade union by the Ontario Labour Relations Board<sup>3</sup> and by the British Columbia Industrial Relations Council.<sup>4</sup> ACTRA is also affiliated with the Canadian Labour Congress.

While the *LRA* is sufficiently flexible to accommodate labour relations in the recorded media industry, there is no question that the inclusion of a specialized "media industry" section is vastly preferable to the status quo to address the unique nature of the recorded media industry.

ACTRA Toronto recommends that elements of this framework include:

- A definition of a "media industry worker" that would include all individuals, particularly those working under the terms of a scale agreement, who receive remuneration for working in a media industry or who receive remuneration for providing a product or service for use in a production in a media industry;
- Recognition and regulation of scale agreements; and
- The elimination of mandatory ratification votes for collective agreements and mandatory strike votes in the media industry.

### **Employment Standards Act, 2000**

#### *5.2.1 – Definition of Employee*

ACTRA Toronto supports Option 6 with respect to the definition of employee in the *Employment Standards Act (ESA)*, with modification. Option 6 would require that the scope of the *ESA* be expanded to include dependent contracts and consideration given to exempting particular dependent contractors.

ACTRA Toronto recommends that any new definition of employee be as expansive as possible to include all workers in an economically dependent position, which would

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2 See, for example, *Family Passions Inc.*, [1994] O.L.R.D. No. 193 (OLRB) ["*Family Passions*"]; *Jetlag Productions Ltd.* (24 April 1991) B.C.I.R.C. ["*Jetlag Productions*"]; *International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts, Local 849 v Egg Films Inc.*, 2012 NSLB 120, aff'd 2013 NSSC 123 (Div. Ct.) and 2014 NSCA 33 (CA).

3 *Family Passions*, *supra*.

4 *Jetlag Productions*, *supra*.

include all performers working in the recorded media industry regardless of whether or not they are classified as independent contractors for tax purposes.

### *5.3.1 Hours of Work and Overtime Pay*

Under the *ESA*, an employee does not earn overtime pay on a daily basis by working more than a set number of hours a day. Overtime is calculated only on a weekly basis or over a longer period under an averaging agreement.

ACTRA Toronto recommends that, for the Film and Television Industry<sup>5</sup>, overtime pay ought to be calculated on a daily basis by working more than a set number of hours a day in circumstances where an employee works for an employer on a short-term basis (less than one week). Such an approach would ensure that all workers in the Film and Television Industry, including those employed for only a short duration, benefit from the *ESA*'s overtime provisions.

### **Concluding Comment**

Media industry workers, and performers in particular, are some of the most vulnerable workers in precarious jobs in Ontario. This does not have to be so. ACTRA Toronto urges the Advisors to recommend that the protections we seek on behalf of performers in the recorded media industry be enacted immediately.

We acknowledge that extensive consultation is the only way to ensure that the legislative model that is ultimately adopted respects the bargaining structures that have evolved over time in the industry, and provides clear and positive gains for all participants.

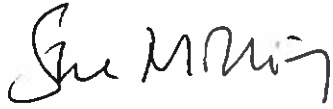
We therefore suggest that the Advisors consider convening a stakeholder committee representing media industry unions/guilds and producer/engager organizations to identify and discuss the issues involved in collective bargaining and employment standards legislation for the media industry in the Province of Ontario in order to assist the Advisors in making any recommendations affecting the media industry.

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<sup>5</sup> We note that the *ESA* already contains a number of exemptions or special rules regulating this industry.

We look forward to the opportunity to meet with the Advisors to elaborate on our response.

Sincerely,



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