



Friday October 14, 2016

Changing Workplaces Review
ELCPB 400 University Ave., 12th Floor
Toronto, Ontario M7A 1T7

Re: The Changing Workplaces Review -- Special Advisors' Interim Report

Dear Special Advisors, Michael Mitchell and former Justice John Murray:

We, "Between the Lines" (BTL), are writing to provide comments, ideas and suggestions in response to the Interim Report.

BTL is a public legal education initiative undertaken by three feminists who met while attending law school in Canada's Capital. BTL is an effort to unravel legislation enacted by our governments and to make the legislation accessible to the communities impacted by the legislation. We believe in access to justice and ensuring that our communities have all the tools it needs to help fight against institutional, structural and cultural violence.

The comments, ideas and suggestions that will follow are written in our capacities as Tamil, Black (of Grenadian and Trinidadian descent) and Indigenous (Anishnaabe-kwe from the Garden River First Nation) women activists. In light of our many lived experiences and realities, we will be focusing on the *Employment Standards Act* only (we will refer to this as the "Act" or the ESA throughout).

A meaningful consultation about legislative changes that will impact all peoples must include, *and* centre, the voices of those who are criminalized and marginalized, especially as their identities intersect and interlock. An intersectional approach to legislative and policy changes must consider how race, gender, class, immigration status, sexual orientation and other markers of identity shape people's lived realities. More often than not, these are the same communities who are excluded from these discussions because of these intersecting and interlocking factors. Yet, legislative developments will have consequences, whether explicitly or implicitly, on those who engage in precarious work and are impacted by systemic factors such as racism (and specifically, anti-Black racism and anti-Indigenous racism), and anti-immigrant/anti-refugee rhetoric.

We make the following proposals in the context of the Interim Report:

Employer Compliance with the *Employment Standard Act*

There needs to be serious consequences for employers who are not compliant with employment standards and protections in the ESA. As it stands now, enforcement mechanisms are weak and poorly regulated. As noted by the Advisors, too many people in too many workplaces do not receive their basic rights. Part of this stems from the lack of knowledge of both employers (usually small businesses) and employees who are not aware of the rights and obligations under the *Act*. In many instances, employees are not even made aware that there are consequences for employers (via the *Ontario Human Rights Code*) who discriminate based on grounds such as race (core ground) in employment (social area). Sometimes, there is also a deliberate attitude of non-compliance.

In either case, there is an inherent power imbalance that exists between employers and employees that must be rectified. We support all recommendations that encourage employers to educate themselves and employees about ESA standards. That said, there must also be a meaningful avenue for employees to initiate a claim against an employer who is not in compliance. As it stands now, employees must first raise an issue with their employers (with a few exceptions) before a claim is assigned to an Employment Standards Officer for investigation. Employees who do not take this step are apparently not turned away; however, the claims processor will usually ask for the reason the employer was not contacted first, which does not take into account the consequences associated with speaking up and out against one's employer, to one's employer.

Accordingly, we support the option to remove the ESA provision allowing the Director of Enforcement to require an employee to first contact the employer before being permitted to make a complaint to the Ministry of Labour. This requirement is a significant barrier for racialized, criminalized and marginalized communities doing precarious work who will not approach their employers for fear of reprisal. An employee should be permitted to make an anonymous claim. More thought should be given to how such claims are then communicated to employers in order to permit an informed response. Depending on the level of detail provided and size of the business, revealing the facts of the alleged violation may make obvious which employee made the complaint, defeating the purpose of anonymity (i.e. a Black woman making a complaint about anti-Black hair policies in a predominantly white work environment where she is the only Black woman).

In the end, employers also stand to gain from ensuring compliance with ESA standards. Even from a purely economic standpoint, compliance will only stand to enhance an employer's reputation and hence, affect their bottom line: profit. However, an employer's profit in relation to the competitive global market is not its only consideration in adopting a culture of compliance. Employers should be educated on the benefits of adopting a culture of compliance for attracting diverse employees.

A community-based approach to protecting workers' rights

We cannot overstate the importance of working in collaboration with community agencies to maximize education and outreach to increase awareness about ESA standards.

There are many community organizations doing important work, including but not limited to, Justice for Migrant Workers (J4MW), and other related organizations. Thus, we propose that better supports be in place to ensure that such community organizations can contribute to any process affecting their realities and rights. We also propose that you thoroughly examine what precarious workers are identifying as issues that negatively impact them under the *Employment Standards Act* and create accessible ways for these individuals to contribute. Further, we propose that any recommendations, suggestions and proposals, question who is being excluded and included, either implicitly or explicitly, from protections.

Despite some of the valuable suggestions, we feel that these suggestions in the Special Advisors' Interim Report do not go far enough. For instance, especially in the context of "Education and Awareness Programs", many questions remain like: Who will be creating the material? Who will be administering the material? How will the material be made accessible to those most impacted by it?

Disrupting the status quo

When there is an absence of a concerted effort to seek consultation with/from those most criminalized and those most marginalized, legislative reform of the *Employment Standards Act*, will only serve to maintain the status quo (i.e. benefit individuals normally offered protections like middle to upper class cis-gendered white folks).

The Final Report, and any other subsequent reports to the Interim Report, should specifically discuss anti-Black racism in the employment context (i.e. discrimination based on hair; micro-aggressions, etc.); the lived realities of Indigenous folks (i.e. migrate from northern and rural areas to urban centres), the exploitation of non-status and migrant workers in Ontario and the overrepresentation of all of these communities in precarious work environments. These are just some of the many gaps in this report, in addition to our significantly lower pay that is far from a living wage in comparison to non-Indigenous, non-Black and non-migrant workers.

Sincerely,

Samantha Peters
Naomi Sayers
Mayoori Malankov

www.btllaw21.com