October 12, 2016

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

To whom it may concern,

Dear Sir or Madam:

Re: Special Advisors Interim Report – Ontario Changing Workplaces Review

We would like to provide our feedback on the options presented in the interim report, specifically with regards to section 5.3.9 Temporary Help Agencies. By way of introduction, IS2 Workforce Solutions Inc. is a private held, 100% Canadian owned staffing and recruiting company. We specialize in providing temporary and contingent labour to Canadian companies in the manufacturing, distribution, automotive, oil and gas and other industrial sectors. IS2 is proudly celebrating 20 years of operations and we have offices in Ontario, Quebec, British Columbia and Alberta. Over the last 5 years alone, we have provided services to nearly 1,000 Canadian companies, including providing all logistics staff to the Vancouver 2010 Olympic and Paralympic games. During this time we have employed a culturally diverse workforce of over 26,000 workers, 13,000 of those in Ontario alone and over 21% of these workers have gone on to be hired by our customers on a permanent basis.

We have been audited by the Ministry of Labour and the Workplace Safety and Insurance Board in Ontario on multiple occasions over the past 5 years as part of the Ontario government's ongoing commitment to ensure compliance with the enhanced Employment Standards and Occupational Health and Safety Acts.

During these audits no issues or orders were written and we were not found to be in violation of any law or regulation. We provide an invaluable service to Canadian companies in assisting them meet their production and staffing requirements in an ever changing global business landscape.

After reviewing the Special Advisors' Interim Report, we share the views expressed by the Ontario Chamber of Commerce (*"Changing Workplaces Review Interim report*

contains options that could hurt employers, employees and contain rising costs for consumers") and ACSESS (Association of Canadian Search, Employment and Staffing Services) in that the government must apply a robust, evidence-based approach to any reforms that are proposed.

We would first like to address some statements made in the report and offer our comments.

The Advisors report that *"the specifics of the staffing industry model are somewhat opaque (e.g., percentage of the mark-up charged to clients by agencies, wages of assignment workers relative to regular staff, etc.)"*, however we know this is not the case. In each instance, our customers are fully aware of the agreed upon markup we are charging and what that markup includes and consists of. The pay rates are also determined in conjunction with direct input from our customers. These rates are determined by real-time, local market salary research which is readily available to the public through job postings, advertisements and job boards. Our customers are fully aware that in order to attract and retain good workers they must offer fair and competitive wages. This is supported by the fact that 95% of our workforce in Ontario earns more than the minimum wage with the average being closer to $14.00 per hour.

In fact, our industry is an exception in that the markup is being fully disclosed to the customer. For example, a consulting, law or accounting firm would all charge hourly rates for work performed by their associates, but rarely, if ever, is the wage rate of the consultant, lawyer or accountant performing the work, or the related markup, disclosed to the customer. Similarly in a retail environment, prices displayed do not reflect, or identify the cost of the product and the related markup.

The Advisors report that *"Anecdotally, we were advised that THAs charge a significant percentage premium to their clients for every hour that the assignment worker works for the client."* And that *"this premium to the client was perhaps 40% of more above the hourly rate paid by the THA to the assignment worker."* We submit that anecdotal evidence should not be the basis of further regulation or changes to laws. One must also consider that even with a markup of 40%, over half of that markup is instantly gone in payroll taxes (CPP, EI, EHT, WSIB Premiums) and required additional payments of Vacation Pay and Public Holiday pay. So, a THA employee earning $15.00 is actually costing the THA, **who is properly making all remittances**, closer to $18.60 per hour (based on a WSIB rate group for provision of non-clerical labour).
The Advisors also make mention of the research conducted by Erin Hatton in the US which claims that *"agencies typically charge their clients about twice the workers' hourly wage."* We submit that this simply does not apply to the use of THAs in Ontario and the rest of Canada where our markups are typically in the 32% - 40% range. This is further substantiated by Statistics Canada which reports that profit margins for our industry are typically in the 2.1% - 4.3% range. We note that Ms. Hatton is a sociologist by training, and is not a specialist in labour economics. Other U.S. academics specializing in

economics, such as Lawrence Katz of Harvard University and Alan Krueger of Princeton University, have extensively studied and published significant academic works on temporary help agencies and their role in the modern US economy.

The Advisors make reference to the fact that rights to notice on termination operate differently for THA employees compared to regular workers and cited an example of where a regular employee and an assignment worker were both "let-go" without notice after both working for 4 months at a specific client site. Our agreements with our customers include provisions that require our customers to provide us with (and in turn the employees) notice of assignment end that aligns with the requirements in the ESA as a result of Bill 139. In this case the Advisors reference that *"the client would be required to pay its direct employee termination pay… but would have no payment obligations to the assignment worker."* They add that the agency would not have an immediate obligation to the assignment worker as the employment relationship would not end and that the agency could place the employee on a temporary layoff and not have any obligation for termination pay unless the temporary layoff turns into a termination of employment. While this is true, it is not mentioned that there is nothing stopping the client in this case from also placing their regular worker on a temporary layoff, which would not turn into a termination unless they were unable to recall the regular worker within 13 weeks (in any period of 20 consecutive weeks) thereby also not having an immediate obligation to pay termination pay. We submit that in this comparison case, the THA employee is actually at an advantage, as it is in the THAs best interest to place them elsewhere as quickly as possible. In essence the THA employee is likely to have a greater opportunity to find gainful employment faster than the regular employee.

The Advisors correctly reference the fact that Ontario is *"in the minority of jurisdictions that specifically addresses THA employment in its legislation."* We submit that with the passing of Bill 139 and Bill 18 into law that Ontario has afforded rights and protections to THA employees that are amongst the strongest in North America.

The Advisors have examined comparisons at length in other jurisdictions such as the United States, the European Union and Australia. We submit that both the European Union and Australia have very different legal and regulatory systems which prevail in those jurisdictions. Furthermore, the EU model represents a wide range of approaches towards the regulations surrounding THAs in different member states all designed to correct different challenges within the THA industry. There is no evidence that would suggest that Ontario is faced with similar challenges, or that any of these approaches would be necessary in Ontario.

In drawing comparison to the rest of Canada and the individual states in the US, it is clear that Ontario is already at the forefront in providing regulation to the THA industry. This does not support the premise that Ontario requires more legislation or regulation to the THA industry. Rather, we should focus on allowing for more time for the changes of

Bill 139 and Bill 18 to take effect and on identifying and correcting the behaviours of non-compliant organizations.

In submissions received by the Advisors it is stated that the differential between what is paid to a THA employee and what is charged to a client *"is said to create an incentive for the agency to keep wages as low as possible."* We submit that this is, in fact, not true. Assuming the markup charged to the client does not change, the higher the wage rate paid to the employee the more gross profit per hour earned. That is an agency charging a client a 35% markup will generate more gross profit if the employee is paid $15.00 than if the employee was paid $14.00.

We agree fully with the points raised by client employers and industry groups (ACSESS, of which we are members) that THAs provide clients with the flexibility they require to remain competitive in a global marketplace. We fear that any regulation that would limit a client's ability to use THAs would not only be detrimental to their business but to the Ontario economy as a whole as would further changes to the Labour Relations Act that would automatically treat THAs as related employers to their customers in all situations.

Options Presented and our comments:

1. *Maintain the status quo* – Given the already comprehensive regulation and laws which apply directly to Temporary Help Agencies, we feel that Ontario should continue to focus on the enforcement and compliance of current laws as opposed to introducing new legislation.

2. *Expanding client responsibility* – Given the Bill 139 and Bill 18 amendments we do not believe that there is any evidence which would support either of these options.

3. *Same wages for similar work* – While we support Ontario's commitment to an annual review and adjustment of the minimum wage, we believe that legislating full wage parity without considering the numerous factors including employee skill sets, length of experience and qualification of employees, is simply wrong. There is also no evidence which would suggest that end user companies would not simply look to lower current wage rates to achieve pay equity rather than increasing wage rates of temporary employees. Imposing pay rates on companies operating in a free marketplace which are above minimum wage will irrevocably damage the economy.

4. *Regarding markup* – We strenuously oppose any legislation that would limit the amount an agency would be able to charge a client or that would require disclosure of markups to outside parties that were not our clients. Limiting markups would simply limit the ability for agencies to make any substantial profit, which would lead to the loss of jobs of Ontarians who work in the THA industry

and the loss of related tax revenues from companies and their employees, both of which would have a negative impact on Ontario's economy. The THA industry is highly competitive where the market fully dictates the markups that are charged. Disclosing markups would be anti-competitive in nature and would be contrary to the very principles that drive the Canadian Competition Act.

5. *Reduce barriers to clients directly hiring employees by changing fees agencies can charge clients* – As previously mentioned, Ontario already possesses some of the most comprehensive laws with regards to THAs and sets restrictions on the period in which an agency can charge a client for hiring an employee. Reducing that period from the current 6 months, with no minimum amount of time or hours worked by the employee, or eliminating the ability for agencies to charge clients for direct hire entirely, would cause irreparable damage to the industry as a whole as agencies would not be able to recover administrative and recruiting costs, let alone implement programs that will ensure complete compliance with Employment Standards law and provide value and service to our clients. This type of restriction will lead to more "black-market" employers who will attempt to circumvent the laws in order to turn a profit. We believe, and our customers' feedback supports, that government should not dictate who companies should hire and for how long. The direct hire market serves companies well in supply short worker classifications and gives employees access to multiple job opportunities in the market.

6. *Limit how much clients may use assignment workers* – We are opposed to this as we do not believe that any government should dictate how a company hires their workers, so long as it is done in accordance with human rights and employment law. Furthermore, placing limitations like these would seriously harm the ability for Ontario companies to remain competitive by managing their workforce through ebbs and flows of their customer's requirements and would lead to an exodus of Ontario businesses to other jurisdictions.

7. *Promote transition to direct employment with client* – Again, similar to points 5 and 6 we feel this would be unfair for the government dictating how companies should hire employees, or even when they would need to hire them.

8. *Expand Termination and Severance pay provisions to assignments* – We oppose any proposal that would expand notice and severance obligations to the assignment level. Not only do the proposals stand in direct opposition to the Bill 139 amendments that provide that assignment employees remain employed between assignments, but there is no reasonably apparent justification or rationale for either proposal. Like all other non-exempt employees, temporary employees are entitled to notice of termination and, in applicable cases, severance pay when their employment comes to an end. Requiring notice and severance at the assignment level would put temporary employees in a better

position than other employees, as they would both retain their employment status, yet be potentially owed notice and severance. Structuring these proposals to avoid the overpayments inherent in them would be administratively complex for agencies to administer and for the government to oversee.

9. *License THAs or legislate new standards of conduct* – While we feel that increased enforcement initiatives are the best use of government resources, we are not opposed to licensing and to also enforcing that clients only work with licensed agencies. However, the guidelines for licensing should be comprehensive, yet not pose a barrier to business operations, and penalties stiff for non-compliance of agencies and the end user customers using unlicensed agencies. For example in Quebec, we welcomed the recent requirements for agencies to provide customers with an Attestation de Revenu Québec showing that they have made all requisite government remittances and are in good standing.

We thank you for your consideration and would welcome any further discussion on these points.

Yours truly,

IS2 Workforce Solutions Inc.

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