



October 14, 2016

**DELIVERED VIA FAX & EMAIL**

Changing Workplaces Review  
ELCPB, 400 University Ave., 12<sup>th</sup> Floor  
Toronto, ON M7A 1T7

Attention: Special Advisors C. Michael Mitchell and Hon. John C. Murray

Dear Sirs:

**Re: Changing Workplaces Review – Interim Report**

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Thank you for this opportunity to respond to the Changing Workplaces Review, Special Advisors' Interim Report (the "Interim Report"), released in July 2016.

As you are aware, the proposed changes to the *Employment Standards Act, 2000* ("ESA") included in the Interim Report would have a profound impact on Ontario's economy, the business of Katz Group Canada Ltd o/a Pharmx Rexall Drugstores Ltd. and Pharma Plus Drugmarts ("Rexall") and the patients we serve. As such, we feel obligated to provide you with our perspective on many of these proposed changes. We hope this submission not only provides an informed counter-balance to some of the recommendations you have received from employee supported groups and organizations, but also provides insight as to how these recommendations could impact Ontarians and the vital healthcare services they receive from pharmacies like Rexall.

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*Ontario Regulation 285/01, Exemptions, Special Rules and Establishment of Minimum Wage* exempts persons employed in specific industries from various provisions of the ESA. Pharmacists are one such employee group. Pharmacists are exempt from ESA provisions concerning minimum wage, hours of work, daily rest periods, time off between shifts, weekly and bi-weekly rest periods, eating periods, overtime, personal emergency leave, and public holidays.

**Inconsequential Effects**

There are some of these exemptions that, if removed, would have little to no impact on either Rexall or its pharmacists. The minimum wage exemption is one such example. No pharmacist employed by Rexall receives minimum wage (or a wage close to minimum wage) and, as best as Rexall can tell, neither are the pharmacists working elsewhere across the province of Ontario. Therefore, Rexall takes no position on whether the minimum wage exemption for pharmacists should be removed, as its elimination would be inconsequential. The same can be said in terms of the public holidays exemption and vacation with pay exemption for pharmacists, as Rexall provides its pharmacists with public holiday benefits and vacation benefits in excess of the minimum entitlements outlined in the ESA.

**Adverse Effects**

Conversely, removing many of the other aforementioned ESA exemptions in regards to pharmacists will have a debilitating impact on Rexall's business, its pharmacists and, more importantly, the Ontarians

Rexall serves. Specifically, the *Drug and Pharmacies Regulation Act* requires a pharmacist to be physically present at all times when a pharmacy is operating. Pharmacy customers also require a pharmacist to be available at all times to answer questions regarding their medication and general health inquiries. If a pharmacy cannot require its pharmacists, as a condition of their employment, to delay their breaks or extend their workday when necessary in order to meet these legislative and customer requirements, the pharmacy would be required to have two pharmacists working at all times if it wanted to remain fully operational. This obligation would likely have one, if not several, deleterious effects. Examples of these deleterious effects include the following:

1. Operating the pharmacy during off-peak hours no longer becomes feasible (e.g., pharmacies are unable to find two pharmacists to work the night shift, labour costs on the night shift now drastically trump sales, etc.). This may lead to the demise of the 24/7 pharmacy. For example, pharmacies could be forced to close the pharmacy counter and utilize the “lock and leave” area where prescription medications are kept during off-peak hours. However, not all pharmacies have these areas, as they are extremely expensive to install and maintain, particularly in pharmacies with a large dispensary area. If a lock and leave area was not feasible, the entire pharmacy may be forced to close during off-peak hours.

Either way, the resulting effect could be that customers would only be able to obtain their prescription medications or seek medical advice from a pharmacist at specific times of the day. This would have a severe impact on the lives and health of several groups of customers that are typically served during off-peak hours (e.g., hospital patients discharged in the late evening or early morning, the increasing number of shift workers in Ontario, parents trying to navigate the health issues of a newborn, etc.).

The primary care services that pharmacists are increasingly being asked to provide could be compromised, placing greater strain on Ontario’s overworked and underfunded healthcare system. One such example is immunization against communicable diseases (e.g., the flu). We must keep in mind that the Ministry of Health has publically communicated that its’ strategic goal is to improve access to primary care services through leveraging the enhanced scope of practice for pharmacists. Limiting the hours a pharmacist can voluntarily work will undoubtedly interfere with this goal of increased access to primary care services.

2. Pharmacies in a general geographical area may consider consolidating in order to reduce operational expenses that would result from having to schedule two pharmacists at all times. In addition, retail stores containing a pharmacy that are governed by the *Drug and Pharmacies Regulation Act* will likely reduce their total hours of operation during off-peak hours. This could not only lead to layoffs and/or a reduction in hours for numerous pharmacists across the province, but also decrease access to a pharmacist for many Ontarians. Again, decisions like this would run directly in the opposite direction of the Ministry of Health’s goal of improving access to primary care services.
3. Pharmacies may begin to schedule pharmacists for shorter shifts (e.g., 4 hour shifts) to avoid required eating periods and potential overtime liability. This may lead to a dramatic spike in precarious work within the profession. For example, this could lead to the hiring of more part-time pharmacists to simply act as a “shadow pharmacist” to cover off breaks. This would have an adverse impact on pharmacists as they would be required to cobble together part-time jobs in order to garner full-time hours. This is an example of the precarious work the Changing Workplaces Review is attempting to decrease, if not eliminate all together.
4. The relationship and continuity of care between an individual and his or her pharmacist may be weakened, leading to a reduction in quality of care. Limiting the hours a pharmacist can

voluntarily work—whether by increasing daily/weekly/bi-weekly rest periods, eating periods, overtime pay, time off between shifts, *etc.*—will drive an individual’s relationship with his or her pharmacist to one more akin to a relationship with a doctor at a walk-in clinic rather than a family physician. No, Rexall is not maintaining all Ontarians have a relationship with a pharmacist, just as all Ontarians do not have a relationship with a family physician. However, legislation in Ontario should attempt to foster these relationships and create an environment conducive to a continuity in care between individuals and these medical professionals. Failing to do so could lead to a further erosion in quality of care for Ontarians, something the province cannot afford given the current state of its healthcare system.

5. Pharmacies may not have enough pharmaceutical work to have two pharmacists working at all times. This may lead to pharmacists performing tasks historically performed by pharmacy technicians and pharmacy assistants. This could then lead to a reduction in the general rate of pay for pharmacists, as they would be doing work historically performed by lower paid pharmacy technicians and assistants. This would have an adverse impact on the profession as the scope of work for pharmacists would be expanded to include tasks such as inventory control, stocking shelves and data entry. It could also lead to pharmacy technicians and/or pharmacy assistants having their hours reduced. Many of these roles then have the potential of becoming precarious, part-time jobs.
6. A pharmacist shortage could be created. With only two pharmacy schools in the province, Ontario may be unable to produce enough qualified employees to have each pharmacy counter staffed with two pharmacists at all times. This could lead to many pharmacies ceasing operation and/or further consolidating with other pharmacies, which in turn leads to an elimination of jobs and decreased access to vital healthcare services for Ontarians across the province.

Pharmacies serving high need areas, such as rural and remote locations, will be even harder hit. Not only do these areas already suffer from a chronic pharmacist shortage, but patients in these areas also rely more heavily on their pharmacist because they are underserved in terms of other essential health service providers (*e.g.*, doctors, nurses, chiropractors, dentists, *etc.*).

## Health and Safety

With all these potential adverse effects to pharmacies, pharmacists and the Ontarians they serve caused by the removal of the pharmacist exemption, one might ask themselves why even consider the removal?

According to the Interim Report, two of the potential reasons for the removal of the pharmacist exemption are the health consequences to individual pharmacists and the increased risk of medication dispensing errors. However, as articulated by Professor Morely Gunderson in *Expected and Actual Impact of Employment Standards*, a paper specifically prepared for the Changing Workplaces Review, the relationship between long hours of work (whether daily or weekly) and health and safety risks is a complicated one, with no proof the former causes the latter.<sup>1</sup> In fact, according to Professor Gunderson, restricting the hours an employee can work can actually have the unintended effect of compromising health and safety: “Importantly, restricting long hours on the part of the existing workforce may lead to hiring new workers who may be inexperienced and lack training and hence be accident prone.”<sup>2</sup> This risk is particularly relevant to the matter at hand. As mentioned, Ontario already suffers from a chronic pharmacist shortage, particularly outside major urban centres. Restricting the number of hours a

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<sup>1</sup> Morley Gunderson “Expected and Actual Impact of Employment Standards” (Paper prepared for the Ontario Ministry of Labour to support the Changing Workplaces Review of 2015, 30 September 2015), at p 7.

<sup>2</sup> *Ibid.*

pharmacist can work may lead to the hiring of less proficient and qualified pharmacists, which would in turn lead to an increased risk of medication dispensing errors.

Furthermore, if the existing pharmacist shortage is exacerbated, it could lead to the Ontario College of Pharmacists and/or the two pharmacy schools in Ontario reducing their respective licencing and entrance qualifications, particularly if the Ontario government continues to download primary care services to healthcare professionals other than physicians. This could again lead to a much greater risk of medication dispensing errors than having a properly skilled and qualified pharmacist working extended hours.

### **Hours of Work Regulations**

In addition to claims regarding health and safety, proponents of the removal of ESA exemptions such as the pharmacist exemption often argue implementing hours of work regulations will improve work-family balance for existing employees and create jobs for prospective employees by opening up hours of work that now need to be filled. However, as already mentioned, there is currently a pharmacist shortage in Ontario, and therefore, creating more pharmacist jobs that need to be filled could have a devastating effect on the health of Ontarians. Furthermore, such claims regarding job creation and work-family balance are disputed by Professor Gunderson. According to Professor Gunderson, “the evidence suggests that hours of work regulations (maximum hours, overtime premium, worktime after which the premium applies) do not have substantial effects on health and safety, work-sharing and achieving work-family balance.”<sup>3</sup>

Moreover, inequality between families could be exacerbated by the removal of the pharmacist exemption and subsequent implementation of the ESA’s hours of work regulations. As Professor Gunderson points out, maximum hours regulations (particularly those that apply to professionals who make higher salaries that could support a family) can give rise to inequities between single-earner and dual-earner families given these restrictions only apply to individuals and not families:

For example, the single-earner in a single-earner family may want to work a 60 hour workweek to approximate the earnings of a dual-earner family where, say, one earner works a 40 hour week and the other a 20 hour week. Both families work 60 hours, but only the single-earner family is restricted.... This inequity would not have applied in the Old World of Work which was dominated by single-earner families, but it certainly applies to the New World of Work where the dual-earner family is the norm.<sup>4</sup>

### **Professionals and Precarious Work**

It has been made clear throughout the Changing Workplaces Review process that the predominate focus is to address the rise of precarious work in Ontario. Pharmacists, like other professionals, do not fall into the group of employees susceptible to this increasing phenomena. Research commissioned for the Changing Workplaces Review confirms this sentiment—specifically, the paper prepared by Professors Leah F. Vosko, Andrea M. Noack and Mark P. Thomas entitled *How Far Does The Employment Standards Act, 2000, Extend And What Are The Gaps In Coverage? An Empirical Analysis Of Archival And Statistical Data*:

As expected, compared to employees overall, exempt professionals tend to have full-time, permanent employment, with long job tenure, and work in larger firms. As professionals, they are less likely to be paid by the hour, and more likely to earn higher wages, than employees overall. They are less likely to report working paid overtime but

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<sup>3</sup> *Ibid* at p 3.

<sup>4</sup> *Ibid* at p 11.

more likely to report working unpaid overtime, an expected result given this groups' exclusion from overtime provisions.

Not surprisingly, on account of the educational credentials required for many professional occupations, exempt professionals tend to be older than employees overall. Because of both their own wages, and because they are likely to partner with others with a similar socio-economic status, they also tend to be a part of high-income families.<sup>5</sup>

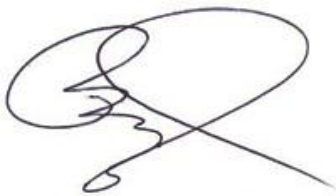
Lastly, nowhere in the Interim Report (or the submissions to the Special Advisors for that matter) has the idea been discussed of removing the aforementioned ESA exemptions for other professionals, such as physicians, dentists, lawyers, engineers or architects. This is because this professional group—a group which pharmacists are a member—is an educated, skilled and competent group that provides services that are necessary and marketable in Ontario. This professional group possesses the ability to negotiate fair and reasonable terms of employment. It does not need the protection of the ESA provisions discussed. On the other hand, pharmacies themselves and the Ontarians they serve need the protection provided by the pharmacist exemption. As previously stated, this pharmacist exemption is necessary to ensure the pharmacies which employ pharmacists remain open and operational. More importantly, this exemption is necessary to ensure Ontarians have their health needs met when they visit their local pharmacy. As such, Rexall respectfully submits the focus of the Changing Workplaces Review should remain the rise of precarious work in Ontario, and therefore, the provisions of and exemptions to the ESA in regards to professionals, such as pharmacists, are not in need of amendment—particularly given the potential adverse effects to doing so mentioned above.

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Thank you for taking the time to review this submission. We ask you please keep it in mind while writing your final report in the Changing Workplaces Review. Specifically, we ask you to keep in mind the potential adverse impact of the removal of the pharmacist exemption on our business, our pharmacists, and more importantly, Ontarians and the vital healthcare services they receive from pharmacies like Rexall.

Should you have any questions, please do not hesitate to contact me.

Sincerely,



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<sup>5</sup> Leah F. Vosko, Andrea M. Noack & Mark P. Thomas, “How Far Does The Employment Standards Act, 2000, Extend And What Are The Gaps In Coverage? An Empirical Analysis Of Archival And Statistical Data” (Paper prepared for the Ontario Ministry of Labour to support the Changing Workplaces Review of 2015, March 2016), at p 34.