



October 13, 2016

Dear Special Advisors C. Mitchell and Hon. John C. Murray,

Thank you for the opportunity to respond to the Ministry of Labour's Changing Workplaces Review Interim Report.

The Nottawasaga Valley Conservation Authority (NVCA) believes that it is important to keep Ontario working and ensure that the government is modernizing and improving legislation to support worker's rights, create jobs and grow the economy. Many of the proposed changes to the Ontario *Labour Relations Act* (LRA) and the *Employment Standards Act* (ESA) however will have profound implications for Ontario organizations, especially smaller organizations. We ask that you consider the economic consequences of any proposed changes to the *Labour Relations Act* and the *Employment Standards Act*.

A strong workforce is vital to the future of Ontario's economy. As it stands, Ontario's highly skilled workforce provides the province with a competitive advantage. Despite this impressive distinction, it's clear to see that new stresses have been placed on employers and employees, including increased global economic uncertainty and a number of new input costs on employers.

The Changing Workplaces Review Interim Report identifies approximately 50 issues and over 225 options of varying size and scope. The NVCA appreciates the work that has gone into this report and would like to offer the following responses to some of those 50 issues.

1. While not listed as one of the issues, NVCA staff feels that it is important to address comments related to the decline of unionization on page 32. Much legislation including ESA, common law, *Workplace Safety and Insurance Act*, *Ontario Human Rights Commission*, etc. are now well established and protect employee rights while giving suitable direction and/or employers are being compliant. This could be a reason why there has been a decline in unionization.
2. As a non-unionized environment, NVCA staff will reserve comment on much of the LRA review. However, one point of concern is related to section 4.3.1.3 and the accessibility to employee lists for unions. If an employee is not already part of a union, the employer should not be sharing any contact information due to the privacy implications. It is the employer's obligation to protect that information.
3. Section 5.2.1 related to the misclassification of employees, NVCA staff notes that options 2, 3 and 4 are all relevant and reasonable. There does need to be an increase of education with respect to rights and obligations to ensure that employers are separating

employees and independent contractors correctly and combining that with proactive enforcement and putting the burden of proof on the employer will all assist in solving the misunderstanding and increase compliance. Adding a dependent contract provision may be helpful as long as it comes with clear constraints and a clear definition of the difference between independent and dependent along with no ambiguities to prevent employers from shifting the responsibility.

4. Section 5.2.2 surrounds who is the employer. Option 2 is bit concerning related to the additional work that an organization would have to complete to ensure that a contractor is compliant. It would not be as easy as ensuring that there is a clause in the contract requiring compliance. There would need to be some proof present like with WSIB's clearance certificate. There is currently no such thing available. The NVCA encourages best practices for ensuring compliance as well as enforcement by the Ministry of Labour.
5. For exemptions, special rules and general process in Section 5.2.3, NVCA staff has concerns about issue 6a – minimum wage differential for students under 18 and issue 7 – student exemption from the “three-hour rule”. While NVCA staff do not disagree with comments in the report, there could be a significant financial impact to small and not-for-profit organizations that may employ some of these students. This needs to be further discussed.
6. For 5.2.4.1 Interns/Trainees there has already been significant guidance on this issue followed with enforcement blitzes to encourage compliance. NVCA staff recommends maintaining the status quo as further changes may confuse and complicate a matter that has already been dealt with.
7. Section 5.3.1 is related to hours of work and overtime. On page 193 there was a comment that the review panel “hear from some businesses that generally all the different requirements and rules for hours of work create a very complex and unwieldy system that is difficult to track and follow”. NVCA staff finds that this process is manageable and feels that employers should balance their operational needs with the employee's needs/rights. NVCA staff would recommend maintaining the status quo because of the reason above as well as the potential financial impact to organizations should changes be made to reduce the trigger for overtime.
8. In regards to scheduling and section 5.3.2 NVCA staff has some concerns with potential duplication of legislation. The OHRC already has provisions for job protected right to request changes to schedule. This does not need to be part of the ESA as well. While NVCA staff recognizes the need for predictable and stable schedules for employees, there is a tremendous amount of variability associated with the scheduling of employees in certain sectors. The NVCA has revenue based education programs that can be difficult to

schedule due to the unknown of when the people who create the revenue will walk through the doors. Putting an additional financial pressure on such a program could have serious implications to the future of the program. Maintaining status quo would be the only recommendation that would not potentially have serious financial implications.

9. For section 5.3.3.1 around public holidays, NVCA staff notes that the current way of calculating public holiday pay, while a bit cumbersome, is not complex, rather a straightforward approach. Many of the options presented in the report could have financial implications and further discussion should occur if maintaining status quo is not chosen.
10. For the following sections, NVCA staff would like to again note that while there may not necessarily be disagreement with some of the options presented; there is a large potential financial implication to not only all businesses but the specific impact to small businesses. This could put many small businesses in financial hardship and further consultations should occur prior to changes being made:
 - 5.3.3.2 – Paid Vacation
 - 5.3.7 - Part-time and Temporary Work – Wages and Benefits
 - 5.3.8.1 - Termination of employment
 - 5.3.8.2 - Severance Pay
 - 5.3.8.3 - Just cause
 - 5.5.5.3 – Remedies and Penalties
11. While the MOL engages in several education initiatives, it has not been as thorough as for legislations surrounding health and safety. As well, the ESA poster is very brief compared to the legislative requirements for posting the green book with H&S. In Section 5.5.2 on page 268 it is noted that the “ESA education is not part of the provincial high school curriculum, whereas occupational health and safety education has been part of the provincial high school curriculum since 1999”. NVCA staff would concur that this is something that should be taught along with the H&S and would encourage the MOL to look into that. Further, around section 5.5.3 about creating a culture of compliance, option 1 is around implementing an ESA committee as an expansion of the JHSC. This would require different levels of expertise and should not be an expansion to an existing committee. If anything, it should be its own committee. However, option 2 would be preferred combined with increased enforcement.
12. For section 5.5.4.1 and initiating the claim it is important to note that the comment “Employers likely will argue that most small and medium employers do not have readily

accessible human resources expertise or employment law advice” would be a comment coming from organizations who do not make human resources a priority. This argument was raised with the WSIA and H&S and resources have been put in place to help. NVCA staff would recommend that option 1 move forward with an increase of resources available to assist employers.

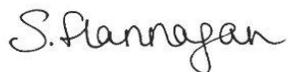
13. Regarding enforcement in section 5.5.5.1 options 1, 2, 3, 5, 6 and 7 are reasonable options. However, option 4, if adopted, would eliminate good education opening for employers and could trigger a review to ensure that they are currently compliant.

The NVCA staff would like to thank the special advisors for their time on this review. It is the intent of these comments to support balanced and fair employment standards while promoting making a significant investment in education of employer responsibilities. The NVCA knows that there will be some legislative amendments and appreciate that they are needed. NVCA staff wants to make sure it's driven by data and believe greater consultation is required.

If your goal is to increase employee experience and their ability to realize more income, what NVCA staff doesn't want to do is introduce new regulatory burdens that compromise the ability of Ontario employers to create jobs and grow the economy.

Thank you again for the opportunity to respond to the Ministry of Labour's Changing Workplaces Review Interim Report.

Sincerely,



Sheryl Flannagan

Director, Corporate Services