



Ministry of Labour Changing Workplaces Review

ORHMA Urges A Risk Based Enforcement Mode to Be Applied to the ESA

At the Ontario Restaurant Hotel and Motel Association (ORHMA) we strongly believe there needs to be **an improved approach to education and enforcement** within Ontario's Employment Standard Act (ESA) 2000 in driving compliance.

Our Recommendation: We encourage the Special Advisors to review the Alcohol Gaming Corporation of Ontario (AGCO) risk-based approach to liquor regulation which has two primary components: the first is based licensing and the second is risk-based enforcement including an education component.

This model can be tailored to be the Ministry of Labour's ESA enforcement model.

Summary: The Alcohol and Gaming Commission of Ontario (AGCO) takes a risk-based approach to liquor licensing, where resources are focused on establishments that are deemed to have a higher level of risk or are more likely to be non-compliant or pose a risk to public safety.

Overall liquor licence infraction rates (the number of infractions per inspection) have shown a downward trend in recent years.

AGCO's Risk-Based Approach to Liquor Licensing: In 2008, the AGCO introduced its Risk-Based Licensing (RBL) program, which is based on assessed risks and focused on promoting licensee compliance through education and collaboration, in conjunction with a series of escalating regulatory options, including monetary penalties and licence suspensions. While the rules around liquor sales licensing have been streamlined to allow for more flexibility for licensees, the AGCO has retained the authority to place specific conditions on establishments that are deemed to have higher levels of risk or who have proved unable to handle the additional flexibility.

There are four key principles behind Risk Based Licensing (RBL):

1. To identify those persons or places that pose specific risks to public safety;
2. To mitigate any risks and ensure compliance with the LLA through the entire lifecycle of a liquor licence;
3. To focus more AGCO resources on those establishments which are more likely to be in breach of the LLA and its regulations, or pose a risk to public safety; and

4. To reduce the administrative burden on those people or places posing a lower risk

At the same time, the AGCO implemented a Risk-Based Enforcement (RBE) program, which focuses liquor inspection activities on licensees with a higher assessed risk level. Like RBL, this program is complemented by a strong educational program for licensees, to raise awareness and understanding of liquor laws, which, in turn, promotes compliance. When infractions do occur, the AGCO has a number of regulatory tools to choose from, ranging from warning letters or monetary penalties to suspensions and licence revocations.

As identified, one of the key goals of the AGCO is to focus both licensing and enforcement resources on those licensees and establishments with a higher risk profile and/or previous compliance issues. As such, the AGCO's Investigation and Enforcement Branch developed a risk-based approach to compliance that focuses on those areas of the LLA that pose the greatest risk to public safety, namely:

1. Serving minors.
2. Serving intoxicated patrons.
3. Overcrowding.
4. Allowing violent, unruly or disorderly behavior; and
5. Serving after hours.

Education and Collaboration: The AGCO schedules local town held training to owners and management on the Liquor Licence rules and responsibilities through travelling training "road shows". The AGCO and hospitality Industry both support Ontario's Best Bar None (BBN) program, which is an industry-led international accreditation and awards program that rewards excellence amongst responsible liquor sales licensees being in test pilot phase within areas of the cities of Toronto and Ottawa.

Liquor Licence Compliance Rates: It is noteworthy that the AGCO's shift in its regulatory approach has, from our point of view, shown really positive impact on compliance rates by bars and restaurants. Violations since RBL came into effect:

- Liquor Licence Infractions decreased by 25 percent;
- suspension days decreased by 66 percent;
- the number of establishments that served suspensions has decreased by 69 percent; and
- Number of significant public safety infractions (minors, permitting drunkenness and serving intoxicated patrons, permitting disorderly behaviour, overcrowding, and service before and after hours) have fallen 48% over the past 5 years;
- liquor related licence hearings have decreased by 68 percent;
- All while liquor inspections over past 5 years have increased 11%.

