



October 12, 2016

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

via: CWR.SpecialAdvisors@ontario.ca

Dear Messrs. Mitchell and Murray:

On behalf of the 9,500 members, Board of Directors and staff of the Ontario Pharmacists Association, it is our pleasure to make this submission in response to the Changing Workplaces Review Special Advisors' Interim Report.

About OPA

The Ontario Pharmacists Association represents pharmacists, pharmacy technicians and pharmacy students across the province. Our member pharmacists are employed in a variety of professional settings, including staff pharmacists in small, owner operated independent pharmacies, and chain drug stores; clinical pharmacists in a hospital setting; pharmacists employed in industry and within government. OPA's Mission Statement is:

We enable and inspire our members and the profession by evolving the practice of pharmacy, advocating for professional excellence, and providing the innovative tools, education, and services needed to deliver high-quality patient-focused care.

Regulatory College

As well as being governed by provincial labour legislation such as the Employment Standards Act, pharmacists are regulated by the Ontario College of Pharmacists, as is referenced on page 167 of the Interim Report.

General Statement of Support

As the largest advocacy group for pharmacists in Canada, OPA supports legislative changes that will improve the practice of pharmacy. These legislative changes will further allow pharmacists to deliver the best pharmaceutical care possible for patients in Ontario. Pharmacists work tirelessly on behalf of their patients, and the workplace demands placed on them can sometimes be very strenuous. We believe that protections under the Employment Standards Act should be extended to the men and women who are duly licensed to practice the profession of Pharmacy in Ontario. Currently, pharmacists are exempted from the provisions of the Employment Standards Act.

Current Exemption

As the Interim Report points out, the exemption for pharmacists resides in the Employment Standards Act Regulation 285/01, along with a number of other health professionals and practitioners. Specifically, pharmacists are exempted from certain parts of the Act:

Part VII: Hours of Work and Eating Periods

Part VIII: Overtime Pay

Part IX: Minimum Wage

Part X: Public Holidays

Part XI: Vacation with Pay

The historical rationale for this grouping is clear: like physicians, dentists, and other health professionals, pharmacists have a duty to patients, and historically have been self-employed professionals. While OPA supports improving working conditions for pharmacists, it is not difficult to understand why pharmacists were originally included in this exemption. Furthermore, while we support ending the exemption for pharmacists who are in non-ownership roles, OPA is concerned that pharmacists' status as self-regulated health professionals be maintained.

Unlike some other health professionals, many pharmacists today work as employees in a retail pharmacy setting. Some of these settings can be open 24 hours a day and 7 days a week. Patients have developed an expectation that when entering a pharmacy, a pharmacist will be present and available almost immediately. Sometimes, patients require help at odd hours, when there might only be one pharmacist working. In situations where only one pharmacist is present, including self-employed owner pharmacists, ensuring timely patient care as required by the standards of practice of the Ontario College of Pharmacist, while providing reasonable accommodation under employment standards will need to be addressed by the profession itself. As their professional scope of practice expands, pharmacists are being called upon by the patient community, and indeed by the government, to provide more front-line health services. The need to look at how to balance professional practice standards and patients' expected level of services evolves.

Proposals in the Interim Report

The Interim Report identifies a number of exemptions *“that might be recommended for elimination or variation without a further review”*. The Report goes on to say:

“Our preliminary view is that these exemptions need not be subject to a subsequent review. If there are reasons why these exemptions should be referred to a subsequent review process and not be dealt with as part of the Changing Workplace Review, we invite stakeholders to make submissions on this issue as well. These exemptions are:

information technology professionals;

pharmacists;

managers and supervisors;

residential care workers;

residential building superintendents, janitors and caretakers;

special minimum wage rates for: students under 18; and

*liquor servers; and
student exemption from the “three-hour rule” (see description below).”*

The Ontario Pharmacists Association interprets this to mean that the Reviewers are of the mind that the exemption for pharmacists should end without further input. While OPA would like to reiterate our support for our members being protected under the Employment Standards Act, with the accompanying protections for hours of work, rest periods, eating periods, overtime, etc., we also recognize that pharmacists, as health professionals, present unique requirements that may in fact require further study and consideration.

For example, the inclusion or exclusion of the Pharmacy Manager who is almost always a pharmacist and who oversees the work of pharmacists and pharmacy technicians should be addressed. Although OPA acknowledges that “managers and supervisors” have been similarly included on this list of exemptions that can be ended without additional review, our reading of the rationale leads us to conclude that the practice of calling someone a “manager” or “supervisor” in order to circumvent protections under the Employment Standards Act is undesirable and should end. The Ontario Pharmacists Association agrees with this premise; however, such is not the case in the vast majority of pharmacy workplaces. The pharmacy manager is charged under regulation with ensuring that patients receive the highest quality of care from pharmacy staff; the necessary reporting to prescribers, regulatory body and government; and that the professionals working in the pharmacy meet the high standards set out by the Ontario College of Pharmacists. Finally, many pharmacy managers may, in fact, exceed the income threshold as set out in the *Highly Compensated Employees* section of the Report (page 170), depending on what level is ultimately set.

The Ontario Pharmacists Association notes that a number of health professionals, such as physicians, chiropractors, naturopaths and massage therapists, as well as hospital employees and retail business employees, are captured in *Category 3: ESA Exemptions That Should be Reviewed Under a New Process*. As noted above, the majority of Ontario pharmacists are employed in the retail and hospital settings. The Association assumes that the professions and jobs included in Category 3 are there because there are unique characteristics associated with the profession, the job, and/or the workplace. Such is certainly the case with the profession of pharmacy.

As well, a number of OPA pharmacists are employed as Relief Pharmacists. Simply put, these pharmacists are not attached to one distinct employer but rather are for hire to those pharmacies that require a pharmacist to work a shift as required, such as filling in for the permanent full-time pharmacist who requires a day off for illness or is on vacation. While OPA supports the notion that a relief pharmacist be entitled to the requisite eating and rest periods, protection for pay and the other protections under the Act, simply eliminating the exemption as it exists, and restricting employers and those who work as relief pharmacists to the letter of the law may not practically allow for the ongoing practice of relief pharmacy as it exists today without some further consideration.

As the Reviewers will appreciate, patients currently expect their medication, counselling, flu shots, MedsChecks and everything else provided by their pharmacists without interruption;

they will have little patience for disruption caused by a legislative change mandated by the Ministry of Labour, without some transition. That being the case, OPA believes that further consideration be given before any regulatory change is enabled.

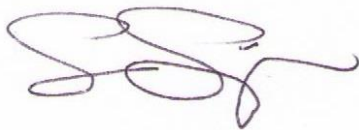
Conclusion and OPA Recommendations

Taking all of the above into account, and having regard to the overarching policy direction that the Government and the Review appear to want to take, the OPA recommends the following:

- The Association supports that employee/non-owner pharmacists should be extended the protection, under law, for a practice environment that enables excellent patient care;
- Any legislative and/or regulatory changes to be enacted should not diminish or compromise pharmacists' ability to exercise their professional judgement as health professionals;
- Given the complex nature of the work of pharmacists, the range of workplaces in which the profession of pharmacy is practiced, the work of relief pharmacists, the role of the pharmacy manager, and the 24/7 nature of the work, additional consideration/consultation is required before simply ending the current exemption;
- Pharmacists should be moved to Category 3 as laid out in the Interim Report; OPA will be a willing contributor to that process;
- If the decision is made simply to end the exemption for pharmacists without further consideration as described above, a period of transition and adjustment should be given in order to avoid/minimize disruption to staff, management and importantly patients in community pharmacy;
- Importance of patient safety, urgent and timely access to medication, hospital discharges, etc. should be mentioned as influencers to the exemption criteria.

Thank you for giving us this opportunity to provide input to your important work on behalf of all Ontarians. We would be happy to meet with you in person, if that is convenient, to provide additional information/input

Sincerely,



Sean Simpson
Chair of the Board of Directors

cc: The Honourable Kevin Flynn, Ontario Minister of Labour
Dennis Darby, CEO of the Ontario Pharmacists Association
Joseph Ragusa, Principal, Sussex Strategy Group