

October 14, 2016

Mr. Michael Mitchell; and,  
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RE: Ministry of Labour- Changing Workplaces Review Interim Report

In response to the *Changing Workplaces Review Special Advisors' Interim Report*, OREA recommends maintaining the status quo as it relates to existing exemptions for real estate professionals. The current framework reflects the principles and criteria used by the Ministry to establish Special Industry rules and serves the unique requirements of our industry.

### **About OREA**

Representing the 62,000 real estate brokers and salespeople who are members of Ontario's 40 real estate boards, OREA serves its members through a wide variety of publications, educational programs and special services. The association provides all real estate licensing courses in Ontario.

Founded in 1922 to organize real estate activities across the province, OREA's goals include promoting higher industry standards, protecting the general public from unscrupulous brokers and salespeople, and advocating on behalf of Ontario home owners and the real estate industry at Queen's Park.

OREA continually strives to improve the image of REALTORS® by enhancing educational and professional standards. OREA develops and publishes standard forms, and supports educational and charitable causes through the Ontario REALTORS Care® Foundation.

### **Existing Exemptions**

The interim report recommends that exemptions applying to real estate salespersons and brokers be reviewed in a new process. It is our view that the current exemptions reflect the principles and criteria used by the Ministry to establish Special Industry Rules.

The first core condition requires that the nature of work in an industry is such that it is impractical for a minimum standard to apply. Due to the requirements of the marketplace, which typically revolve around the schedules of property buyers and sellers, real estate salespeople work evenings and weekends meeting with clients, showing properties and managing transactions. Removing the exemption would eliminate the flexibility required for salespeople to carry out their business effectively.

Under the current framework, real estate professionals enjoy a high degree of control with regards to working conditions (such as hours and location), remuneration and how to run their businesses, meeting the second special industry rules core condition. In most cases, there is no fixed schedule by the brokerage or requirement to work a certain number of hours. Instead, real estate salespeople typically set their own schedules and often work remotely.

Lastly, real estate professionals are a readily identifiable group. Real Estate professionals are regulated by the *Real Estate and Business Brokers Act, 2002* (REBBA). Section 2 of Ontario Regulation 285/1 sets out exemptions to Parts VII to XI of the ESA. Section 2(1) of the regulation states that Parts VII, VIII, IX, X and XI of the Act do not apply to a long list of registered and qualified practitioners who are subject to professional or regulatory oversight, including lawyers, professional engineers, chiropractors, optometrists and surveyors. Section 2(1)(g) of the regulation ensures persons employed as salespersons or brokers, as those terms are defined in REBBA, are included in this list of exempt professionals.

Furthermore, a real estate brokerage's relationship with a salesperson is typically governed by an independent contractor service agreement. This contract covers things like use of brokerage facilities, expenses and fees or commission splits paid by the salesperson. This form establishes, among other things, voluntary entry by a real estate salesperson into an independent contractor relationship with their real estate brokerage. Contrary to other forms of contractor status the ministry's consultation is reviewing, the independent contractor status is the desired business model that is well positioned to meet the needs of both clients and the real estate industry.

### **Conclusion**

OREA echoes the reports recommendation that current exemptions should not be eliminated, modified or amended without further consultation of those affected. Due to the nature of our industry, it would be impractical for the exemptions to be removed. We believe the current framework reflects the principles and criteria used by the Ministry to establish Special Industry Rules.

Therefore, OREA recommends maintaining the status quo as it relates to exemptions for real estate professionals due to the unique requirements of our industry.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Ray Ferris', written in a cursive style.

Ray Ferris, President  
OREA

Cc: Honourable Kevin Flynn  
Minister of Labour