

Peterborough Community Legal Centre

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September 28, 2016

To: The Honourable Kevin Flynn, Minister of Labour

Attn: Special Advisors, C. Michael Mitchell and John C. Murray

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

Dear Minister Kevin Flynn and, Messrs. C. Michael Mitchell and John C. Murray,

Re: Vulnerable Workers and the Employment Standards Act

The Peterborough Community Legal Centre (PCLC) is a community legal clinic providing free legal advice and representation to low income residents of Peterborough City and County. We are making submissions on the **Changing Workplaces Review** regarding the proposed legislative changes that are desperately needed to address the issues facing Ontario workers.

In writing this submission we have drawn from the issues we encounter on a daily basis when assisting the vulnerable low-income workers of Peterborough. At the Peterborough Community Legal Centre we have encountered a wide range of cases which echo the findings of the Changing Workplaces Interim Report and our experience indicates that Peterborough is no exception to the broader workplace trends occurring across Ontario.

Our work at PCLC is entirely for non-union workers; therefore we draw our submissions from the *Employment Standards Act* recommendations from the Interim Report and our proposals will focus on: i) enhanced enforcement, and; ii) deterrence of employer misconduct.

In our submission, we will present solutions applicable to vulnerable workers in Ontario system that target two goals. The first is to enhance the ability of workers to pursue legitimate claims by presenting a streamlined path to pursuing their rights. The second is to enhance the deterrent effect of individual claims in order to deny employers from profiting from illegal activity and create an even playing field for all employers.

Overview of the Changing Workplaces Review and Peterborough

The Review aims to tackle the issues faced by modern Ontario workplaces and shape them into legislative changes. The Interim Report for the Changing Workplaces Review was released on July 27th, 2016 and featured the submissions from organizations and other interested parties from across Ontario.

A general trend identified in the interim report has been the shift from permanent work to less stable and precarious work across the board. The transition from a blue-collar labour workforce to a service-based industry has left many areas, including Peterborough, with a diminished demand for traditional labour work and a new, vulnerable population of workers.

Peterborough City and County have experienced a steady increase in the population of vulnerable and precarious workers. A recent report identified a living wage in Peterborough to be \$17.65 an hour working 37.5 hours per week. In comparison the report listed the median wage in Peterborough at \$15.02 in 2010 with half of the population making below that amount.

The cases that we have encountered involve a very broad spectrum of employment law issues identified in the interim report including: wage theft, wrongful dismissals, independent contractor questions, dependent contractors, human rights complaints, workplace harassment, vacation pay violations, ROE violations, temporary help agencies, workplace injuries, etc. In addition, temporary help agencies have become increasingly prominent in Peterborough with many of the negative employment features outlined in the Interim Report.

The case work at PCLC has indicated that the modern demands of increased competition have been disproportionately placed on workers who traditionally work as laborers. Many of these workers are low-income and have low levels of education, making them vulnerable compared to their sophisticated employers. For this reason, the content of this report will address the process of pursuing the rights of these vulnerable workers who may qualify for aid from legal clinics.

Submission and recommendations:

We have organized our submission into two proposals which that address our stated goals of i) enhanced enforcement, and; ii) deterrence of employer misconduct.

Streamline the enforcement of ESO orders

First, we recommend placing emphasis on creating a clear path that workers can take towards enforcing their rights. Our recommendation is simple and effective. **It draws upon one option outlined in section 5.5.7 in the report: claimants should be permitted to enforce and file ESO orders as an order of the court.** This recommendation affords claimants the option to forgo the prescribed Ministry of Finance collection process and gives claimants more expansive access to justice by giving them access to all the enforcement tools of a court order.

By crafting a faster and more coherent process for workers, the frustrations they experience can be shifted towards encouragement to pursue their rights. A common complaint of asserting rights through the Employment Standards Claim process has been the lengthy timeline from the beginning of the claim to the eventual collection from employer.

Even after an ESO has initiated an order, many of our clients cannot afford to wait for long periods of time before claims can be collected. The current model of collection involves starting

with orders to pay and escalating action eventually being delegated to the Ministry of Finance. This adds a significant amount of time to the claim process. The recurring problems of long processing claim times, which are identified in the interim report, have in our experience added a layer frustration to claimants.

Enforcing ESO orders as court orders will benefit claimants by expanding the number of options that workers have access to, especially vulnerable workers. Workers are very diverse in Ontario and have vastly different levels of sophistication and education; increasing access to the legal system will benefit workers more than the 'one-size fits' all system currently in place.

Legal clinics have the necessary experience and are well placed to assist vulnerable workers in enforcing their claims through the court system. For instance, clinics already do this with orders of the Landlord Tenant Board (LTB). ESO orders and LTB orders are both administrative decisions, but currently only orders of the LTB are directly enforceable in through the court system by claimants. The recent legal clinic expansion into the area of worker's rights is a natural fit with this solution as clinics are now actively practicing employment law, are cost effective entities, and can assist the Ministry of Finance in the administration of justice.

The importance of the locality of community legal clinics should not be understated. Similar to the role that legal clinics play in enforcing the rights of tenants at a local level, they can act as a deterrent against employers who breach the rights of vulnerable workers. Legal clinics are also familiar with the local labour market players such as employers, employees, local unions, worker's associations, and the like.

Legal clinics are also well positioned to conduct outreach and public legal education to workers. In our practice we note that many of our clients are unaware of the Ministry of Labour tools or lack the sophistication and digital access to use them. In addition, our clients are often unaware they have claims with respect to human rights, common law termination, and workers compensation.

The goals of streamlining and efficient enforcement are essential towards creating a culture of compliance among Ontario workplaces. **We believe that, coupled with public legal education, streamlining enforcement and collection is a simple and effective change that will enhance the rights of workers at a very basic level.**

Increase deterrence of employer misconduct

Our second submission is to place more emphasis on deterrence of employer misconduct. Our perspective is that the overall function of employment standards is undermined by ineffective and inconsistent enforcement of the *Act*. **In line with the options in section 5.5.5.3 of the interim report, our second submission is that the Ontario Labour Relations Board should gain jurisdiction to impose significant penalties on offending employers.**

Modern competition, especially among employers who do not comply with the *ESA*, creates an incentive for otherwise honest employers to breach the *ESA*. At the moment, employers who contravene the *ESA* do not face enough deterrence in their actions, often treating the cost of non-compliance as part of the cost of doing business.

As the interim report identifies, employers will make decisions based on the cost of non-compliance judged against the cost of doing business. There currently exist supplemental penalties made against employers engaged in misconduct. However, there is a lack of consistency in applying these penalties; provincial prosecutions only commence for employers who are “repeat offenders,” and Notices of Contravention are rarely administered.

The purpose of this shift would be to continue to impose more substantial and consistent penalties on employers who breach the *ESA* as well as to allow a specialized tribunal to develop consistency in how penalties are administered. This sends a clear message to employers that certain conduct will consistently attract a certain penalty.

Conclusion

The Peterborough Community Legal Centre appreciates having this opportunity to participate in the consultation process. We believe experiences with vulnerable workers in smaller urban areas of Ontario such as Peterborough will have a meaningful contribution to the development of stronger employment standards for all of Ontario.

We believe that the path to stronger employment standards begins with proper enforcement and creating an environment where employees and employers can thrive. We believe that our submissions will allow vulnerable workers in communities such as Peterborough to better understand and enforce their rights in the workplace.

Yours truly,
PETERBOROUGH COMMUNITY LEGAL CENTRE

A handwritten signature in black ink that reads "Melinda Rees". The signature is written in a cursive, flowing style.

Melinda Rees,
Barrister & Solicitor
Executive Director

Copy to: The Honourable Jeff Leal, Minister of Agriculture, Food and Rural Affairs