



**ORHMA & GTHA
Response to Special Advisors
Changing Workplaces Review & Interim Report
FALL 2016**



October 14, 2016

VIA E-MAIL: CWR.SpecialAdvisors@Ontario.ca

RE: Changing Workplaces Review – Interim Report

Dear **Special Advisors Mitchell and Murray,**

On behalf of the members of the Ontario Restaurant Hotel and Motel Association (ORHMA) and the Greater Toronto Hotel Association (GTHA), we are writing to provide input into the Changing Workplaces Review.

The ORHMA along with the GTHA has heard from its membership and we are greatly concerned about the impact any labour reforms will have on Ontario's hospitality industry. This provincial government review also has the potential to increase red tape, add unnecessary costs and make Ontario's hospitality operations more onerous to operate.

Many leading employer groups have joined efforts to call upon the Provincial Government to address your Interim Report of the Changing Workplaces Review. This coalition made of other like minded associations has been branded "Keep Ontario Working". Together we have prepared a submission "Reform that Works a Call for Evidence Based Law Modernization." We support the recommendations and comments within that submission but also wanted to ensure you understood and were aware of Ontario's Hospitality Industry current state of affairs and to point out that the current climate is not conducive for labour laws to be changed.

Unfortunately, it is not about revenue growth in the Ontario hospitality industry anymore, it's about the pressures on the expense lines. While we are pleased to be able to provide you with Ontario's hospitality industry perspective on the provincial government's labour reforms we are cautious about any changes impacting our hospitality economy.

Ontario's Hospitality Economy: Ontario's hospitality industry is one of the most dynamic and competitive sectors of the provincial economy contributing 4.3% of the provincial GDP, generating over \$23 billion in sales and is a major employer of over 400,000 jobs. That equates to an estimated \$9 billion in tax revenues generated for all three levels of government.

In today's Ontario the hospitality industry, with more than 22,000 foodservice establishments and 3,000 accommodation properties, has the potential to create more jobs, more investment and more service destinations. With over 201,000 businesses related to tourism products and services representing over 17% of all business in Ontario, hospitality and tourism GDP in Ontario is greater than that of agriculture, forestry/logging, commercial fishing/hunting and mining industries combined.

The industry is uniquely positioned to contribute to the economy of every Ontario community. It directly employs over 400,000 Ontarians representing 7% of the total provincial employment. In the City of Toronto alone restaurant employment is over 70,000 and in hotels over 32,000 workers.

We appreciate the opportunity to provide input on the Changing Workplaces Review Interim Report, and look forward to further consultation with the Ministry of Labour to ensure any changes made are in support of a the employer-employee relationship.

Should you have any questions please contact the undersigned.

Yours truly,



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Yours truly,



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cc: Hon. Kevin Flynn, Minister of Labour
cc: Hon. Eleanor McMahon
cc: Hon. Brad Duguid

ORHMA & GTHA RESPONSE TO CHANGING WORKPLACES REVIEW INTERIM REPORT

The Ontario Restaurant Hotel and Motel Association (ORHMA) and the Greater Toronto Hotel Association (GTHA) appreciate the opportunity to be consulted during the Ministry of Labour's Changing Workplaces Review 2015 and now the opportunity to respond to your 2016 Interim Report which suggests significant changes. We understand the purpose of your review and suggestions will consider how the Labour Relations Act, 1995 (LRA) and the Employment Standards Act, 2000 (ESA) could be amended to best protect workers while supporting businesses in our changing economy. This provincial government review also has the potential to increase red tape, add unnecessary costs and make Ontario's hospitality operations more onerous to operate.

The Ontario hospitality industry did not seek changes or request a review of the Employment Standards Act and the Labour Relations Act. Currently there is insufficient information to support major reforms to labour legislation. We recommend that the government does not make amendments to the legislation without statistical and economic data that would result in unintended consequences and negatively impact the ability of Ontario's businesses to create jobs and grow the economy.

The ORHMA and GTHA believe there is a disconnection between the direction provided by the province to the special advisors and the economic reality of any impacts. For example: as part of our coalition submission, the Keep Ontario Working group commissioned Philip Cross, Executive Fellow with the School of Public Policy at the University of Calgary and former Chief Economic Analyst at Statistics Canada, to analyze the issue of worker precarity. Cross' analysis indicates that by several metrics, the concern around precariousness is overstated. For example, part-time employment in Ontario and Canada shrank in 2015 as compared to 25 years ago. Data also indicates that at no time in Ontario's recent history have employees in this province enjoyed such stable employment; the average employee in Ontario has worked for the same employer for a record 106.3 months (or nearly 9 years). We recommend that further research and an in depth economic analysis is completed prior to moving forward with any recommendations.

The ORHMA and the GTHA strongly believe good employee practices are imperative for the benefit of both the employee and the employer. We advocate for employment legislation that balances the legitimate needs of employees for security and predictability with the equally important employer needs of labour flexibility based on the hospitality business demands. The positive side of employer and employee practices including employee flexibility and job opportunities of the most diverse workforce in any industry has been missed entirely from this report. Missing is also the considerable changes in consumer behavior in terms of booking hotel accommodations and food service facilities requiring the hospitality industry business model to maintain the flexibility it needs to meet consumer demands.

We anticipate proposed changes will have a profound impact on the relationship between employees and employers in every workplace in Ontario. If the provincial government fails to take an open, inclusive, and evidence-based approach to studying these proposals, it will compromise the ability of employees and employers to work together to meet the needs of consumer demand.

In particular, key areas of policy focus for the Keep Ontario Working Coalition includes:

1. **Education and Enforcement:** A critical first step in improving workplaces for Ontarians is increased education and enforcement of Ontario's existing labour laws.

- a) We see these measures as an important area of common ground for government, employees, and employers. Human Resource development support should be considered.

We do know that education is the best method for employers to understand the law and are to strive for compliance. Education and a Risk Based Inspection and Enforcement approach similar to the Alcohol and Gaming Commissions (AGCO) Risk License Based approach should be prioritized by the government. (Employ a risk-based approach to the issuance and regulation of liquor sales licences called *risk-based licensing*. This, allows the AGCO to encourage good business practices throughout the industry and strategically focus resources where they will make the most difference.)

Furthermore we encourage the government to adopt a similar approach in training to the AGCO's "You and the Liquor Rules" educational campaign aimed at owners and managers of licensee establishments. The program has a high participation rate and aims to drive compliance on AGCO policies and the Liquor Licence Act.

To drive effectiveness wherever feasible we strongly encourage sectoral approaches to standards with the ESA.

The ORHMA and GTHA support increases in education and enforcement of Ontario's existing labour laws.

2. **Scheduling Provisions:** The provisions include potential options that will create rigid and universal requirements related to employers' posting of employee work schedules.
 - a) A one-size-fits-all approach to scheduling fails to recognize the wide range of traffic demand in the hospitality industry that serves both employers and employees.

The ORHMA and GTHA does not support a one-size-fits-all approach to scheduling.

3. **Labour Certification Rules:** These rules include options that would allow workers to unionize simply by signing a union card.
 - a) The need for a secret ballot vote would be removed, marking a substantial change from the existing process. We believe this is diminishing of employees' rights and would prevent workers from having a real say about whether or not they wish to be part of a union. Intimidation and fear presence will lead to unintentional, unfair employee decisions.

The ORHMA and GTHA support the right for a secret ballot vote to unionize.

4. **Sector exemptions:** These exemptions have potential that would allow for the abolishment of all sectoral exemptions.
 - a) Doing so ignores the unique needs of important industries such as agriculture and information technology when it comes to flexible scheduling and compensation.

The ORHMA and GTHA support the need for sector exemptions.

5. **Joint/common employers:** This changes the current legal standard for determination of common employers.

- a) It represents a fundamental disruption to the current relationship between employees and employers.

The ORHMA and GTHA oppose any changes to the current legal standard for determination of the joint/ common employers.

- 6. **Sectoral bargaining:** Sectoral bargaining includes options that would enable Sectoral Standards Agreements, which extend standards and contractual provisions throughout identified regional/ occupational/ industrial labour markets.

- a) These Agreements would expand collective bargaining among disjointed groups of employers and employees. This would have a devastating effect on the hospitality's business model. It will profoundly have a negative effect on small business with sustainment being an issue for many.

The ORHMA and GTHA oppose sectoral bargaining.

- 7. **Minimum Standards and Non-Standard Employment:** The interim report includes an option to move away from this approach, potentially leaving both employers and employees uncertain of benefit entitlements.

The interim includes options that will automatically move contract workers to full time employee status, further complicating employee-employer understandings of workplace relation. There are opportunities for contract work that can provide specialized skills required or needs that can help fill peak demand situations. Viewing this item through a single lens is a one-size-fits-all approach that will not work.

The ORHMA and GTHA believe in an industry with wide demand swings that there are benefits to utilizing contracted work and this standard must be examined from various views.

- 8. **Franchising:** Any amendments to these acts that would deem franchisors to be joint or common employers with franchisees would change decades of business history and legal jurisprudence.

- a) Changes would fundamentally undermine the system of franchising in Ontario. Franchising has allowed thousands of Ontarians to go beyond the role of manager to become employers in a small business.

The ORHMA and GTHA support greater clarity and certainty with respect to franchisors and franchisee's distinct employment and labour law liabilities. This clarity has the potential to have franchisors provide greater guidance and resources to their franchisees to assist in overall ESA and LRA education and compliance.

Conclusion: The ORHMA and GTHA recommend that the government does not make amendments to the legislation without statistical and economic data that would result in unintended consequences and negatively impact the ability of Ontario's businesses to create jobs and grow the economy.

ONTARIO'S HOSPITALITY STATE OF AFFAIRS OCTOBER 2016

Appendix

Ontario's hospitality industry is being considered among all other sectors in a one size fits all approach to this review. The hospitality industry is unique we are not typically a nine to five job. We have huge traffic demand variances, multi task responsibilities differences, profit margin differences, lack of resources and operating with significant amounts of red tape. As well we are an industry that is an entry level employer for many of the youth, seniors, immigrants and non skilled. One needs to truly consider the sustainment of our economic model with rigid price point limitations in a highly competitive environment.

Ontario's hospitality industry feels their competitiveness and capacity to invest in Ontario is eroding. Ontario's food service industry in particular has been experiencing extreme difficulties with rising labour as well as food and hydro costs. Expenses exert upward pressure on menu prices and in turn menu-price hikes are inevitable but there is only so much that price points can go up when faced with a high risk of losing customers even to grocery stores due to a very tight pricing elasticity in a very competitive business. Restaurant and hotel operators continually battle the trend of shrinking operating margins

Furthermore, tightening credit lending practices by financial institutions has led to an inability within the industry to make enhancements to existing infrastructure or to build new product. Drawing new investment into a destination is tough and very competitive eying healthy financial returns. The review suggests changes to the ESA and LRA practices that are potentially onerous and costly and will keep new business growth away from Ontario.

The accommodations sector across Ontario operates on 50% reduction in profit margins since the year 2000 and it's been only recently that the industry is finally meeting the year 2000 year occupancy and ADR hotel performance numbers. It's not about revenue growth anymore it's about pressure from the expense lines impacting the bottom line.

Ontario restaurants operate on a 3.3% pre tax margin of profit and this remains the lowest in our country - Canada at 4.5%. These proposed changes stated in the review will be very costly raising sustainment concerns.

Layering labour reform on top of growing government policies that impact the hospitality sector, rising hydro costs, Canada Pension Plan Enhancements, cap and trade, rising municipal property taxes and the long list of economic challenges faced by the hospitality industry, we ask that the government consider the drawbacks and impact to business while considering the timing on amending and changing current labour laws.

The review's proposed changes are one sided view without the economics lens applied to suggestions made. The hospitality industry expects government policy to have a positive impact on business and that it is essential for the government to conduct a cost benefit analysis before passing any new or amended labour law legislation.

Industry Challenges

With over 22,000 foodservice establishments and 3,000 accommodation operations across the province, the hospitality industry directly employs over 400,000 Ontarians, representing 7% of total employment.

The hospitality industry is a significant component of Ontario's economy and character, yet is vulnerable to economic volatility. Over the last decade since 9/11 the hospitality and tourism industry has experienced tremendous pressures on business due to a number of catastrophic events and measures. Research from the Canadian Tourism Human Resource Council (CTHRC) indicates that the tourism sector will experience critical labour mismatches in the coming years. The tourism businesses are already starting to suffer. When asked what significant challenges they expect to face 53% (of tourism operators) cited labour issues second to operating costs. (Reference: Gateway to Growth Travel & Tourism Labour Force Report 2014 page 6).

Slim Margins- The minimum wage increases of 2008 and 2009 impacted a great deal of suffering. Make no mistake about it in these times the hospitality industry has changed with more of its leadership wearing many hats and performing many work tasks and sustainment being a top of mind for most operators. This limits business growth and limits hiring new employees.

Wage Differential -The government sets minimum wages for liquor servers and students at a different rate than the general minimum wage in recognition of the fact that they earn the majority of their income through gratuities (liquor servers) or are economically supported by other means, usually their parents (students). Our operators are thankful that the government continues to preserve this distinction.

Morley Gunderson, Chair in Youth Employment at the University of Toronto, confirms that increases to the minimum wage rate (and its differentiated categories) will affect the accommodation and food service industries significantly more than other sectors.

Unemployed Youth - Research shows that "a 10 percent increase in the minimum wage *reduces* the employment of teens by 3 to 6 percent and slightly less for young adults." This is particularly worrisome considering 45% of those employed in Ontario's foodservice and accommodation industry are youth. Our industry hires more youth than any other. We are an entry level industry that offers many first time job seekers especially the youth opportunity but this is diminishing in this province. Ontario currently has the highest youth unemployment in all of Canada. You need to be aware that any further policy changes to hiring and retaining of youth under the labour law reform will only make unemployment grow. The Premier herself has acknowledged that the Ontario youth face persistently high unemployment that is why she has developed and promoting a Youth Job Strategy.

Entry Level Jobs – Ontario's youth when searching for work often encounter the catch-22 of "no experience-no work and no work-no experience", and for many, the hospitality industry is that all-important first job. These early experiences teach responsibility, service, customer care, sales and other soft skills. These skills carry on to many other job and careers. In addition our industry provides stability for youth during economic downturns.

According to the Gateway to Growth Travel and Tourism Labour Force Report 2014: "Young Canadians were hardest hit by the recession: a recent report states that youth unemployment is about 2.4 times higher than that of Canadians aged 25 and older. They are also having a harder time bouncing back from the recession and struggling to reach prerecession employment levels. In stark contrast, tourism is one of the few areas in which youth employment is growing at a healthy pace. The sector also helps support young people while they are in school. In 2006, 28.4% of tourism workers attended school while employed in the sector – this is almost double the national average of 16.7%."



It is in Ontario's best interest now to keep the differentiated minimum wage rates as they are for liquor servers and students in order to balance the needs of employees with the needs of their employers to remain open and overcome tough economic times.

The implications of raising minimum wage is that there is also an increase in payroll taxes, because by virtue of the payroll going up then CPP goes up, employment insurance goes up, workers compensation contributions go up, and our industry has to absorb those costs as well. This impacts human resources being retained.