Submission to the

Changing Workplaces Review
Special Advisors

C. Michael Mitchell
The Honourable John C. Murray

Hamilton, Ontario Thursday, September 10, 2015

Presentation by:
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B & S Associates Professional Corporation

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Overview

This paper has been prepared in response to the call for submissions to the *Special Advisors* as you act on the mandate given to the Minister of Labour to review relevant legislation to see what updates may be necessary in these changing times.

B & S Associates Professional Corporation is one of the largest Paralegal firms representing unionized workers in Canada, based out of Hamilton, Ontario. Our primary area of practice focuses on WSIB, grievance arbitration, CPP appeals and human rights. On average our associates have 25 years' experience and also provide pro bono work for non-unionized workers.

We are also concerned citizens who have witnessed in recent months within our community an increase in violent crime including gun violence and death. As discussed in local media, these despairing realities flow in part from the reality that too many of our young people see no hope and find few economic opportunities that would suggest the 'good life' can be theirs too.

With the knowledge of these realities and what our Province must confront we have identified a number of areas in both the Labour Relations Act and the Employment Standards Act which we feel should be amended.

We offer our views based on the published mandate of your Review, which includes the following from the Ministry of Labour website:
"Ontario is committed to an economy that benefits all Ontarians, because the economy is not an end in itself – but a means to enhancing opportunity and security for all".
We wholeheartedly agree with this premise. We fully appreciate that business- whether large or small, must be able to run economically in order to provide reasonable returns for those who invest and take the risks. However, as per the mandate, a healthy economy is not the end in itself. We believe that a healthy economy must be equally understood to include an economy that provides decent living standards to all workers engaged in full time employment. It is common knowledge, we submit, that we are awash in 'w*orking poor'*: women and men working 40 to 60 hours a week at one or more places of employment who must still rely on food banks, live in sub-standard housing and who cannot provide for their children the promise of the *'good life'* that Ontario offered just a generation ago. We believe that the on-going shrinkage of the middle class, the loss of good-paying jobs and the despair young people feel as they leave College or University saddled with massive debt and few prospects of decent employment, must be addressed. Ontario must not allow itself to become the kind of society we see in the Southern United States where the wealthy live in protected enclaves and huge segments of the population must work two jobs to even afford substandard housing. All must be able to share the wealth that we collectively create. With these ideas in mind, we are proposing changes to the Employment Standards Act and the Labour Relations Act.

Below we have listed a number of ideas to alter current legislation and practice. We are aware of the background of each of the Special Advisors; as such, rather than detailing formal proposed legislative change, we are presenting general ideas that you might recommend to the Minister.

Employment Standards Act

General:
We see the Employment Standards Act as the key baseplate that the vast majority of non-union working people rely upon as their 'personal employment contract'. Some of the changes we suggest below will put further costs onto employers. However, when all Ontario employers are meeting these same standards, we

believe the playing field will remain level and so this should not be the bar to the improvements we suggest. While it is true that well-paid professionals can normally afford to engage legal Counsel to protect their rights related to their employment; most workers cannot and must rely on the Ministry to ensure their rights are protected.

Proposals:

1. As we all know, there are large gaps in universal medicare coverage: everything from prescription drugs to eye glasses to dental care. Far too many in Ontario work full time and yet have no benefit coverage. We propose that the Act be amended to include that, where the employer does not provide basic coverage for these, all employees be paid an additional 8% of their gross wage as a payment in lieu. Regulations related to this should include allowance for coordination of benefits between employers where an employee is working for more than one employer. We do not see how it can be, in this day and age, that working people should not be afforded the ability to provide such basic care for themselves and their families.

2. The Act provides for employees to have a minimum of two weeks of vacation pay per year[1]. It is long overdue that workers start to enjoy the benefit of all the efficiencies and productivity improvements that every business and industry has enjoyed since the two week standard was implemented. All workers in Ontario should be granted a minimum of three weeks of paid vacation per year after 5 years of employment as is the case in British Columbia and Quebec, for example.

3. The Act bans a unionized worker from making a complaint to the Employment Standards branch of the Ministry[2] when covered by a collective agreement. We propose this should be revoked and dealt with much the same as the Human Rights Commission handles this type of situation, by placing the complaint in abeyance until the relevant grievance is finalized.

[1] Part XI Sec 33 *ESA*
[2] Part XXII Sec 99 (2) *ESA*

4. In similar vein to the above, we believe that the language in Part III of the Act which speaks to "*Greater contractual or statutory right"* should be repealed[3]. We see no justification to allow employers to opt out of minimum standards simply by pointing to a different provision that provides some other related benefit. We are not aware of any other Canadian jurisdiction that provides such a dilution of base standards.

5. The Act makes provision for Severance Pay and provides how Notice of Severance is to be done and administered[4]. However, these provisions miss a fundamental protection, namely recourse in the event of unjust discharge from employment. Especially in times like these, a worker relies on her or his employment as the key element of social security. When, for example, a senior worker is fired for no just reason, they must have better protection than simply being handed some money and told to go away. We very strongly urge the implementation of a system such as the one in place under the Canada Labour Code[5]. Under that regime, a worker who feels they have been unjustly dismissed from employment can appeal and have that action adjudicated with the possibility of being returned to employment. As we noted above, most workers cannot afford to seek proper redress through the Courts, and even then judges do not have the power to order a reinstatement to employment. This is a glaring inequity that needs to be addressed if workers and their families are to be able to have a sense of security that employment provides.
6. Finally, we believe there must be more Enforcement Officers hired and made available throughout our communities. Employers and employees must all know that the rights and benefits of legislation will be protected and enforced. Speedy redress to violations of this legislation advantage workers and employers.

Labour Relations Act

General:
We believe that any review of historical data reveals that where a work force has elevated Unionization rates, a strong middle class is created. When Union rates

[3] Part III Sec 5 (2) *ESA*
[4] Part XV Termination and Severance of Employment *ESA*
[5] Divison XIV Paras 240-246 incl. *Canada Labour Code*

fall, wealth remains with the few at the top of the economic ladder and the middle class collapses. This is what we are witnessing today. Much has been made of the reduced number of workers covered by Union Agreements since the mid-80s. This, we believe, has come about due to two key factors. The first is quite simply the loss of so many blue-collar jobs in heavy industry and manufacturing since the implementation of NAFTA. But the bigger factors we identify are the roadblocks that have been imposed in legislation. The changes to the LRA imposed by the Harris government have had the intended effect of making it extremely difficult for workers to join a Union and have their Union recognized as the bargaining agent. Ontario needs a strong middle class to sustain economic growth and provide opportunity for our youth: a strong middle class is a byproduct of strong unionization. We also see that there are unnecessary impediments to dispute resolution at both the Ontario Labour Relations Board and grievance Arbitration. Further to these, we offer the suggested changes below.

Proposals:

1. It is well known that employers tend to fire those advocating for a Union in the workplace. It is true that such an illegal firing can already be brought before the Labour Board as an unfair practice. However, the Board needs to have the power to immediately reinstate the worker if the employer cannot show some other justifiable reason for the dismissal. To have a reinstatement to employment ordered months later cannot undo the chilling effect this type of action will have had. In the American setting, anti-Union law firms laughingly refer to associated costs of firing Union organizers as a 'head tax'. Workers must be free to organize and have immediate redress to unfair and illegal acts such as this. There is no bona fide reason to oppose this other than to quash a move to bring in a Union.
2. This leads to the next recommendation we make: reinstatement of the automatic recognition of a Union when the majority of the workers have already signed Cards to be represented by the Union[6]. The requirement to, instead, conduct a vote of all the employees is clearly an opportunity to defeat the Union. Employers who opposed Unions will argue that they need a chance to speak to workers about why they should not have collective representation, yet they will have had the employees as a

[6] Section 8 92) *OLRA*

command audience all along: the will of the workers should not be subject to threat or propaganda in this manner.

3. Our final suggestion speaks to the authority of Arbitrators when dealing with cases of unjust Discharge of employees. Currently, the Arbitrators have broad remedial and injunctive powers[7]. However, they are specifically restricted from making an order to reinstate an employee on an interim basis[8]. This restriction needs to be repealed. As those who engage in such disputes know, these kinds of cases can last for multiple days spread out over one or more years. In situations where an employee is reinstated, an employer can be required to provide the individual back-pay for the whole period which gives the employer a huge, additional loss. For the worker, even getting back lost wages does not always compensate for lost savings, loss of a home or damage to the family from having been out of work. Arbitrators are not about to put every worker back to work prior to a full hearing, however, in some instances it is obvious that the worker will be going back to work. The interests of all parties are better served by giving the Arbitrators this authority. A further result, we believe, would be that Hearings would be sped up reducing costs to all parties. There is no economic reason to maintain this shackle on the authority of Arbitrators.

We appreciate having the opportunity to participate in these consultations to have our views and opinions heard.

Respectfully Submitted by,

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[7] Section 48 (12) *OLRA*
[8] Section 48 (13) *OLRA*