



August 5, 2015

C. Michael Mitchell and Honourable Justice John C. Murray  
Special Advisors  
Changing Workplaces Review  
Employment Labour and Corporate Policy Branch,  
Ministry of Labour  
400 University Ave., 12th Floor  
Toronto, ON M7A 1T7

Dear Mr. Mitchell and the Honourable Justice Murray:

**Re: Conference of Independent Schools (Ontario) Proposal to Amend Regulation  
285/01**

I am the Executive Director of the Conference of Independent Schools (Ontario) ("CIS Ontario").

As you may know, CIS Ontario is an association of independent schools located, for the most part, in Ontario, Canada. CIS Ontario has 47 member schools with founding dates from 1829 through to 2002. Our schools collectively educate approximately 25,000 students and employ 4,300 staff. These schools teach the Ontario Ministry of Education curriculum.

While working to support our member schools in their missions to prepare students for the 21st century, we are committed to providing quality inter-school student programs and responsive professional development.

CIS Ontario maintains a strong voice for quality independent school education and emerging issues in pedagogy, as well as acts as a catalyst for collaborative efforts among our member schools.

CIS Ontario has identified an apparent ambiguity in one of the regulations to the *Employment Standards Act, 2000*, S.O. 2000, c. 41, as am. (the "ESA") that affects the employment of teachers in independent schools. Such ambiguity can be corrected by a simple amendment to Regulation 285/01, thus ensuring equity and clarity for employers of teachers in Ontario.

**Summary**

Regulation 285/01 to the *ESA* contains an exemption for teachers as defined in the Ontario *Teaching Profession Act*, R.S.O. 1990, c.T.2. However, this definition doesn't clearly capture teachers employed to teach at an independent school, such as those represented by CIS Ontario members. The nature of the work performed by teachers in publicly-funded schools and at independent schools is very similar, and as such there does not appear to be any reason why the exemption should not apply to them as well. CIS Ontario therefore proposes that Regulation 285/01 to the *ESA* be amended to expressly apply to all Ontario teachers, including those at independent schools.

### **Exemption for Certain Teachers**

Ontario Regulation 285/01 ("Exemptions, Special Rules and Establishment of Minimum Wage") provides that individuals employed in certain industries or in certain capacities are exempt from the overtime pay and hours of work provisions of the *ESA*. Among those specifically exempted are persons employed:

"as a teacher as defined in the *Teaching Profession Act*"

The *Teaching Profession Act* defines a "teacher" in section 1 as follows:

"teacher" means a person who is **a member of the Ontario College of Teachers** and is **employed by a board as a teacher** but does not include a supervisory officer, a principal, a vice-principal or an instructor in a teacher-training institution. [emphasis added]

This reference to the *Teaching Profession Act* definition of "teacher" is the source of the ambiguity. The definition of a "teacher" in the *Teaching Profession Act* identifies a teacher by his or her membership in the Ontario College of Teachers, which is easy to determine. However, the term "board" is not defined in the *Teaching Profession Act*, and as such there is some ambiguity about whether the term "board", as used in the context of Ontario Regulation 285/01, was assumed or intended to include independent schools.

The *ESA* Policy and Interpretation Manual prepared by the Employment Standards Program of the Ontario Ministry of Labour is similarly ambiguous. It does not make any clear distinction between public schools and independent schools, and does not provide any guidance on the meaning of the term "board". The Policy and Interpretation Manual provides as follows:

"Not all persons employed to teach by a board are exempt, however. As the definition provides, "teacher" does not include supervisory officers (that is, directors of education), principals and vice-principals, and instructors in a teacher-training institution. These employees are therefore not

exempted. Further, there are other types of teachers who are not exempt, as they do not fall within the definition at all; for example, teachers who are not employed by a board, and university and college teachers." [emphasis added]

### **Rationale for Proposal**

There is no apparent purpose for the distinction between teachers who are paid by a publicly-funded school versus an independent school. The teaching profession has a long-standing practice of hours of work, vacation time and adherence to the school day and school calendar. The nature of the work and the hours associated with the teaching profession, including the extended periods of time off (e.g., December holiday, March break, and summer vacation), do not make it amenable to the standard and rigid rules of the ESA.

In many respects, independent schools are treated like publicly-funded school boards by the Ministry of Education. For example:

- The Ministry of Education assigns each independent school in Ontario an identification number – called a “Board Number” - for the purposes of data collection through the Ontario School Information System (“OnSIS”).
- Independent schools and school boards are both considered “school authorities” and are generally treated the same for purposes of the HST;
- Qualified teachers who work at “designated private schools” are required to join the Ontario Teachers’ Pension Plan (“OTTP”), and teachers are almost entirely Ontario College of Teachers’(OCT) members and are required to be
- Independent schools are entitled to elect a representative to sit on the Ontario College of Teachers council (the “OCT Council”).

The lack of clarity in the Regulation means that teachers employed to teach at an independent school in Ontario could be subject to the hours of work and overtime provisions in the ESA, while teachers at publicly-funded schools are not. This creates differential treatment of teachers based solely on the status of their employer, which creates inequity and uncertainty for employers. The Ministry of Labour’s Changing Workplaces Review is intended to reflect the realities of the modern economy. CIS Ontario’s proposed amendment falls within the mandate of the review; the reality of the modern teaching profession in Ontario calls for a harmonized and equitable approach.

## **Proposed Amendment**

CIS Ontario has a regulatory solution for the ambiguity in the ESA. Below are the relevant excerpts from the current Regulation 285/01:

Exemptions from Parts VII to XI of Act

2. (1) Parts VII, VIII, IX, X and XI of the Act do not apply to a person employed,  
[...]
- (d) as a teacher as defined in the *Teaching Profession Act*;

We propose adding the following text as paragraph 2(1)(i) to the Regulation:

- (i) as a teacher employed by a private school as defined in subsection 1(1) of the *Education Act* and/or operated in accordance with section 16 of the *Education Act*.

## **Conclusion**

Regulation 285/01 contains an ambiguity with respect to the exemption for teachers employed by a board. The amendment to Regulation 285/01 that CIS Ontario proposes will eliminate such ambiguity, acknowledge the unique scheduling issues for teachers in *both* the public and private spheres, and provide consistency for employers of teachers in Ontario.

We would be happy to meet and provide further information, at your convenience.

Yours truly,



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Conference of Independent Schools (Ontario)  
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## **Please Note:**

I have submitted a request via email on July 23, 2015 indicating our interest in attending the public consultation session on September 18, 2015 in Toronto. I look forward to receiving confirmation from your office, on this request, at your convenience.