Submission to Ministry of Labour Consultations: *Changing Workplaces Review*

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Home Care Ontario is pleased to provide this submission in response to the Ministry of Labour's consultation document, *Changing Workplaces Review*. As the Association representing home care service provider organizations (SPOs) in Ontario, the recommendations represent the perspectives of this growing area of work within health care.

While the submission deals with the questions posed throughout the consultation document, the key priorities for members of Home Care Ontario are:

- **Temporary Help Agency Designation**: Home Care SPOs should be expressly excluded from the definition of a temporary help agency.
- **Homemaker Exemptions**: The existing homemaker exemptions under the current Employment Standards Act (ESA) need to be retained.
- **Scheduling Work**: Home Care SPOs should be exempt from legislated scheduling obligations and/or full-time, part-time, casual quotas.
- **Short Term Work Absences**: Paid leaves cannot be introduced without corresponding opportunities for service price adjustments.
- **Public Sector Labour Relations Transition Act (PSLRTA)**: PLSRTA needs to be further defined to clarify that it is not intended to apply to the movement of work from one provider to another.

Home Care In Ontario

About Home Care

Home care is defined as an "array of services, provided in the home and community setting, that encompass health promotion and teaching, curative intervention, end-of-life care, rehabilitation, support and maintenance, social adaptation and integration and support for the family caregiver".[1]

Services within home care include nursing, personal support/homemaker, therapy (including physiotherapy, occupational therapy, speech language pathology, social work, nutrition/dietetics), medical supplies and equipment in the home. Home care services are intensely personal and provided at a time when individuals are most vulnerable.

Why Home Care?

Most, if not all, people wish to remain independent at home in their community during their older years. Successful aging requires a holistic approach – avoiding disease and disability; maintaining cognitive ability; and engaging with life.[2] One of the most significant and least desirable outcomes for a community dwelling senior is to be prematurely institutionalized[3] because of the lack of home and community care based health and social support options.

Home care is critical to supporting individual health needs, managing chronic illness and system sustainability. A robust system incorporating both publicly and privately funded

[1] Canadian Home Care Association
[2] Rowe, J. W., & Kahn, R. L. *Successful aging.* Gerontologist, *37*, 433–440, 1997
[3] For the purposes of this paper, institutionalization is understood to be a setting where decision-making related to activities of daily living (such as meals, baths and bedtimes) is outside of the control of the individual.

home care services can provide Ontarians flexibility and independence as they age; and can help them to preserve their memories and contributions to their communities and families. For the overwhelming majority who prefer to remain in their community, home care services are most desirable, cost effective and health effective.

Government Funded Home Care

Home care is a publicly funded, not a publicly insured, service.[4] In Ontario, publicly funded home care falls under the jurisdiction of the Ministry of Health and Long-Term Care (MOHLTC), which has steadily increased its investment in order to meet the increasing demand.

Government funded home care was formally established in Ontario in 1970 and has grown and evolved as a sector over the past 45 years. As has been the case ever since the inception of the publicly funded home care system in Ontario, service provision is based on a private sector delivery model where the corporate status of service provider agencies is varied.

Fourteen Community Care Access Centres (CCACs) administer Ontario's publicly funded home care program across the province.[5] CCACs are accountable to the Local Health Integrated Networks (LHINs) that are regional organizations responsible for local health system planning, community engagement and funding a wide range of health service providers. CCACs serve to provide a simplified service access point and are responsible for determining eligibility for and buying on behalf of consumers the highest quality, best priced visiting professional and homemaker[6] services provided at home and in publicly-funded schools.

Home care is delivered by service provider organizations (SPOs) that meet high standards of excellence, many of which are reported publicly by Health Quality Ontario[7]

Today, the government funded home care system is responsible for providing almost 38 million visits/hours of high quality care at home to close to 700,000 Ontarians per year.[8] This represents year over year growth of 2.2% to 6.9% over the past five years with a net 15.8% growth in the number of people served by the government funded home care program. Within the same timeframe total service hours have increased by 29%.

Family's Role

The system of publicly funded care is designed to complement and supplement, but not replace, the efforts of individuals to care for themselves with the assistance of family, friends and community.

Families are the mainstay of the home care system – only 2% of clients manage without a family caregiver.[9] Family caregivers provide 80% of care at home and many choose to privately retain support in order to cope with the challenges of work, family and distance

[4] The Canada Health Act recognizes home care as an element in the category of "extended health services", and, as such, it is not an insured health service to which the principles of the Act apply.
[5] A listing of CCACs can be found at http://www.ccac-ont.ca/Locator.aspx?MenuID=70&PostalCode=Enter%20Postal%20Code&LanguageID=1&EnterpriseID=15
[6] Homemaker serves as the generic term to describe the person who provides personal care, homemaking services and/or respite to enable the individual to remain at home in a safe and acceptable environment
[7] See http://www.hqontario.ca/public-reporting/home-care
[8] MOH Health Data Branch Web Portal. Analysis of 2013/2014 YE 2013/2014 YE reports.
[9] Canadian Institute for Health Information 2010, p1

to a person in need of care. Without family caregivers, government funded home care, as it is currently configured, would not be a feasible option.

Family caregiver is the term used to denote a family member, friend or family of choice who gives unpaid care to someone, either at home or in a facility, who has a physical or mental health condition, or is chronically ill, frail, or elderly.[10] The use of the term "informal caregiver" is discouraged because, to many caregivers, it diminishes and invalidates the role and the nature of the care they provide.[11]

Privately Purchased Care

Home Care Ontario estimates that 150,000 Ontarians purchase an additional 20 million visits/hours of home care services annually in order to remain at home.[12] Privately purchased home care service often provides the vital few hours of care and respite that enables families to continue their caregiving responsibilities while fulfilling their other obligations such as raising their children and holding a job. This privately retain service often supplements the publicly funded care. For some, the care may be paid by privately-insured employment plans. For most, the care is an out-of-pocket expense.

> *Families provide the majority of care at home, and to manage, many choose to use private funds to retain home care service provider organizations.*

Home Care SPOs Support Health System Partners

Home care staff are adept at working in diverse settings and as a result, institutional providers, such as hospitals, long term care facilities, retirement homes, hospices, group homes and assisted living facilities, will retain SPOs to supply staff in order to support their needs. By working with a home care SPO, both institutional clients and individuals are assured a standard of service that includes careful selection of staff; supervision and continuous education; adherence to Ontario's labour practices and occupational health and safety standards, and staff liability coverage that includes appropriate worker compensation insurance.

The ability for institutional partners to retain services from a home care SPO when needed is a cost effective way of meeting the demands of the health care system 24 hours per day. Institutions are able to respond to the need for flexibility without incurring staff overhead costs. They are also able to increase and decrease services in a timely manner by holding SPOs to strict performance criteria.

[10] Caregivers Nova Scotia
[11] Caregivers Nova Scotia
[12] Ontario Home Care Association. (2009)

Temporary Help Agency Designation

Home Care SPOs should be expressly excluded from the definition of a temporary help agency.

A temporary help agency is a company that sends its employees on temporary work assignments to its client businesses. The temporary help agency is the actual employer for the purposes of the ESA.[13] Temporary help agency employers are governed by ESA, as are most employers in Ontario.[14,15] Members of Home Care Ontario are erroneously assumed to be "temporary help agencies" because they employ workers that are given assignments to work in a client's setting. These clients may include CCACs, institutions such as hospitals, long term care facilities, retirement homes, hospices, group homes and assisted living facilities, and individual Ontarians. As individuals, Ontarians may retain SPOs to provide care while in facility-based care, typically to supplement the services already provided.

Home care SPOs are entirely and exclusively responsible for the standard of standard of service delivered by their staff. SPOs conduct careful selection of staff; ongoing and regular supervision and continuous education. SPOs adhere to Ontario's labour practices and occupational health and safety standards. SPOs maintain staff liability coverage that includes appropriate worker compensation insurance.

Members of Home Care Ontario are unique in that they annually complete the Association's Quality Template that establishes a self-evaluated level of compliance with Home Care Ontario's Standards. This is not a legislated requirement, however members of Home Care Ontario believe that reflective self-assessment and evaluation is an important way of encouraging continuous quality improvement. The Association also strongly endorses accreditation and at this time three quarters of members have achieved accreditation and/or are registered with ISO.

The ESA currently provides a specific exception applicable to the home care industry:

a) Where an 'assignment employee' is 'assigned' to perform the work 'under a contract' between a Community Care Access Corporation (CCAC)[16] and the worker or the worker's employer; ***and***
b) The 'assignment employee' is providing professional services, personal support services or homemaking services as defined in the Long-Term Care Act, 1994 (renamed the Home Care and Community Services Act, 1994 as of July 1, 2010)[17].

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[13] Temporary Help Agency Employees Employment Standards Fact Sheet, November 2009 https://www.labour.gov.on.ca/english/es/pubs/is_tha.php
[14] Ibid
[15] The ESA does not apply to employees in sectors that fall under federal jurisdiction, such as airlines, banks, the federal civil service, post offices, radio and television stations and inter-provincial railways; individuals performing work under a program approved by a college of applied arts and technology or university; a secondary school student who performs work under a program authorized by the school board that operates the school in which the student is enrolled; people who do community participation under the Ontario Works Act, 1997; police officers (except for the Lie Detectors part of the ESA, which *does* apply); inmates taking part in work or rehabilitation programs, or young offenders who perform work as part of a sentence or order of a court; people who hold political, judicial, religious or elected trade union offices.
[16] Within the meaning of the Community Care Access Corporations Act, 2001
[17] "Homemaking" services include housekeeping, laundry, ironing, shopping and banking services, preparing meals, and planning menus, among others. "Personal Support" services include assistance with personal hygiene activities and the routine personal activities of daily living. "Professional Services" include nursing, social work, physiotherapy, and dietetics services are considered to be professional services.

Given the relationship of home care SPOs with their staff and ongoing accountability regardless of the setting of service, this exemption needs to be extended across the health care system. A better solution would be to confirm that home care SPOs do not fall under the definition of a temporary health agency.

Transfer of WSIB Costs

Home Care SPOs should be expressly exempted from the transfer of WSIB requirement and/or expressly excluded from the definition of a temporary help agency.

Bill 18, *Stronger Workplaces for a Stronger Economy Act, 2014* passed in 2014 proposed to remove the impact of the costs associated with a temporary worker's injury from the experience rating of the actual employer (the temporary help agency) and to place it with the client employer contracting with said agency. In the context of health, this transfer of cost and responsibility would move from the home care SPO employer to the health care institution (e.g. long term care facilities, hospices and hospitals).

Health care institutions within Ontario adhere to the Occupational Health & Safety Act and to the Employment Standards Act assuring their staff with the inherent protections. It is unreasonable to expect these organizations to assume responsibility for SPO worker injury costs regardless of the circumstance and, as a result, to be responsible for securing relief from the SPO through cost transfer. Home Care Ontario SPOs recognize that they share accountability for safety and, as the employer of staff, have responsibility to their employees and for pursuing cost transfer if they believe it is warranted.

The question regarding injury costs being applied to an individual Ontarian who retains a home care SPO privately to provide care in their place of residence has yet to be clarified. However, most Ontarians and their families who privately retain a home care SPO could not afford the cost of a worker injury.

Home Care Ontario members all carry WSIB insurance[18] and are fully accountable for their workers' injuries. These SPOs provide extensive training to staff and work closely with their clients to ensure a safe work environment. Where costs should be legitimately transferred, the SPO follows the existing processes in place through the WSIB.

Homemaker Exemptions

Retain existing homemaker exemptions under current ESA in order to assure the continued flexibility required in the home care sector.

Home care services, whether privately or publicly funded, are paid on a per unit (typically per hour) basis. Not surprisingly, demand for service is greatest at the start and end of the day, necessitating a large 'casual' pool of staff and split shifts. In the government program, there is increasing emphasis on "time for tasks" with the expectation that some services will be completed within 30 minutes. Staff must be adept at conducting assessments, completing tasks and problem solving quickly.

[18] This is a requirement for membership of Home Care Ontario

Clients have the right to change the time of their services and not surprisingly, the demands in their home may result in frequent changes in order to accommodate the client and family. The staff must ensure that the client will be ready for service every day as there is generally no opportunity to return to provide service later. In fact, the public system penalizes SPOs who attempt a visit when the client is not home.

SPOs manage new admissions and discharges daily, and often on short notice as there is a strong focus on quickly transitioning patients from hospital to home. The timing of services, needs and location of clients does not always align with the availability and positioning of staff with the requisite expertise. Reassignment is complicated by a factor of distance not found in other health care settings. Travel between clients is typical.

Down time cannot be leveraged in the same way that it can in an institution. It is sometimes too far to expect staff to travel to a regional office in order to complete administrative type tasks.

The current homemaker exemptions[19] were created in recognition of the needs of the home care sector. The service delivery model has fundamentally not changed. In fact Minister Hoskins has proposed more client directed care[20] which will further challenge SPO ability to be responsive, flexible and effective to client preferences. Accordingly, it is vital that the homemaker exemptions remain in place.

Scheduling Work

Home Care SPOs should be exempt from legislated scheduling obligations and/or full-time, part-time, casual quotas.

Home care providers understand that the 'work environment' is indeed someone's home and when delivering care, the control is, to a much greater extent, on the client's terms. The timing of the home care visit is not fixed at the convenience of the SPO's priorities. Rather, in consideration of the setting, clients are empowered to make a change in the timing of their visits in order to accommodate the other events in their lives.

The expectations of SPOs is that they will balance respect for the client's/family's way of life and for delivering health care.

Home care work is typically delivered in concentrated pockets, making it difficult at times to provide consecutive hours. Some staff may end up working daily over a 10 – 12 hour period with

[19] Minimum wage - Homemakers are entitled to be paid the minimum wage for no more than 12 hours in a day. O. Reg. 285/01, s. 11(2); Hours of work - Homemakers are not covered by the daily and weekly limits on hours of work if the homemaker is paid the minimum wage for hours worked in a day to a maximum of 12. O. Reg. 285/01, s. 11(3); Daily rest periods - Homemakers are not covered by the daily rest period rule if the homemaker is paid the minimum wage for hours worked in a day to a maximum of 12. O. Reg. 285/01, s. 11(3); Time off between shifts - Homemakers are not covered by the time off between shifts rule if the homemaker is paid the minimum wage for hours worked in a day to a maximum of 12. O. Reg. 285/01, s. 11(3); Weekly/Bi-weekly Rest Periods - Homemakers are not covered by the weekly/bi-weekly rest period rule if the homemaker is paid the minimum wage for hours worked in a day to a maximum of 12. O. Reg. 285/01, s. 11(3); Eating Periods - Homemakers are not entitled to an eating period if the homemaker is paid the minimum wage for hours worked in a day to a maximum of 12. O. Reg. 285/01, s. 11(3); Overtime - Homemakers are not entitled to overtime pay if the homemaker is paid the minimum wage for hours worked in a day to a maximum of 12. O. Reg. 285/01, s. 11(3): Temporary Health Agency rules – previously discussed.

[20] Ministry of Health & Long-Term Care (2015)

lengthy break periods because consecutive hours of work cannot be provided. While some staff may prefer split shifts, (working four consecutive hours at two different times during the day, for example) this is not a model that unions have been willing to negotiate on behalf of their members.

Home care service delivery is financed based on units/hours of service delivered. Staff costs are the primary expenditure. "Place of care" is not funded and as the "operator" of the home, clients have a greater say about when they want / are able to receive care. Demand is typically clustered at treatment specific times that suit a client's preference – early morning, and evening. There is no provision for "standby" service as is the case within institutions where a minimum level of staffing is required 24 hours per day.

Government funded service has become increasingly prescriptive in order to maximize efficiency. Tasks are specified and time allotments authorized. Coupled with the request for changes in service delivery times, admissions and discharges (as discussed above), it causes continuous changes and fluctuations in scheduling. SPOs need reasonable latitude to deploy staff as needed.

Both employers and unions have advocated for permanent full-time and/or part-time positions with more security, while some employees welcome the permanency others remain resistive.

Many staff that choose home care are attracted to the "atypical" work environment and hours. SPO staff demonstrates flexibility, autonomy and excellent problem solving skills in working effectively in an unregulated environment, the home, which is controlled by others. They are also effective at managing their time, prioritizing care needs and enjoy the latitude that flex hours provide to manage their work life balance. However, as previously stated, this is not an arrangement that unions typically endorse, favouring instead a model that is as close to institutional health care terms and conditions of work as possible.

Flexibility and agility in scheduling is key to an effective home care system. Despite the existing opportunities, employers have been challenged to recruit staff to available full-time positions, which have been instituted either through third party representation or funder requirement. Home Care Ontario data indicates that approximately 20% of SPO nursing and PSW staff is employed on a full-time basis. Home care SPOs should not have mandated quotas for their mix of staff.

Short Term Work Absences

Paid leaves cannot be introduced without corresponding opportunities for service price adjustments.

Home Care SPOs have diverse compensation packages and as such attract workers who find the mix of wage and benefits to be most suitable. This level of choice benefits workers providing them with options that reflect their circumstances and needs.

Workers also benefit from the many Leave provisions (Emergency Leave, Family Medical Leave, Maternity/Paternity Leave) within the Act. Employees are often not aware of the criteria that must be in place to be eligible for leaves and do not understand the alignment

with a collective agreement. The medical verification requirements can be costly and problematic.

Employers who already provide paid sick days or personal emergency days would not want those "statutory" days to add to the employee's total entitlement where an organizational entitlement already exists.

The PSW wage enhancement has provided the greatest annual increases these workers have ever seen, yet many still feel they are underpaid in relation to Long Term Care, Homes for the Aged and Hospitals.

Furthermore, the home care sector has been impacted by the government's restraint policies for a decade. As a result, rates for government-funded service have not increased and in a 2013 report on service rates[21], the researchers confirmed low margins of such significance as to give rise to "significant concerns about overall sector sustainability". The recent wage increases to PSWs[22] for government-funded service have effectively lowered the SPO bill rate because the reimbursement did not cover all the employer costs. Any new cost to the employer for government funded home care will need to be fully costed and reimbursed.

The impact of funded leaves, such as sick leave, will also impact those home care SPOs who work outside of government funded care. They would need to raise their rates, potentially to a level that consumers will not or cannot afford. The impact needs to be carefully considered, given the reliance on families to provide the majority of care (80%) and the willingness to purchase care (estimated 20 million hours per year) in order to fulfill that obligation. When families cannot cope, Ontarians opt to send their loved ones to the hospital applying more pressure on the system.

Paid leaves from work have the potential to have broader unintended consequences and the full impact should be carefully studied.

Public Sector Labour Relations Transition Act (PSLRTA)

PLSRTA needs to be further defined to clarify that it is not intended to apply to the movement of work from one provider to another.

PSLRTA was created to contemplate and manage labour issues resulting from hospital amalgamations. However, unions have been attempting to use PSLRTA to their advantage when a new SPO assumes a contract for home care service[23] – either through a tendering process or as a result of the purchaser's dissatisfaction with a current provider.

The union has argued that the introduction of the new SPO has been "health services integration" and therefore falls under PSLRTA. Several cases have been brought to the OLRB with mixed outcomes. The process is costly and while the rulings are suggestive that moving work from one provider to another (without any change in the manner in which the work is performed) does not constitute a HSI to which PSLRTA would apply, the uncertainty remains.

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[21] Accenture. (2013)
[22] News release: http://news.ontario.ca/mof/en/2014/04/improving-home-and-community-care-for-ontario-seniors.html
[23] North Simcoe Muskoka CCAC, 2014; Erie St. Clair CCAC, 2012; Ottawa (Champlain) CCAC, 2004

In the 2014 decision regarding the North Simcoe Muskoka CCAC the Board stated:

> "38. A decision to stop using one contractor for a particular service for performance reasons is in my view not in the same category as a decision to deliver services out of a different location (to deal with increased volume) or to provide cost-effective alternatives to home care. While, broadly speaking, a change of service provider might be seen as a "commencement" or "discontinuance" and perhaps even a "transfer" in some cases, it is difficult to understand it as an "integration", even broadly defined.
>
> 41. It is possible the PSLRTA could be interpreted to apply to a situation where a service provider loses a contract and is replaced by another service provider. Such an interpretation might be supported by the requirement to give statutes a large and liberal interpretation. However, such an interpretation would, in my view, go beyond the purposes for which the PSLRTA was enacted. Those purposes relate mainly to restructuring in, among other public sectors, health care. The PSLRTA was, in my view, not designed to deal with the routine change of service providers (whether nursing care in Muskoka or food services in a hospital), which are a normal component of the homecare system.
>
> 42. For all of these reasons, I am satisfied that the PSLRTA does not generally apply if one service provider simply loses a contract as a result of (for example) performance related issues and another provider provides the same services under a new contract. Such an event is not a health services integration."

Based on these findings, the conditions for PSLRTA should be further defined so as to avoid any uncertainty or confusion. This is increasingly important in the home care sector as SPOs are held to tight performance criteria and contracts are terminated for failure to meet expectations. Further, SPOs are expected to pursue and introduce new innovations in care delivery in order to continuously improve the way in which services are provided. Risk of an unfavourable ruling under PSLRTA could constrain requisite advances within the sector.

Third Party Representation

While a general decline in union representation is reported, the home care sector has witnessed an increase in third party interest and representation from all unions. Home care is a large untapped market for unions.

There are at least seven different unions competing for the home care staff. The diverse experience and knowledge of the sector across the various unions creates challenges for the sector as they all vie for better terms and conditions without fully understanding the implications. A streamlined approach would lead to responsible bargaining and agreements.

Bargaining unit definition at time of certification should not automatically defer an all-inclusive bargaining unit. It is unfair to a small group of employees who are not interested in representation and did not support the drive in any way. Bargaining unit scope should be restricted to the classifications who have signed union cards.

Employers may not have certain classifications within their organization at the time of certification and yet be impacted through automatic inclusion at a later date. This

guarantees the union its membership but does not allow the employer the right to apply agreements achieved with the union to new employee classifications that are introduced subsequently.

Employment Relationship

Efficiency, equity and voice are all valid objectives in the employment relationship. An addition to the list is "Quality Service". SPOs want to provide good service to clients/customers and do not like laws that may obstruct them from doing so.

Home care SPOs strenuously resist the efforts to assume that the approach in the institution is the benchmark for practice. The home care work environment is different. The challenge facing policymakers, administrators and others interested in home care is to respect the home care difference. Since 1970 when government funded home care was introduced in Ontario, SPOs have been building expertise in delivering care at home, balancing respect for maintaining the client's/family's way of life and for delivering health care. Home care has evolved with carefully nuanced policy development.

SPOs recognize that their staff is admitted into the client's home at each and every visit as a guest. Staff works in the setting and, to a large extent, with the resources that the client provides. Staff who thrive in the home care setting embrace the challenge of working with clients on their turf and on their terms. They enjoy the challenge of working with clients to find creative solutions to the challenges posted by the home setting.

SPO staff manages the delicate balance of creating a safe working environment and providing safe care for patients while respecting their individual rights within their own homes.

With the changing demographics and increased interest in keeping people at home as long as possible there is a need to achieve a shared understanding of the differences and be open to new employment norms that are truly reflective of the sector.

Employee Representation

Opportunities for effective employee representation need to be explored. Today, the drive by unions is directed at increasing membership and revenues. There are numerous stories of employees feeling coerced and not truly represented on the issues that matter to them in their community with their employer.

Currently the system defaults to the union and, once in place, it is costly and difficult to make a change. Decertification is challenging and employees are generally not aware of this option. Information should be clear, simple to understand and readily accessible. A help line for employees who have issues with their union needs to be established.

Policies that allow staff greater latitude for staff to hold their union accountable and to make changes should be developed. This approach would lend itself to the development of "hybrid" models of representation that would potentially serve employees and employers very well.

Supporting Business in the Modern Economy

A simple but effective strategy would be to decentralize the Ontario Labour Relations Board (OLRB) so that more activity occurs outside of Toronto.

The central shift that needs to be made for the modern economy is in attitude. The ESA and OLRB need to be more balanced and shift away from the assumption of employer guilt until proven otherwise. The perceived power imbalance between employer and employee is outdated. The needs of employers (limited resources, competing legislation), particularly smaller employers, merit more attention from legislators.

The issue of ESA complexity is valid. The interpretation manual for the Act is huge with virtually every provision in the Act requiring some degree of interpretation depending on the intricacies of the specific HR issue. Employment Standards staff are not able to provide much guidance and almost always advise the employer to consult a lawyer.

Effective strategies to support business would be to:

- Enhance employer education
- Retain the ESA Guidelines
- Expand the extent to which Employment Standards staff can provide guidance
- Provide easy access to interpretation manuals
- Provide links with the Act to pithy interpretation and a source in the manual

Relationships

The ESA should be about *employment* relationships only, not arrangements (such as franchising or subcontracting) which are not true employer/employee relationships with the associated responsibilities of both parties. Covering non-employees under the Act would fundamentally change the nature of existing contractual arrangements. The potential ramifications are extensive and further consultation would be required.

The premise of management positions, expectations and compensation is based on the expectation that they are not entitled to ESA entitlements. A change would fundamentally disrupt the current business model and should not be undertaken at this time.

Enforcement

Without evidence to the contrary, Home Care Ontario members believe that current enforcement provisions work well. However, SPOs have noticed a lack of staff to deal with ESA complaints in a timely fashion. It also appears that the background information (e.g. Letters of Patent) required before addressing the concern is an inefficient use of time. Finally, employers would benefit from a copy of the complaint so they can understand the context and provide a more comprehensive response. Currently, SPO employers must respond to oral information provided when the Employment Standards Officer calls.

Compliance would be enhanced with regular employer education. For example, it would be helpful, particularly for smaller employers, to have Employment Standards interpretations published and broadly disseminated. Currently such updates are acquired through human resource publishers or consultation with legal counsel.

The current enforcement model is focused on employer punishment for non-compliance. An incentive driven approach might be an effective way to further improve outcomes.

Additional Comments

Termination

Many SPOs have difficulty with the termination regulations pertaining to "cause" for termination under the Act. If poor conduct is not "willful", a "for cause" termination may not be supported as are the traditional examples of "cause", such as theft, or certain conflicts of interest situations. While relevant in all settings, home care SPOs are particularly sensitive and intolerant of lack of professionalism and poor conduct. This is most likely due to the awareness that the population served are vulnerable, often elderly (58%). Additionally, SPOs can tolerate no question about staff's conduct or attitude because the staff /client interface is often in isolation of others.

Termination Pay

Home care SPOs suggest that employers should not be required to provide paid termination pay in lieu of notice where notice is given to employee absence on sick leave. Although case law is developing on this point, clarity in the Act would be helpful.

Conclusion

Work is normal, diverse and important to society. This submission by Home Care Ontario addresses a growing area of work within health care. The work environment and trends in home care have been presented as the context for commentary on the questions posed in the Ministry of Labour's consultation document, *Changing Workplaces Review*.

The shift to care at home will continue. Ontarians want to remain at home as long as possible. Clinicians agree that outcomes are often better at home. And politicians recognize that health system value is improved with a robust home care system, which relies on family contribution. As the home care sector grows and evolves to respond to the demands of the system there is a need for legislative and regulatory change that reflects the setting. The challenge is to balance the unique attributes of home care while ensuring safe and effective care.

About Home Care in Ontario

Home Care Ontario, *the voice of home care in Ontario™*, is a member-based organization with a mandate to promote growth and development of the home care sector through advocacy, knowledge transfer, and member service. Home Care Ontario members include those engaged in and/or supportive of home-based health care. In Ontario, service provider organizations are responsible for providing nursing care, home support services, personal care, physiotherapy, occupational therapy, social work, dietetics, speech language therapy and medical equipment and supplies in the home to individuals of all ages. An estimated 58 million hours of publicly and privately purchased home care service is provided annually across the province.

Members of Home Care Ontario

Service provider organizations that are members of Home Care Ontario meet specific performance criteria that distinguish them. Among the many standards to which members comply, the Home Care Ontario service provider organizations (SPOs):

- Provide 24x7 supervision of staff.
- Have a health professional regulated in Ontario whose responsibility is to ensure quality of client care and services.
- Have current policies and procedures guiding operations.
- Comply with all employee payments and deductions legally required as an employer.
- Provide staff with ongoing in-service and continuing education programs.
- Conduct initial and ongoing regular client assessments.
- Participate in reporting and care planning for clients.
- Abide by legislated employment standards and human rights codes.
- Have appropriate retention and destruction of client records and maintenance of a confidentiality of client information policy.
- On an annual basis, complete the Association's Quality Template that establishes a self-evaluated level of compliance with Home Care Ontario Standards. This is not a legislated requirement, however members of Home Care Ontario believe that reflective self-assessment and evaluation is an important way of encouraging continuous quality improvement.

Members of Home Care Ontario demonstrate their accountability to the public through the yearly release of a Balanced Scorecard Report to the community.

Member Statistics

Service

- 29.6 million hours of service were provided by Home Care Ontario members in 2014

Quality

- 82% of Home Care Ontario members are accredited and/or seeking accreditation within the next 12 – 24 months

Staff

- Total number of frontline staff employed by Association members in 2014 was 27,069
  - PSWs represent 73% of frontline staff
  - Nursing represents 21% of frontline staff
  - Therapy represents 3% of frontline staff
  - 19% of frontline staff are designated full time
- The average length of employment of staff as on December 31, 2014:
  - RNs: 6.98 yrs
  - RPNs: 4.18 yrs
  - PSWs: 4.36 yrs
  - Therapists: 3.7 to 5 yrs

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