

Submission to the Ontario Government
Workplaces Change Review

On behalf of the London and District Labour Council, I thank you the Advisors for this opportunity to present in this public consultation. In this presentation, I will be addressing issues relevant to unions and also speaking to the need for changes to employment standards that would improve working conditions for every worker in Ontario. Please note that this presentation alludes to the questions in the consultation guide and I have not included these questions in order to provide more content and all of our recommendations.

While inequality and precarious work are rising, there has been a series of legislative attacks on unions, which have decreased the ability of unions to organize, and has resulted in millions of workers who do not have the protection of a union. That is directly related to the plight of non-unionized workers who are in what is termed the “precariat” – the majority of jobs in Ontario and Canada are part time and precarious jobs, offering little security. The term precariat defines workers who have temporary, part time, low wage work which is not protected by regulation and in which workers have very little control or redress for the violations that are rampant, including reprisals against workers who take collective workplace action. Much research shows that since the last recession, many full time and living wage jobs have been permanently lost across Canada, and only one in four new jobs are full time.

So this Review process is extremely important in that there are multiple types of labour rights violations taking place across the province and it is clear that there is a need for reform for both the Employment Standards Act and the Labour Relations Act.

As a matter of public record and because right now our CUPE 101 Sisters and Brothers are fighting a historic front line battle in London to defend full time union jobs and to keep public services strong, I have to say that the City’s negotiators are clearly emboldened by the “Wild West” of labour violations routinely happening in workplaces and the rise in part time, precarious and temp work that is the pattern now in Ontario and all across Canada. And to introduce these new extreme austerity demands during week 7 of a strike is not only unconscionable and the antithesis of authentic collective bargaining, but together with the use of replacement workers – in our words scabs – are critical and glaring examples of the labour law reform that must emerge from these consultations.

I will now talk about our recommendations for changes to the Employment Standards Act.

One prime example of the negative trends in Ontario has been the increase in Temporary Agencies. There are rampant abuses by employers because of weaknesses in the ESA, which result in temp workers being in those jobs from 10 to 15 years – also known as “perma temps”. The ESA clearly states that agency workers should be “assigned to perform work on a temporary basis but the Act does not limit the term of assignment, which opens the door wide to abuses. We also know that agencies routinely classify workers as independent contractors and due to this misclassification, the worker gets no employment standards entitlements and can be required to work 48 hours in 3 days. I personally heard this story from a worker who spoke at session in Toronto. To add insult to injury, agencies get 7 percent from the worker’s hourly wage of \$11.

We recommend that the ESA be changed to ensure that temporary agency workers receive the same wages, benefits and working conditions as permanent workers doing the same work. We recommend that client company be jointly responsible with temp agencies for all rights under the ESA, not just wages, overtime, and public holiday pay. Also we recommend the prohibiting of long term temporary assignments and the requirement that agency workers become directly hired employees after working a cumulative total of six months for the client company.

The ESA gives employers too much control over hours of work and scheduling. Statistics Canada reports that over one million Ontario workers worked overtime in 2014 and 59 percent did not get overtime pay. Also Ontario’s hours of work standards have no real maximum work hours and have a convoluted array of exemptions and rules for hours of work and overtime.

We recommend that the ESA should provide for an eight hour day and a 40 hour work week. Workers should be able to refuse work over that limit and overtime pay at time and a half should be paid. We also recommend that the ESA should have all overtime exemptions and special rules removed.

Canadian Labour Congress research indicates that nearly 80 million is lost annually because of the impacts of domestic violence and the costs to workers, families and the broader society of course have costs that are incalculable. We recommend that the ESA provide domestic leave for victims and family members.

Regarding migrant workers, the Office of the Parliamentary Budget Officer found that between 2002 and 2012, the number of foreign workers in Canada increased sharply from just over 100,000 to 338,00 and that there are multiple cases of exploitation and human and labour rights violations. Just one example is that recruiters target migrant workers and charge exorbitant fees, creating ongoing massive debt bondage for workers and if they seek redress, they lose not just their jobs, they lose their residency status and can be deported.

We recommend that the Ontario government create a Migrant Workers' Bill of Rights and legislative changes that would establish a proactive and comprehensive system of registration and licensing for employers and recruiters; mandatory filing of information about recruitment and employment contracts; and the funding and human resources required for proactive enforcement regarding inspection and investigation. Also we recommend changing the ESA to include a process for expediting complaints of reprisals before migrant workers are deported and ensuring that workers retain or can move to another employer and are fully protected from labour and human rights abuses.

Our Labour Council, working with the 15 and Fairness campaign and the Workers' Action Centre, are seeking to improve the low wages that typify the labour market picture currently. We note that in 2014, the Ontario government increased the provincial minimum wage to \$11.00 an hour with annual inflation adjustments. But there has been research showing that wages have stagnated for workers for the past three decades, and so the current minimum wage is still too low to be an authentic "living wage". Also, workers who are low income, women, youth, and recent immigrants are most likely to be exempt from the minimum wage protections.

We therefore recommend that the provincial minimum wage be raised to \$15.00 an hour and adjusted annually for inflation. Also we recommend repealing occupational exemptions to minimum wage; repealing liquor servers' minimum wage; and student minimum wage exemptions. Further, we recommend that every worker have increased access to paid vacation entitlement; as well as paid sick leave and personal emergency leave.

I will now turn to our recommendations for the Labour Relations Act.

Without question, the fact that most of Ontario's workers do not have the right to card based union certification means that there will be unfair employer intimidation and effectively impedes the unionization of many workers who have the most need for union protections such as women, workers of colour and immigrants. Although Canada's Charter of Rights and Freedoms states that workers have the right to join a union, there are several barriers to forming a union, including threats of reprisals, and a range of practices used to dissuade workers from unionizing.

There is consensus across both public and private sector unions that card based certification must be a main focus for statutory change. The mandatory secret ballot required under current law gives employers the opportunity to exert undue influence on the certification process and to curtail open discussion between workers. Since the imposition of the mandatory ballot by the Conservative Harris Government, the number of successful certifications has declined.

We recommend that the Labour Relations Act be reformed so that workers can join a union by signing a card; that the workplace is free from employer intimidation and coercion during the certification drive process; and that when a clear majority of workers have signed a card, the union will be certified.

We also recommend that if at least 20 percent of workers want to join a union, then employers should disclose the workers' list to the Ontario Labour Relations Board. This process would respect existing legislation regarding freedom of information and protection of privacy. Additionally, we recommend that workers who are disciplined, fired or who face discrimination because they exercised their rights during an organizing drive, must be reinstated to their original work terms and conditions.

We also recommend that the Labour Relations Act enforces that certification votes take place in neutral locations and that workers be permitted to vote online or by phone, according to the union's call.

Even when union certification is successful, there can be significant obstacles to negotiating a first collective agreement, including delay tactics by employers. In other Canadian jurisdictions, first contract arbitration has been effective in ensuring both parties have incentives to achieve a first agreement. We therefore

recommend that Ontario adopt a process that provides additional means to binding arbitration and improve provisions in existing legislation for doing so.

On the matter of successor rights, we acknowledge that the current Ontario Government restored successor rights for public and private sector workers, but we are concerned that workers in some of the most precarious sectors such as food services, cleaning, security, home care and personal support services are excluded from such protection. The loophole that allows contract service workers to lose modest improvements in wages and working conditions is a legislative gap that must be changed so that there is not an ongoing race to the bottom.

We recommend that the Labour Relations Act be modernized to extend successor rights to the growing number of vulnerable workers in the contract services sector who are at risk of losing all collective agreement protections when contracts are re-tendered.

As a final point, there needs to be a change to the use of replacement workers or “scabs” during strikes, since it severely undermines the collective bargaining process and is a draconian measure designed to weaken a union’s ability to negotiate and to break the strike. As I stated at the outset of this presentation, we have a glaring example right now in London, with the City obviously attempting to break the CUPE 101 strike, and the fact that City negotiators are urging CUPE 101 workers to cross the picket lines is a disgraceful tactic to pressure the union into unprecedented concessions. Again, these concessions recently included new extreme terms which would increase part time and temp workers – and I have spoken to the hardships and problems related to part time precarious work and “perma temp” that is work that is supposed to be temporary but is a permanent means of exploiting workers. This is the shameful vision of the City negotiators.

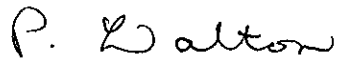
So as our final recommendation, we call on the Ontario Government to ensure that the use of replacement workers or “scabs” is prohibited during strikes.

In closing, it is my view that the types of concessions the City is trying to get from CUPE 101 and the overall disrespect that is being displayed in this situation, which has been ongoing from the very beginning of the collective bargaining process, are part of the new hardline austerity era attacks on unions. Employers are increasingly emboldened by the climate of “open season” on unions, and are blatantly defying core union rights. Many of the labour rights and protections won over decades by unions are being eroded, and concurrently, workers are enduring

rising inequality, and there have been sharp increases in labour and human rights violations.

So thank you for this opportunity to give the input of the London and District Labour Council. This review and your work is historic – we call on the Ontario Government to follow through with substantial labour law reforms. It is critical that the outcomes of this consultation process ensure that the working lives of millions of Ontarians are improved; core union rights are defended and strengthened ; and future generations of workers do not have to face the struggles and poverty that too many workers are currently enduring and that all workers can work with dignity; have access to unionization and full workplace rights; and enjoy a high quality of living.

Respectfully Submitted,

A handwritten signature in cursive script that reads "P. Dalton".

Patti Dalton
President London and District Labour Council
London, Ontario