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The Honourable Kevin Flynn
Minister of Labour
Ministry of Labour
400 University Avenue- 14th Floor
Toronto, Ontario M7A 1T7

Dear Minister Flynn,

RE: Changing Workplaces Review

The Ontario Municipal Human Resources Association (OMHRA) is pleased to have the opportunity to respond to the review on Changing Workplaces.

For the last 50 years, OMHRA has been the premier professional association representing over 400 active human resources, labour relations, and senior management professionals employed within the local public sector in Ontario. Our members are employed in municipalities, local boards and commissions. They provide timely human resources advice and assistance to their respective Councils, Boards, Management Teams and Commissions.

Within the scope of the *Changing Workplaces Review* (the "*Review*"), we consulted our membership on the specific topics requiring input and we have included many of the comments we have received herein for consideration/discussion under the *Review*. However, we also want to bring to your attention that OMHRA members overwhelmingly expressed grave concerns on two matters not directly connected with your area of review, but which cannot be overlooked in our members' opinion.

First, and most importantly, municipalities in Ontario believe the interest arbitration process is in need of immediate review and change. We know that this is an issue that you are aware of through the collective work of OMHRA, Association of Municipalities of Ontario ("AMO"), the Emergency Services Steering Committee ("ESSC") and others. In short, the interest arbitration awards, which stipulate the binding terms and conditions of employment for staff

in the emergency service sector, provide wages and benefits to employees well beyond what would be freely bargained as is evident from settlements freely negotiated (sometimes through labour disruptions) with other municipal bargaining agents. These interest arbitration awards are neither reasonable nor responsible from a municipal budget perspective and cannot be maintained without commensurate increases in taxes and/or significant reductions in other important municipal services. This is such an important issue for our membership that OMHRA would commit to partner with you to examine the interest arbitration system in Ontario to help find a sustainable solution. We are dedicated to finding a resolve to this issue on behalf of our members at the earliest opportunity possible.

Second, municipalities have been significantly burdened by and are very keen in seeking the removal of the ability that they can be deemed to be "construction employers" enabling construction trade unions to seek certification with municipal employers. Having the requirement to build and maintain municipal facilities should not result in municipalities being deemed to be construction employers. Those municipalities that tender for the construction and maintenance of facilities, however, the role of a municipality is not to be a construction employer.

From a municipal perspective, the Labour Relations Act should be changed to deem municipalities to be "non-construction employers". Municipalities are unnecessarily burdened by this label which is not appropriate for application to municipalities.

We understand that AMO has also forwarded to you these two issues in its correspondence to you.

In response to the questions seeking input in the *Review*, OMHRA tables the following response as an outline to the points around which we would welcome further discussion and an opportunity to more fully state the concerns of our members.

Employment Standards Act, 2000 (ESA)

- Municipalities are heavily governed with policies, procedures and collective agreements that for the most part exceed the *ESA's* minimum standards. Municipalities request relief from:
    - Overtime Consent Form
    - Excess Hours Permit
    - Working Public Holiday Consent Form
    - Averaging Agreements
- The *ESA's* website is a good source of information, and certainly easier to navigate than the actual legislation itself. However, the website can be further revised with plain and consistent language, making it even easier for both employer and employees to understand their rights and obligations. The website is currently still too difficult to navigate. For

example, clarification is required on the entitlements of casual and temporary workers particularly interpreting the lay-off provisions.

- We further wonder if it would it be possible to post the answers for the hotline queries for HR professionals to read. This may lend itself to consistent application of the provisions in the *ESA* – our members have explained that in the past multiple calls to the hotline on the same issue have resulted in different responses/interpretations. Greater consistency between online and telephone information would be beneficial in our view.
- Greater clarity is required in the leave provisions. The emergency leave provisions ought to reference the total leaves provided by the Employer. In municipalities, most policies, procedures and collective agreements' "leave provisions" exceed that which is provided in the *ESA*. *ESA* revisions are required to clarify that the *ESA* is only applicable when a greater right or benefit is not provided. As the norm in the municipal sector is such that the leave provision(s) satisfies or more than satisfies the *ESA,* an employee ought not to be provided with both provisions. Such banking of leaves frustrates the employers' ability to implement attendance management programs and to operate an efficient public service.
- The minimum 'call out' provision must be revised. Often an employee is able to respond to an issue and resolve the concern while working at home and is not required to physically attend the work site. It appears that the changing nature of the workplace, and in particular the expanded use of technology, has made change in this area necessary.
- The rigid *ESA* hours of work and breaks language needs to be clarified as it can be extremely cumbersome to navigate and understand which provisions apply when and when exceptions are possible. Furthermore, these provisions need to be revised to account for the "mobile" workplace which increasing is becoming a "home office" with the maximum flexibility of telecommuting. Employees might not be working from home on a regular and continuous basis, but it is becoming increasingly normative that individuals are working from home from time to time.
- A new tribunal is required to remove wrongful terminations from the courts.
- We wonder if consideration should be given to the need for reasonable notice for the termination of employment to those employees absent from the workplace for over two years. Municipalities seek relief from the obligations to pay notice and severance pay because the standard of reasonable notice does not apply.

Labour Relations Act

- ***Certification and Decertification Process***

  In general, municipalities have failed to see the same decline in union representation as has been experienced in other sectors and we believe that it is due, at least in part, to the current complicated decertification process and the ability of the larger, stronger public sector unions to carefully control messaging to employee groups. Often we find the certification and decertification process feels like a slanted field – considerable periods of time are permitted for the organizing of union support and the filing of an application against a very short response period on the Employer's side of the field. Communications with employees is another area that is unclear and difficult for employers in general to navigate and appears to provide the unions with a significant advantage. Accordingly, Municipal employers believe that changes are required to the certification and decertification process including:

  - A more accessible process, in plain language, for employees who are attempting to submit a decertification application. To assist in this process, we believe that one or more staff specialized in this area available at the Ontario Labour Relations Board to assist such individuals would be beneficial. It is our belief that in many cases individuals who do not wish to be represented by a union any longer are not empowered and provided with the assistance to make change.
  - Expansion of guidance provided to leaders around the decertification applications
  - Revisions in the certification process to ensure a balance system as currently the system appears to provide greater assistance to the certification side of the equation through longer time frames and clearer entitlements with little guidance to those employees wishing to maintain their non-union status (they do not appear to have the same voice strength within the certification process).
  - Consideration of legislative clarity in accordance with established jurisprudence and, as we would suggest is necessary, greater flexibility regarding the employer's 'Right to Free Speech' during a unionization drive. At present, the employer's freedom in this area appears to be more muted and blanketed than the union's as there are no apparent sanctions for misleading information provided to employees during organizing drives (and other situations). We believe that this is an area worthy of further discussion and examination to ensure that we have a balanced field.

        - Change in the way in which it is determined whether or not the "majority" of employees wish to be unionized . We believe that unionization ought to be with a vote of at least 50% of those in the actual unit that the Board determined is subject to the certification application (to remove potential bias to using the bargaining unit proposed in the application or the bargaining unit proposed by the responding employer), not 50% of those who show up to vote.
        - Consideration for the modernization of how people vote – in person versus the use of technology to ensure greater voter turnout.
- ***Union's Duty of Fair Representation***
    - Unions can often be paralyzed with fear and often refuse or otherwise are unable to make decisions in the workplace because they are concerned about their duty of fair representation.
    - Language needs to be strengthened to confirm when a unionized employee can submit a claim that the union failed to represent a member.
- ***Crossing Picket Lines***
    - The *LRA* fails to clearly articulate the employee's right to cross a picket line and how that process is to occur and the six (6) month window for same as currently articulated in the *LRA* does not appear, on its face, to have any rationale
    - Clarity is required to prevent union intimidation of the employee who chooses to cross a picket line. While employer's can generally deal with difficult employees, union leaders and union executives/steward within the workplace can present different problems given the broad scope of powers afforded to them in the administration of the union's business.
- ***Unfair Labour Practises***
    - There must be more rigor when a union lodges an unfair labour practice and there ought to be recourse when a frivolous complaint is filed
- ***Illegal Strikes***
    - Stronger and better protection is required around illegal strikes
    - Clarity of definition is required for 'slowdowns and sick call ins'
    - Plain language is instrumental in understanding third party picketing
- ***Conciliation Process***
    - The conciliation process must be revised to increase the responsibilities and authority of conciliation officers to assist the parities to settle a collective agreement. Often conciliation officers

merely show up without attempting to help or influence parties to agree upon a Memorandum of Settlement.

- We believe that it is an abuse of the process when a union files its conciliation application at the same time it sends the municipality its 'notice to bargain'- meaningful bargaining needs to occur before either party is able to put the ultimate pressure of a strike/lockout deadline on the table which often has the effect of confusing the issues rather than brining clarity to the situation. Allowing the application for conciliation that the same time 'notice to bargain' is served can also have a significant chilling effect on the process.

- ***Bring Back Grievance Settlement Officers***
  - Grievance Settlement officers ought to be prevalent and available to assist parties resolve issues/concerns
- ***Exclusion(s)***
  - Consideration should be given to the best way to define classifications appropriate for the bargaining unit. For example, security, payroll and finance staff who deal with sensitive employment financial information.

OMHRA appreciates the opportunity to table its comments during the *Changing Workplace Review* and we thank you in advance for your consideration of our comments and concerns which we have tabled as a precursor to further discussions as appropriate to explain our position. We are available to discuss these concerns and explore solutions to the problems that we have outlined at your convenience.

Yours truly,

Louise Ann S. Riddell

Louise Ann S. Riddell
President, OMHRA

cc ESSC
AMO
Board Director Members