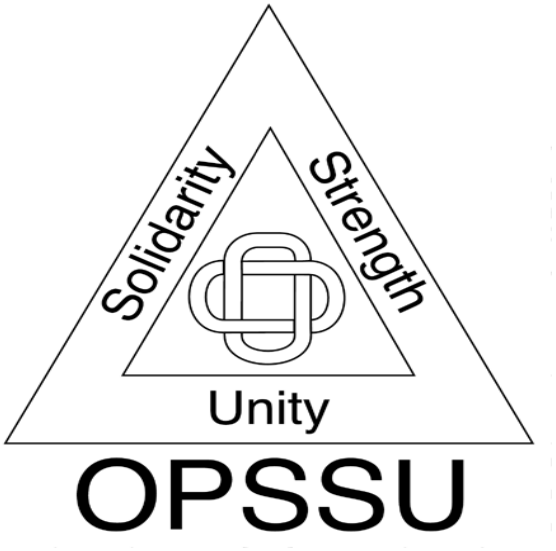


THE CHANGING WORKPLACES REVIEW

Submissions on behalf of:

Ontario Public Service Staff Union

September 17, 2015

Prepared by:
Cynthia Watson
Watson Labour Lawyers

Watson Labour Lawyers

TABLE OF CONTENTS

ABOUT THIS BRIEF

The Ontario Ministry of Labour has requested consultations for its Changing Workplaces Review per its Guide to Consultations for the Changing Workplaces Review.

These submissions are filed on behalf of Ontario Public Service Staff Union (OPSSU).

The consensus positions described in this brief represent many of our priorities for this process.

It is essential that labour voices be heard in the process, and we hope that this brief provides essential information and recommendations to assist in the Changing Workplaces Review.

September 17, 2015

THE CHANGING WORKPLACES REVIEW

Two special advisors have been appointed by the Ontario government to lead a review of Ontario's labour laws and employment standards. The Changing Workplaces Review will focus on how the *Employment Standards Act*, 2000 and the *Labour Relations Act* (1995) could be reformed to both improve protections for workers and support businesses in the context of Ontario's changing economy.

If you are interested in responding to this review with your comments, ideas and suggestions, kindly contact the Ontario Ministry of Labour by:

E-mail: CWR.SpecialAdvisors@ontario.ca

Fax: (416) 326-7650

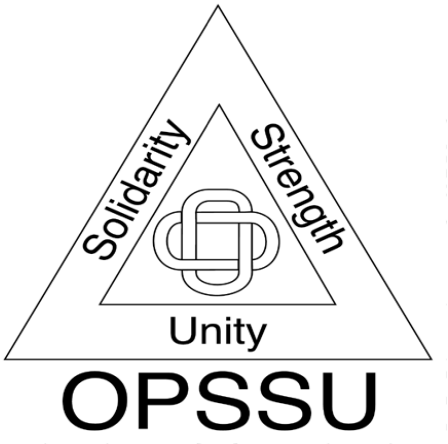
Mail: Changing Workplaces Review
Employment Labour and Corporate Policy Branch
Ministry of Labour
400 University Ave., 12th Floor
Toronto, ON M7A 1T7

Comments will be accepted until September 18, 2015.

INTRODUCTION

OPPSU welcomes the opportunity to participate in this important initiative. Public consultation from stakeholders is key if meaningful and appropriate changes to the *Labour Relations Act* and *Employment Standards Act* are to be effective in today's changing workplace. We need to ensure that the government function of providing a social safety net is met and that the current trend to prioritize corporate monetary 'success' is stemmed. Profit motivations should never trump the fundamental right to be treated with dignity and respect in the workplace and to ensure a meaningful standard of living for all Ontarians. Our statutory scheme must strive to ensure it protects both unionized and non-unionized workers alike. The minimum standards provided in the *Employment Standards Act* are critical to raise the 'floor' for all workers (including vulnerable workers). Working in tandem with that, the *Labour Relations Act* is critical to extend the valuable protections and benefits that unions offer to workers to elevate them out of a poverty cycle and so benefit Ontario.

At the outset, we would strongly caution against the proposed consideration of "new models of worker representation" as suggested in the Guide to Consultations. As workplaces change and precarious workers are on the rise, so too is inequality and power imbalance. Unions have historically demonstrated their ability to improve working conditions, wages, health and safety, quality of life, benefits and security – not just for their unionized members, but for all workers across the board. These improved conditions for workers translate to increased productivity, and health and wellness which has a corresponding positive impact on our economy and decreases stress on our health care system and social service systems. Accordingly, it would in our view be a mistake to look to alternate modes of representation rather than bolstering the ability of unions to organize in a more balanced and equitable system. Now, more than ever, it is critical to ensure the stability of our Unions as they ultimately improve the economic and social health of our great province and people.



OPSSU

The Ontario Public Service Staff Union (OPSSU) represents the front line staff of the Ontario Public Service Employees Union. We work in the union's head office in Toronto and in 19 regional offices across Ontario, providing a wide range of services to over 100,000 of the union's members.

OPSSU members are involved in organizing new bargaining units, and in supporting local leaders to build strong effective organizations to represent their members in the workplace. We work with bargaining teams to build strong contracts. We work with members to resolve grievances. We represent members in conflicts around benefits, workplace health and safety, workplace accidents and illnesses caused by workplace conditions. We produce newsletters and magazines and maintain the union's website to communicate the union's many and diverse activities to members and to the general public.

On a broader front, we influence legislative activity in the province and nationally to represent the interests of our members. We work with members to run campaigns to influence public policy where members' interests are involved. We back up these campaigns with solid research. We support the struggle for equity among union members, through creating opportunities for discussion and through support for members who face discrimination. And in all these roles, we also train members to take on local leadership, and local leaders to expand their horizons within OPSEU and within the broader labour movement.

CONTEXT: CHANGING WORKPLACES

From the Guide to Consultations

Q 1: How has work changed for you?

Q 2: What type of workplace changes do we need to both improve economic security for workers, especially vulnerable workers, and to succeed and prosper in the 21st century?

Q 3: As workplaces change, new types of employment relationships emerge, and if the long term decline in union representation continues, are new models of worker representation, including potentially other forms of union representation, needed beyond what is currently provided in the LRA?

Q 4: Are these the key objectives or are there others? How do we balance these objectives or others where they may conflict? What are the goals and values regarding work that should guide reform of employment and labour laws? What should the goals of this review be?

OPSSU Response:

GENERAL

New Types of Employment Relationships and Worker Representation

Workers are not in need of new models of representation, rather, they need better access to unionization. In 2013, roughly 30 % of workers were covered by collective agreements.[1] From 1981 to 2012, Canada's unionization rate declined 8% with most of the decline occurring in the 1980s and 1990s.[2] Ontario had the second lowest rate of union density in Canada at 27%, with only Alberta ranking lower at 22.1 %.

The decline in unionization rates was more significant among young workers, and with men seeing an overall decline in unionization over women.[3] The rate of private sector unionization has declined significantly with most unionized workers being a part of the public sector.

[1] Employment and Social Development Canada, *Union Coverage in Canada, 2013*, June 2014. Online: http://www.labour.gc.ca/eng/resources/info/publications/union_coverage/union_coverage.shtml
[2] Statistics Canada, *Long term trends in unionization,* Online: http://www.statcan.gc.ca/pub/75-006-x/2013001/article/11878-eng.htm
[3] *Ibid.*

The changing labour market has also impacted unionization rates.[4] Many Canadians engage in non-standard work. Evidence has shown that since the 1970s, there has been a shift away from standard work to non-standard work. In a standard employment model, a worker has one employer, works a full year, on the employer's premises while enjoying extensive benefits. The worker expects job security. Non-standard work, however, differs from the traditional model of a stable full-time job. Non-standard jobs are effectively comprised of part-time or temporary work, less protected by regulation, and usually low-wage. Part-time and temporary workers have typically been the first to be laid off. The data illustrates a shift away from standard jobs,[5] but a stabilization occurred in the mid-1990s. Still, while non-standard work has not continued to increase, even where new employment has taken the form of full-time employment, these full-time jobs are paying lower wages.

Privatization is one key area of concern with respect to new employment that pays less than the job previously would have paid. These newer jobs also provide lesser benefits and representation. When formerly public services are contracted out or sold altogether, new workers may find themselves in the precarious position of inadequate representation and lower wages. Stronger successor protection would also be needed in order to ensure the ongoing representation of employees who provide a valuable public service.

Seeking the Right Balance

Established employment standards are necessary as a safeguard against the erosion of employment and labour rights. Since Bob Rae was elected out of the role of Premier of Ontario in 1995, employment standards have fluctuated somewhat, but have generally eroded. Workers have often been subject to political hostility and the erosion or removal of rights.

In 2001, for instance, under Premier Harris, the Ontario government amended *the Employment Standards Act* to allow corporate employers to demand employees work up to 60 hours per week. In the Ontario of Premier Harris, corporate employers did not need to seek a permit or pay overtime for workers who laboured up to 60 hours per week. This effectively reverted Ontario to the state it was in prior to 1944, when masses of workers organized to demand the right to a shorter work week.

[4] *Ibid.*

[5] Vosko, Leah; Zukewich, Nancy; and Cranford, Cynthia. Statistics Canada, Perspectives on Labour and Income, "Precarious jobs: A new typology of employment." October 2003. See: http://www.statcan.gc.ca/pub/75-001-x/01003/6642-eng.html

Under Premier Harris, employment standards were also amended to allow employers to require their employees to take their entitled vacation days one day at a time. No more could employees assume they would be able to take their vacation days all at one time, or to schedule vacations with their families.

In 2012, the McGuinty government passed, on a temporary basis, Bill 115, which forced new contracts on Ontario teachers, and banned strikes and lockouts.

Also in 2012, Tim Hudak, leader of the provincial Conservative Party, ran on a campaign that, if he had been elected, would have resulted in the decimation of established employment standards. Among Tim Hudak's ambitions was overturning the 1991 *Lavigne* decision[6] of the Supreme Court which upheld the so-called Rand-formula as a *Charter* protected right to union security, and increasing privatization of public services.

We encourage Premier Wynne to reconsider the serious threat to worker's rights posed by privatization of sectors of labour within the province.

Given the legislative gaps in the ESA discussed above, and the variety of methods said gaps afford employers for avoiding regulation by the ESA, privatization could conceivably widen the potential for employment abuses in Ontario. As a result, it is all the more imperative that the ESA be amended to provide protections for all of Ontario's workers, from the 41% of Ontario workers who work part-time, on contract, or are self-employed to the rapidly growing role of precarious work in the Ontario labour force[7].

Equity is not sufficiently guarded in the present ESA. Precarious employment has been growing significantly faster than full-time work. Under the ESA, employers have been able to pay precarious workers less than their full-time counterparts, with part-time workers earning roughly 50% of the rate full-time workers earn. Temporary workers fare slightly better, but still only average $15 per hour compared to the $24 per hour average for full-time workers[8]. This is an example of economic inequity that fails to respect the key objective of equity in the employment relationship.

---

[6] *Lavigne v Ontario Public Service Employees Union*, [1991] 2 S.C.R. 211.

[7] Kaylie Tiessen, *Seismic Shift: Ontario's Changing Labour Market,* (Canadian Centre for Policy Alternatives, May 2014). Online: https://www.policyalternatives.ca/sites/default/files/uploads/publications/Ontario%20Office/2014/03/Seismic%20ShiftFINAL.pdf

[8] Workers Action Centre, *Still Working on the Edge.* Online: http://www.workersactioncentre.org/wp-content/uploads/dlm_uploads/2015/04/StillWorkingOnTheEdge-Exec-Summary-web.pdf

The Employment Relationship – Key Objectives

Efficiency as a key objective of the employment relationship is also compromised by the failure of the ESA to protect workers in the changing workforce. Both economic and business efficiency must require a healthy workforce who are capable of performing the tasks required of them. The World Health Organization has linked precarious and insecure employment to diminished health.[9] Cardiovascular illnesses are particularly aggravated by shift work, job insecurity and overtime. The economic costs of cardiovascular disease has been discussed above and will not be revisited here, other than to note that precarious employment in the changing workforce is economically inefficient.

The key objective of workers' voices in the employment relationship has also been consistently undermined in Ontario's changing workplace. With the rise in precarious employment relative to full-time employment, increasing numbers of workers are finding themselves outside of the protections of the Employment Standards Act and unable to demand rights provided to other workers in more standard or traditional forms of employment relationship. These workers, particularly workers in non-unionized settings, have little voice due to the legislative constraints of the ESA and are more apt to be dissuaded from attempting to voice concerns due to fear of employer reprisals.

Where any of the three key objectives in the employment relationship (i.e. efficiency; equity; and voice) conflict, there must be a premium placed on matters affecting dignity and health and safety. The economic performance of an employer must not be given enough weight to justify reductions in the health, safety, or dignity of its workforce.

[9] Benach, J. Muntaner, C and V Sanatana (Chairs) (2010), *Employment Conditions and Health Inequalities. Final Report to the WHO Commission on Social Determinants of Health (CSDH).* Online: http://www.who.int/social_determinants/resources/articles/emconet_who_report.pdf

THE EMPLOYMENT STANDARDS ACT, 2000 (ESA)

From the Guide to Consultations:

Q 5: In light of the changes in workplaces, how do you feel about the employment standards that are currently in the ESA? Can you recommend any changes to better protect workers? Do the particular concerns of part-time, casual and temporary workers need to be addressed, and if so, how?

Q 6: Are changes needed to support businesses in the modern economy? How could the Act be simplified while remaining fair and comprehensive? Are there standards in the ESA that you find too complex? If so, what are they and how could they be simplified?

Q 7: Should this leave be revised in any way? Should there be a number of job-protected sick days and personal emergency days for every employee? Are there other types of leaves that are not addressed that should be?

Q 8: In the context of the changing nature of employment, what do you think about who is and is not covered by the ESA? What specific changes would you like to see? Are there changes to definitions of employees and employers or to existing exclusions and exemptions that should be considered? Are there new exemptions that should be considered?

Q 9: Are there specific employment relationships (e.g., those arising from franchising or subcontracting or agencies) that may require special attention in the ESA?

Q 10: Do the current enforcement provisions of the Act work well? In your experience, what problems, if any, exist with the current system, and what changes, if any, should be made? In your experience, what changes could help increase compliance with the ESA?

OPSSU Response:

Employment standards currently in the ESA are inadequate in protecting workers in these times of changes to workplaces. If it is to meaningfully respond to changes to workplaces and the rise of non-standard employment, the ESA must, at a minimum, address the following issues:

Overtime

As of August 2015, about one million employees in Ontario work overtime. Of these employees, approximately 59% are working unpaid overtime. Stated differently, more than 1 in 7 employees in Ontario, or 590,000 employees, works unpaid overtime[10].

At present, the ESA allows employers to seek to obtain overtime permits. If obtained, said permits allow employers to schedule workers in excess of 48 working hours per week.

Not only does the ESA in its current incarnation enable employers with a permit to schedule workers for more than 48-hours per week, section 22 of the Act also permits employers to enter into averaging agreements with its employees, whereby employers can average overtime compensation over longer periods.

The ESA does not provide any clear restriction on the amount of hours employees can be expected to work. Agreements made between an employee and an employer that an employee will work above 48-hours per week are dubious in that such agreements are borne of a gross power imbalance. An employee is vulnerable to the demands of an employer. Employee consent to such agreements must be viewed with suspicion. The ESA, in effect, prioritizes freedom to contract over freedom from exploitation. This is not a reasonable position from which to protect workers' rights.

In permitting averaging arrangements, the ESA benefits the employer by allowing it to avoid paying compensation at the higher overtime rates. At the same time, the ESA does harm to the employee by depriving him/her of the higher wage rates traditionally expected for overtime work.

Even where averaging and overtime permits are allowed under the ESA, the legislative gap of the ESA in the regulation and restriction of overtime hours has also proven a detriment to employers.

The laxness of the ESA in regulating overtime hours has encouraged an environment where business may attempt to reduce payroll costs by failing to pay employees for their overtime work. In recent years, this has led to a proliferation of class-action claims against employers by employees seeking damages for unpaid overtime.

[10] Statistics Canada, *Employment by age, sex, type of work, class of worker and province (monthly) (Ontario).* August 2014 to August 2015. Online: http://www.statcan.gc.ca/tables-tableaux/sum-som/l01/cst01/labr66g-eng.htm

Employers have also been found to avoid paying overtime to employees via the creation of a workplace environment where employees are expected to work greater than 44-hours per week. Such an environment may pressure vulnerable employees to work more than 44-hours per week as a matter of expected practice from the employer. Employers heading such environments have been alleged to fail to keep track of the overtime hours of employees. Employees are often undercompensated in such a system.[11]

Misclassifcation

With the changing workplace in Ontario, there is greater potential for the misclassification of workers. For instance, an increasing number of workers are being classified as independent contractors rather than employees. Such a classification brings the effected workers outside of the protections and benefits of the ESA.

Misclassification, in addition to harming employees through reduced benefits and protections, has also harmed businesses. To wit, recent years have seen a proliferation of so-called "off the clock" and misclassification class-action claims brought by employees who either worked hours they did not receive compensation for, or who were misclassified as independent contractors and denied the compensation and benefits to which they were entitled. With a 59% rate of unpaid overtime, employers are vulnerable to a host of potential claims.

Hours of Work

Over 140 years ago, Ontario workers, expected to work upwards of 10-hours per day, 6 days per week, led the struggle to reduce working hours. In January of 1872, unions in Hamilton fought for the right to a shorter work week and a 9-hour work day. Soon, branches of the so-called "Nine-Hour Movement" began to spring up across the country. During these strikes, outrage was caused when many workers and union leaders were arrested.

The protests of these workers and the public outrage at their arrests, led the politically astute, Sir John A. Macdonald, to repeal anti-union laws. In June of 1872, the federal government legalized the formation of unions via the Trade Unions Act.

---

[11] See for example: *Rosen v BMO Nesbitt Burns Inc.,* 2013 ONSC 2144, where employees were expected to work more than 60-hours per week, but were not compensated for overtime, both because the employer did not keep accurate records of employee hours and because the employer attempted to classify the employment relationship as one in which the workers were not entitled to overtime payments. The situation in Rosen led to a class-action against the employer. So-called "off the clock" claims for unpaid overtime are increasingly seen in class-action claims.

While workers had won the right to organize, they had yet to win the right to a shorter work week. On May 1, 1886, workers in Canada and the U.S. engaged in strike activity, demanding an 8-hour work day. It was not long before workers in Europe supported workers in North America and staged their own May Day strikes for a shorter work week.

So pervasive was the demand for a shorter work week, that in 1919, the International Labour Organization established the 40-hour work week in its first convention, the Hours of Work (Industry) Convention, 1919 (No. 1)[12].

Eleven years later, the Canadian government passed the Fair Wages and Eight-Hour Day Act. This Act applied only to federal employees. Four years later, in 1934, the Ontario provincial government passed a provincial Fair Wages and Eight-Hour Day Act. This Act applied only to employees of the provincial government.[13]

Canada ratified the *Hours of Work (Industry) Convention, 1919 (No. 1)* on March 21, 1935.[14] Nevertheless, there were still many Ontario workers who did not have explicit legislated right to a shorter work week. Those who did not work for either the federal or provincial governments had no domestic Act to enshrine their rights to a shorter work week.

This changed in 1944 when the Ontario government passed the *Hours of Work and Vacations with Pay Act.* This Act was the predecessor of the *Employment Standards Act* and reduced maximum daily working hours to 8 hours per day and established a maximum working week of 48-hours per week.

Prior to these events, Ontario workers could be expected to work up to 60-hours per week without overtime pay.

The struggle against such onerous working hours was driven by a variety of considerations, not least of which was the recognition of the inherent value of work/life balance. Workers need time to be with their families, to pursue hobbies, and to enjoy leisure, etc.

When workers have more time for these activities, there is an inestimable social benefit – from more productive and engaged workers, healthier workers and decreased daycare costs, to a closer bonding of the family unit, to stimulation of the economy through increased spending on such things as hobbies and leisure. Industrialist, Henry Ford, advocated for the social, and perhaps

[12] Convention Limiting the Hours of Work in Industrial Undertakings to Eight in the Day and Forty-eight in the Week (Entry into force: 13 Jun 1921)
[13] Ontario Federation of Labour, *The Rising of Us All,* February, 2013, at p. 24.
[14] International Labour Organization: Ratifications for Canada. Online: http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102582

most importantly for Ford, the need and benefit for reduced working hours, saying: "It is high time to rid ourselves of the notion that leisure for workmen is either 'lost time' or a class privilege."[15]

The exemptions in today's ESA enable employers to revert to a time before workers fought for and won the right to a shorter work week, effectively threatening to erode rights that workers have been struggling to achieve and maintain arguably since the 19th Century.

Health Consequences of Increased Working Hours

With increased hours of work comes a decrease in the health and safety of employees. Overtime and extended work schedules have been associated with an increased risk of numerous health conditions, including: hypertension, cardiovascular disease, fatigue, stress, depression, musculoskeletal disorders, chronic infections, diabetes, and general health complaints. All of these conditions can cause mortality. The consensus among systematic reviews of workplaces among adults in the U.S. have concluded that long working hours are potentially dangerous to the health of workers.[16]

In a meta-analysis of seventeen studies that involved approximately 530,000 men and women from Europe, Australia and the United States, researchers found a correlation between the more hours people work and their risk of stroke. Researchers found that individuals working between 41 and 48 hours had a 10 % greater risk of stroke than those working 35 to 40 hours. Those working 49-54 hours had a 27 % increased risk, and those working 55 hours or more, had a 33% greater risk[17].

In a study of nationally representative data from the United States, the authors' findings "were consistent with the hypothesis that long working hours indirectly precipitate workplace accidents through a causal process, for instance, by inducing fatigue or stress in affected workers."[18]

Fatigue is an especially common factor when working hours are extended via overtime. [19] The Canadian Centre for Occupational Health and Safety (CCOHS) reports that an extended number

[15] Lee, Sangheon and McCann, Deirdre, "Working Time Capability: Towards Realizing Individual Choice". Eds., Jean-Yves Boulin, Michel Lallement, Jon C. Messenger and Francois Michon. *Decent Working Time – New Trends, New Issues.* International Labour Organization (Geneva, 2006), at p. 65.
[16] Dembe, Erickson, Delbos and Banks, The impact of overtime and long work hours on occupational injuries and illnesses: new evidence from the United States. Occup Environ Med 2005 62: 588-597, at 588.
[17] Kivimaki, M et al. *Long working hours and risk of coronary heart disease and stroke: a systematic review and meta-analysis of published and unpublished data for 603 838 individuals*, The Lancet, 2015.
[18] *Ibid* at 592.
[19] Alberta Human Resources and Employment. Fatigue, Extended Work Hours, and Safety in the Workplace in Workplace Health and Safety, June 2004, Reformated August 2010

of hours awake can produce results similar to blood alcohol levels. Workers with sleep deficits are likely to have impaired judgment and reaction times.

WorkSafeBC reports the following:

- 17 hours awake is equivalent to a blood alcohol content of 0.05
- 21 hours awake is equivalent to a blood alcohol content of 0.08 (legal limit in Canada)
- 24-25 hours awake is equivalent to a blood alcohol content of .10

CCOHS has stated that, "fatigue is regarded as having an impact on work performance."[20]

Alberta Human Resources and Employment reports that accidents occur when people are more likely to want sleep. And, indeed, sleep deficit has been linked to large scale events such as the Exxon Valdez oil spill and the nuclear accident at Chernobyl.[21]

Exemptions

Given the changing face of the workplaces and the rise of employment that is not based on the employment systems that were standard when the ESA was first adopted, employers now have the opportunity to reduce labour costs through the use of any number of employment relationships that are excluded from the ESA.

The rise in independent contract and part-time work exemplify the situation where employers are able to hire workers for the same work but to hire them in the context of a different employment relationship. The different employment relationship will often exclude the worker from the protections and benefits of the ESA, while simultaneously exempting the employer from the duties and obligations it would have had under a more traditional employment relationship. Semantics and issues regarding the definition of the employment relationship must not be allowed to undo over a century of workers struggling to achieve employment rights and benefits.

The fairest and most comprehensive way for the ESA to be simplified would be to close the above-noted coverage exemptions and exclusions. For instance, if the definition of employee were expanded to include all workers performing employment for the employer, individual workers would be able to consult the ESA and to know their rights. As it stands now, however, many people are unaware of the vast number of legislative gaps to their protections.

[20] Canadian Centre for Occupational Health and Safety, *OSH Answers Fact Sheets*. Last modified: September 4, 2015. Online: http://www.ccohs.ca/oshanswers/psychosocial/fatigue.html
[21] *Ibid.*

Fair Wages

Fair wages are a concern of all workers in Ontario. Fair wages improve equity in the employment relationship between workers and employers, fortify the individual and collective dignity of workers, and improve the economic condition of workers, the community and the larger economy.

It has also been found that fair wages can improve workplace safety and result in better quality products and services. The reason for this is that fair wage policies tend to encourage employer use of more skilled and better qualified labour. As a result, fair wage policies support industry and worker investments in skills training.

In industries of competitive bidding, such as aspects of the construction industry, fair wage policies can prevent the creation of underground practices and facilitate a more equitable environment for competitive bidding. This, in effect, restricts a race to the bottom for wages and removes incentives employers may have to cut costs by neglecting to offer adequate training to employees.

Though fair wage policies are routinely criticized as inflating costs to levels that are unsustainable for employers, the evidence does not support these claims. There is a marked community benefit to fair wage policies for all members of a community, as fair wages protect local employment and thereby increase the benefits to the local economy from labour and projects that are financed by local funds.[22]

However, the present failure of the ESA to protect workers in non-standard forms of labour works contrary to fair wage policies, encouraging instead an environment where employers can reap benefits from the use of labour that is not entitled to the same benefits and protections as labour in standard employment relationships.

Simply put, there is a gap in the legislative protections of the ESA that run contrary to the establishment of fair wages for all workers and which enables employers to leverage this gap to reduce costs. At the same time, employees in non-standard forms of employment are left with lower wages, less ability to economically contribute to the community, and struggling to be recognized under the ESA's inadequate and outdated protections that have not kept pace with the times.

[22] John O'Grady, *Impact of Fair Wage Policies on the Construction Industry.* (Ontario Construction Secretariat, June 2006). Online: file:///C:/Users/tvibert/Downloads/OCS_Fair_Wage_Study_-_Final.pdf

Recommendation 1: Repeal the averaging provisions of the ESA.

Recommendation 2: Mandate MOL oversight of any agreements reached between the employer and the employee. This is to ensure the employer is not exploiting its power-imbalance in order to have its employees agree to low quality terms.

Recommendation 3: Close the legislative gap by mandating all workers are covered by ESA protections and entitled to the same benefits of any worker.

Recommendation 4: Expand the definition of "employee" to include all workers no matter the industry or type of work.

Personal Emergency Leave and Sick Days

Under the current section 50 of the ESA, an employee is only entitled to personal emergency leave if the employer has fifty or more employees. The effect of this is to exclude a great number of workers from entitlement to personal emergency leave, forcing said workers to rely on the goodwill of the employer.

This is to say that it creates a gross power imbalance whereby the employee who must take personal emergency or sick leave runs the risk of incurring the displeasure of the employer. This legislative gap could be remedied by amending s. 50 to apply to all employers and requiring employers to create a workplace plan to cope with employee illness and personal emergency. As it stands now, the employee is required to cope with unexpected life events and/or illness without any substantial income or job security protections.

Employees who do not have access to paid sick days may be more inclined to come to work while sick, leading to less productivity and the potential to make other employees sick. One study found that the costs of attending work while ill results in more cost to the economy, and that people who are in insecure jobs are more likely to attend work while sick[23]. Additionally, workers who attend at work ill, are more likely to make errors which impacts on productivity, profitability and safety.

It is conceivable that situations could arise where an employee is forced to choose between his/her job and being with a terminally ill loved one. This is not a choice that bolsters the dignity

[23] Johns, Gary, *Attendance dynamics at work: The antecedents and correlates of presenteeism, absenteeism, and productivity loss,* Journal of Occupational Health Psychology, Vol 16(4), Oct 2011, 483-500. Online: http://psycnet.apa.org/journals/ocp/16/4/483

of work which the Supreme Court recognized in *Reference Re Public Service Employee Relations Act* (Alta.)[24].

Recommendation 5: Amend section 50 to apply to all employers, no matter the number of employees.

Recommendation 6: Require employers to establish a workplace plan to deal with employee illness and personal leave.

Recommendation 7: Rather than presume that an employer is exempt from s. 50 if it has less than fifty employees, shift the presumption so that an employer is to provide sick days and personal leave. Further, employers should be required to provide a minimum of seven days paid sick days to their employees.

Recommendation 8: Rather than have the exemption(s) as a default position of the legislation, require an employer to apply for an exemption and to be means tested as part of the exemption application.

ESA Coverage

At present, the definition of "employee" is expressed in the positive, by which is meant that an employee is defined by what it includes. This creates a situation where, if an employer wishes to avoid the ESA, it need only seek to arrange working relationships that are not included in the definition. A prime example of this is seen in the growing use of independent contractors.

The end result is that we see large numbers of working men and women, who want to work, who do work, but who are excluded from benefits and legislative protections afforded to employees who are part of the standard employment relationship that existed at the time the legislation was first drafted. With the ongoing advent of technology and ability for people to work remotely, it becomes both easier to exclude workers from being defined as "employees" and harder for said workers to cope with discrimination, personal emergencies, termination, etc.

If the definition of employee were expanded to include all workers performing employment for the employer, individual workers would be able to consult the ESA and to know their rights. As it stands now, however, many people are unaware of the vast number of legislative gaps in their protections.

[24] [1987] 1 SCR 313.

One way to expand the definition to protect more workers, would be to change the definition of "employee" from a positive definition that lists what it includes to a negative definition which lists what an "employee" is not. Alternatively, look to an inclusive definition as opposed to an exhaustive definition.

Recommendation 9: Broaden the scope of the definition of "employee" by defining it in the negative rather than the positive (or inclusive vs exhaustive).

Subcontracting

Subcontracting is of special concern as it opens the door to abuses of workers' employment rights. Under the ESA, if an employer subcontracts out work to be accomplished by a subcontractor, the potential costs and liabilities of the work is passed on to the subcontractor.

If it is work an employer wants accomplished, it should be held to account for the work and have a responsibility to ensure the subcontractor pays fair wages to its workers and ensure that anyone hired by the subcontractor is at once defined and entitled to the ESA protections of an employee, even if the subcontractor retains independent contractors to complete the work. Again, it becomes an issue of definition of "employee".

In Quebec, legislation has been in force since July 1, 2014, being an *Act Respecting Labour Standards*[25] that holds employers jointly liable with their subcontractors for non-compliance with wage and monetary obligations under the Act.[26]

Both in Canada and on an International level, there is a growing awareness of the need for increased employment protections. On Labour Day, September 7, 2015, for example, President Obama signed an Executive Order (the "Order") to establish paid sick leave for Federal contractors and subcontractors. The Order seeks to ensure employees of federal contractors and subcontractors are provided a minimum of 7-days of paid sick leave per year. This will include paid leave for "family care".

It is estimated that improving labour protections for employees in the contract fields will: improve health and performance of contract employees; ensure contractors will be able to attract talented employees; and result in improved economy and efficiency. Section 1 of the Order states the policy objective behind seeking to establish paid sick leave as a standard for federal contractors and subcontractors:

[25] CQLR c N-1.1.
[26] *Supra* 26.

> Providing access to paid sick leave will improve the health and performance of employees of Federal contractors and bring benefits packages at Federal contractors in line with model employers, ensuring that they remain competitive employers in the search for dedicated and talented employees. These savings and quality improvements will lead to improved economy and efficiency in Government procurement[27].

It does not strain credulity to accept the rationale that healthier employees will deliver improved performance and enable the employer to attract dedicated and talented employees. Nor is it difficult to accept the proposition that these protections will lead to cost savings and improved economic activity. Stated differently, it can be assumed the converse is equally true, namely that failure to provide sick leave and family care protections to employees of contractors and subcontractors results in: decreased performance, less ability to attract dedicated and talented workers, and increase social and economic costs.

There is no compelling reasons to believe these policy objective on the federal level in the United States would not be equally applicable on the provincial level in Ontario. As a result, it is submitted that Ontario would do well to establish like legislative provisions in the ESA.

Temporary Agencies

Temporary agencies are on the rise in Ontario. Workers from temporary agencies typically earn less wages and benefits than non-temporary workers. The only rationale for this appears to be that employers are able to reduce payroll costs by hiring temporary workers, because the ESA does not provide sufficient protections for temporary workers.

If the ESA started from the position that all workers were presumed to be entitled to the protections of the ESA and then shifted the burden of demonstrating the negative to the employer, as in showing why a particular class or group of workers should not be provided with personal emergency leave, sick leave, wage equality, etc., this could go a long way to protecting workers coming by way of temporary agencies.

Recommendation 10: Create a provision whereby an employer is responsible for the actions and ESA compliance of the subcontractor. This could be modeled on the above-mention Quebec legislation.

Recommendation 11: Amend the definition of "employee" to presumptively include all workers, unless the employer can demonstrate the negative.

[27] President Barack Obama, "Executive Order -- Establishing Paid Sick Leave for Federal Contractors". (The White House Office of the Press Secretary, September 7, 2015). Note: this Executive Order is not yet listed on the website of the Federal Register. It can be found online at: https://www.whitehouse.gov/briefing-room/presidential-actions/executive-orders

Compliance

The limitation period in section 111 of the ESA, in our view, is unduly short. The transition time limits of section 111 (3.1), dealing with the transition to the *Stronger Workplaces for a Stronger Economy Act, 2014,* provides that an employee has 6-months in which to bring a claim for wages owing to him/her.

This is problematic for many reasons. For starters, it could take time for many employees to navigate and understand their rights under the ESA. To limit the limitation period for bringing a claim to 6-months may prove too short a time period. As a result, it is conceivable that employees with meritorious claims will be barred from pursuing such a claim through the enforcement mechanism of the ESA by virtue of the limitation period having expired.

Section 111(1) limits the time on the recovery of an employee's complaint to 2 years. This provision contains no mention of discoverability as an exception to the rigid application of the 2-year limit. Section 114 (1)(b) does import a discoverability clause, but only as it applies to the knowledge of the enforcement officer, not the individual employee. The ESA could benefit from a discoverability clause similar to that found in the *Rules of Civil Procedure.*

A related inadequacy of the ESA enforcement provisions is found in the monetary limit that an employer found to owe unpaid wages can be ordered to pay. Via s. 103(4), an employment standards officer shall not order an order to pay more than $10,000.00 per employee claim.

This leaves employees in a difficult position, as it is possible that some employees will be owed greater than $10,000.00 in unpaid wages. If, for example, an employee is owed $15,000.00, if the employee would seek to recover the full amount, the ESA will not be an available recourse. The employee will presumably need to pursue the full amount of the monies owing via the court system. In the particular example, of $15,000.00 owing, an employee would need to seek recovery through the small claims court, which is limited to claims of $25,000.00.

The difficulty this invites is two-fold: (1) an employee may not have experience navigating the court system and will find it necessary to retain a lawyer, which will only add expense; and (2) it shifts the burden of enforcement onto the court system and could add further strain to judicial resources.

Recommendation 12: Amend the legislation to more closely mirror the limitation periods in civil litigation, where the limitation period for a typical claim is two-years post-discovery of the damage.
Recommendation 13: Increase the monetary limit an enforcement officer may order from $10,000.00 to at least the same amount as small claims court (i.e. $25,000.00).

Cameras and Surveillance

With rapid technological change we have seen a dramatic increase in the use of cameras and/or video surveillance in the workplace and/or arising from work. This raises serious issues of privacy and unnecessary/unwarranted intrusion on individual rights (notwithstanding arguments to be made for ensuring safe workplaces). Being subject to surveillance has profound impact on workers self-esteem and security. It is important to strike an appropriate balance between competing rights in this regard.

While privacy legislation exists, the workplace poses unique challenges deserving of special consideration. In this day of rapid technological advancement, it would be prudent to set some minimum standards to protect abuses of surveillance in the workplace. For example, at a minimum, the onus should be on Employers seeking to introduce such surveillance in the workplace to justify the rationale for the introduction of such. Additionally, it may be prudent to require Ministerial approval prior to the introduction of surveillance in the workplace. It should be noted that the legislation would require imposed negotiation with and consent of the Union in unionized workplaces.

Recommendation 14: Explore meaningful minimum standards and protections with respect to introduction of any surveillance in the workplace.

THE LABOUR RELATIONS ACT, 1995 (LRA)

From the Guide to Consultations:

Q 11: In the context of the changing nature of employment, what do you think about who is and is not covered by the LRA? What specific changes would you like to see?

Q 12: In the context of changing workplaces, are changes required to the manner in which workers choose union representation under the LRA? Are changes needed in the way that bargaining units are defined, both at the time of certification and afterwards? Are broader bargaining structures required either generally or for certain industries? Are changes needed in regard to protecting bargaining rights?

Q 13: Are changes required to the LRA with regard to the ground rules for collective bargaining? Are new tools needed in the LRA with respect to industrial disputes or to deal with protracted labour disputes?

Q 14: In light of the changing workplace and the needs of workers and employers in the modern economy, are changes needed regarding the unfair labour practices set out in the LRA, or to the OLRB's power to provide remedies in response to unfair labour practices?

Q 15: Are there changes that could be made to the LRA that would enable the parties to deal with the challenges of the modern economy?

Q 16: Are there any other issues related to this topic that you feel need to be addressed? Are there additional changes, falling within the mandate of this review, that should be considered?

OPSSU Response:

Successor rights

Under Premier Wynne, Ontario has seen a marked rise in privatization of provincially-owned assets. The Ontario Budget of 2015 has essentially facilitated the privatization of Hydro One, ostensibly to gain additional funding for the infrastructure and transit sectors.

A common argument in favour of privatization is as strategy for the government to gain financial benefits by selling its assets and reducing its expenditures, or operating costs, while simultaneously maintaining revenue through the taxation of the sale of products or provision of service(s) effected by the private entity[28].

This is not a brief on the economics of privatization and will not attempt to provide an in-depth discussion of the merits or demerits of privatization as a revenue generating strategy. It has been important to note, however, as the pinch of austerity of recent years has developed a political appetite for the consideration of privatization. This appetite for privatization has, in turn, increased the vulnerability of all workers in state-owned sectors.

Suffice it to say, unions have lobbied extensively against privatization and its devastating impact on labour. Ironically and notably, the global examples of privatization regularly establish that the anticipated cost-savings are rarely realized in any event and, in fact, to the contrary, privatization has resulted in increased costs with lower service and a host of other problems. We are happy to provide further information/submissions on this important issue if desired.

In the interim, and in any event, while there has been much discussion of the effectiveness of privatization to generate expected revenues, there has been significantly less consideration on the effect privatization may have on workers. In this new atmosphere of the workplace, the provisions of the LRA must be modernized and amended to be responsive to the challenges faced by workers in the context of successor rights in the changing workplaces of today's labour market.

Under section 68(1) of the LRA, an existing union at the time of the sale of a business has the right to apply to the Ontario Labour Relation Board for a declaration that it was the predecessor union at the time of the sale, merger or amalgamation and to be declared the successor union after the sale, merger or amalgamation of the business. Once recognized, the successor employer is bound to respect the rights, obligations and duties owed to the union, whether via collective agreement or otherwise.[29]

However, under the current legislative regime, bargaining rights are not protected, and in fact, are eroded by virtue of public-private subcontracting. The legislation needs to be reformed to prevent such erosion and the current race-to-the-bottom which arises with the rise of P3 partnerships and outsourcing of work to private companies through tendering. P3s and the

[28] David Campanella and Greg Flanagan, *Impaired Judgment: the Economics and Social Consequences of Liquor Privatization in Western Canada.* Canadian Centre for Policy Alternatives, at p. 4. Online: http://www.policyalternatives.ca/sites/default/files/uploads/publications/Saskatchewan%20Office/2012/10/Impaired_Judgement_Oct2012.pdf

[29] *Labour Relations Act*, s. 68(3).

tendering of public sector service contracts decrease accountability and wages while increasing employment instability and precarious employment arrangements.

Those unionized workers already affected by subcontracting by virtue of privatization, have already suffered the adverse consequences of such, including loss of bargaining rights, benefits and jobs, not to mention a loss of statutory protections otherwise guaranteed. If not redressed forthwith a crisis for workers looms.

Workers are increasingly concerned over the perceived growing encroachment into the public sector of alternate financing and public-private partnerships. The reduction in employment and labour standard that such systems could create for all workers is of serious concern.

The Ontario Labour Relations Board, seized with interpreting and applying the *Labour Relations Act*, has developed tests to determine who falls within the purview of the legislation as a related employer and/or in a sale of business. However, these tests are based on an outdated model of the concept of 'employer'. In today's market and economic climate (and reality), we are less likely to find one 'true' employer in the traditional sense. This is particularly so in situations of P3s and/or contracting out of public services. It is no longer realistic to assume that the 'employer' will be either the contractor or the public provider/municipality. Yet, the OLRB has been reluctant to recognize existing bargaining rights in subcontracting cases – even where it was clear that the tendering process was designed to, and resulted in, defeating bargaining rights.[30] The Board has stated that the related employer and sale of business provisions were not designed to address such attacks against bargaining rights.

Clearly this is a fundamental area that needs to be addressed as given the changing workplace reality, these will be amongst the most pressing attacks against bargaining rights for our generation. As noted earlier, declining union rates are detrimental to the economy, to decent standards of living, to health and safety protections/standards and many other key benefits that are the hallmark of civilized society.

In today's reality, the related employer/sale of business protections as currently set out in the Act are deficient to the extent that the protection is tied to the 'entity' as opposed to the 'work' and 'workforce'. To redress this potential crisis, the LRA ought to be reformed to ensure that collective bargaining rights and/or employment obligations transfer with a change in service 'provider'. In particular, it is necessary to ensure that related employer designations and/or sales of business will be found in public-private contracting scenarios, including 'upstream' to the relevant public entity.

[30] York (Regional Municipality) [2012] O.L.R.D. No 4165; Ottawa Community Care Access Centre, [2008] OLRB Rep. September/October 671; Durham Access to Care, [2000] OLRB Rep. November/December 1108.

There are a number of legislative options to achieve such protection. Whether through (i) specific provisions defining 'sale of business' and/or 'related employer' in the context of private-public subcontracting situations (i.e. specifically recognizing bargaining rights from the 'contractor' to the government); (ii) reinstating protections provided under Bill 40 (1993 NDP amendments to the LRA later repealed by the Conservatives in 1995) wherein bargaining rights attached to the relationship between employees, their work and workplace (regardless of who constituted the 'technical' employer); (iii) adopting the UK Transfer of Undertakings Regulations 2006[31] wherein a service provision change is broadly defined to specifically include outsourcing to a contractor etc. In such cases, bargaining rights and collective agreement obligations transfer automatically.

If this situation is not redressed, it represents a concern for unions involved in the public sector. In a competitive bidding process, private sector employers who use independent contractors and other forms of precarious employment to keep costs down have a competitive advantage over the public sector. And as value-for-money audits are an accepted metric of alternate financing review, the public sector could lose out on employment. This would actively condone and reward employers who use non-standard employment relationships to provide less wages, benefits and protections to workers and, it could also put undue pressure on unionized labour and employees in standard forms of employment to agree to wage and benefit reductions and other concessions they have fought long and hard to attain thereby driving down the standard of living for Ontarians and the resulting adverse economic impact which arises from such.

With the combined rise of non-standard and precarious employment and privatization efforts, these are clearly unique and challenging times for workers. Vigorous protections in the *Labour Relations Act* are necessary to protect the position of unions in the context of privatization and successor-employer relations. Failure to provide legislative safeguards to protect union members when dealing with a successor-employer will be to create fertile ground for a compromise or working standards and employment conditions for all workers in Ontario. The health, safety and economic costs of such a scenario would be immeasurable.

Recommendation 15: Amend the *Labour Relations Act* to ensure that collective bargaining rights and/or employment obligations transfer with a change in service 'provider'. In particular, it is necessary to ensure that related employer designations and/or sales of business will be found in public-private contracting scenarios, including 'upstream' to the relevant public entity.

[31] http://www.legislation.gov.uk/uksi/2006/246/contents/made.

Timelines

While the OLRB has strict timelines for applications and responses to application, there are no similar strictness in time limits for the Board to schedule a hearing of the issue(s) involved in the application.

Our members are concerned that hearings of their applications and grievances are not being scheduled with enough timeliness to deal with their matters expeditiously. Expeditiousness takes on special importance when the matter involves time-sensitive issues such as a request for hearings regarding allegations of bad faith bargaining and unfair labour practices. In such matters, if the delay is long enough, the issue may be no longer in need of a final decision by the time a hearing is scheduled and the damage to labour relations may be irreversible by then.

This is not a radical proposition as the Board currently sets immediate hearing dates in Employer cases involving allegations of unlawful strike.

Recommendation 16: Provide mandatory time limits for the scheduling of time sensitive matters.

Enforcement

Under section 104 of the LRA, the potential penalty for contravening any provision of the Act or any decision, determination, interim order, order, direction, declaration or ruling made under the Act is set at no more than $2,000.00 for an individual and no more than $25,000.00 for a corporation, union, council of unions, or employers' organization. Continuation of an offence may receive the same penalty for every offending day.

These penalties are insufficient incentive to encourage many parties involved in a dispute to abide by decisions of the Board. An employer may be able to simply ignore decisions and delay proceedings in order to harm a union's bargaining position, in addition to the financial integrity of the union.

As noted above, delays are particularly detrimental to the position of a union where bad faith has been established.

Additionally, there ought to be legislative direction permitting the awarding of punitive damages in appropriate cases.

Similarly, arbitral jurisprudence is not keeping up with the times in terms of appropriate damages awards/remedies. Accordingly, it would be appropriate to introduce legislation specifically empowering arbitrators to award punitive damages where appropriate.

Recommendation 17: Amend the *Labour Relations Act* to provide strict timelines for hearings to be scheduled and conducted by the Ontario Labour Relations Board.

Recommendation 18: Expand (or clarify) the jurisdiction of the OLRB to award punitive damages and damages for harm to the integrity of the union where an offence is found pursuant to s. 104.

Recommendation 19: Expand (or clarify) the jurisdiction of arbitrators to award punitive damages in appropriate cases.

Card-based union certification

We adopt and support the submissions of the OFL on this issue.

Interest arbitration for a first contract

We adopt and support the submissions of the OFL on this issue.

Anti-scab rules

We adopt and support the submissions of the OFL on this issue.

Arbitrators Jurisdiction

Timeliness

Historically, arbitrators had and routinely exercised their discretion to relieve against the time limits set out in collective agreements in appropriate cases. This exercise, as one would expect given the expertise of Ontario arbitrators, was judiciously applied and served to ensure that justice was not denied based on a technicality where such would have resulted in an inappropriate result. During the tenure of the NDP, the legislation was amended to codify this pre-existing exercise of discretion/jurisdiction. Unfortunately, however, during the Tories overhaul of the labour legislation under former Premier Harris, the NDP amendments codifying the pre-existing practice were stripped away and the Court of Appeal determined that such change was intended to strip arbitrators of such jurisdiction.

This has resulted in significant inequities. By depriving arbitrators of the ability to exercise their discretion in appropriate cases, injustices arise. We trust our arbitral community to exercise their discretion and expertise in any number of significant issues. The question of relief against time limits should be no exception.

It does not make labour relations or business sense to deprive arbitrators of this jurisdiction. The result has been the unnecessary expenditure of significant resources as parties continue to litigate the issue. More importantly, as noted above, the hamstringing of arbitrators has resulted in unreasonable decisions impacting on the rights of workers and relationship of the parties. It has also resulted in an increase in the number of Duty of Fair Representation complaints against trade unions, which has unnecessarily drained the resources of the Ontario Labour Relations Board, unions and employers alike.

Recommendation 20: The NDP amendments specifically recognizing arbitrators jurisdiction to relieve against time limits both in referrals through the grievance procedure and to arbitration ought to be reintroduced.

Just Cause Protection

The former mandatory just cause protection set out in the Labour Relations Act ought to be reintroduced. All unionized workers ought to be entitled to the minimum assurance that their employment cannot be terminated without cause. We had such protection previously in Ontario and it worked. Such minimum protection ensures labour relations stability both for the parties and also for individual workers. This is one of the fundamental protections enjoyed by unionized employees and our legislation ought to reflect such.

Recommendation 21: Reintroduce just cause protection in the Act.

Probationary Employees:

The NDP government during its tenure had introduced legislation specifically recognizing the rights of probationary employees to protections under the Act and collective agreements. This legislation was also stripped back by the Tories under former Premier Harris. As a result, many probationary employees are being denied fundamental protections enjoyed by their co-workers notwithstanding that they are dues paying union members. Again, the minimum protection afforded under the Act provided labour relations stability both for the parties and for individual workers and ought to be reintroduced.

Recommendation 22: Reintroduce minimum guaranteed protections for probationary employees.

CONCLUSION

This brief, prepared by the Ontario Public Service Staff Union for the *Changing Workplaces Review*, has sought to elucidate the integration of issues impacting workers across the province and the unique challenges being faced today by members of the transit industry.

With the rise of precarious and non-standard labour, we believe it is crucial to update the *Employment Standards Act* to proactively respond to the issues being faced by workers today that are not faced by members involved in standard employment relationships. Furthermore, with the increasing propensity of the Ontario government to engage in privatization, we believe it is vital that the *Labour Relations Act* be amended to strengthen successor rights in order to respond and reflect the concerns brought about by privatization of state-owned assets. In our view, it is also important that provisions of the Labour Relations Act be amended to help ensure employer-compliance with the Act and determinations of the Ontario Labour Relations Board.

The recommendations offered in this brief start from the proposition that no community, province or nation can truly thrive unless its workforce has adequate protections to enjoy the fruits of their labours and to spend quality time with their families. In our estimation, legislators have a positive duty to enact laws which support the economic and physical health of its citizens. This brief is submitted in the hopes that amendments may be made to the *Employment Standards Act* and the *Labour Relations Act* in an effort to ensure legislators satisfy their duty.

SUMMARY OF RECOMMENDATIONS

Recommendation 1: Repeal the averaging provisions of the ESA.

Recommendation 2: Mandate MOL oversight of any agreements reached between the employer and the employee. This is to ensure the employer is not exploiting its power-imbalance in order to have its employees agree to low quality terms.

Recommendation 3: Close the legislative gap by mandating all workers are covered by ESA protections and entitled to the same benefits of any worker.

Recommendation 4: Expand the definition of "employee" to include all workers no matter the industry or type of work.

Recommendation 5: Amend section 50 to apply to all employers, no matter the number of employees.

Recommendation 6: Require employers to establish a workplace plan to deal with employee illness and personal leave.

Recommendation 7: Rather than presume that an employer is exempt from s. 50 if it has less than fifty employees, shift the presumption so that an employer is to provide sick days and personal leave. Further, employers should be required to provide a minimum of seven days paid sick days to their employees.

Recommendation 8: Rather than have the exemption(s) as a default position of the legislation, require an employer to apply for an exemption and to be means tested as part of the exemption application.

Recommendation 9: Broaden the scope of the definition of "employee" by defining it in the negative rather than the positive.

Recommendation 10: Create a provision whereby an employer is responsible for the actions and ESA compliance of the subcontractor. This could be modeled on the above-mention Quebec legislation.

Recommendation 11: Amend the definition of "employee" to presumptively include all workers, unless the employer can demonstrate the negative.

Recommendation 12: Amend the legislation to more closely mirror the limitation periods in civil litigation, where the limitation period for a typical claim is two-years post-discovery of the damage.

Recommendation 13: Increase the monetary limit an enforcement officer may order from $10,000.00 to at least the same amount as small claims court (i.e. $25,000.00).

Recommendation 14: Explore meaningful minimum standards and protections with respect to introduction of any surveillance in the workplace.

Recommendation 15: Amend the *Labour Relations Act* to ensure that collective bargaining rights and/or employment obligations transfer with a change in service 'provider'. In particular, it is necessary to ensure that related employer designations and/or sales of business will be found in public-private contracting scenarios, including 'upstream' to the relevant public entity.

Recommendation 16: Provide mandatory time limits for the scheduling of time sensitive matters.

Recommendation 17: Amend the *Labour Relations Act* to provide strict timelines for hearings to be scheduled and conducted by the Ontario Labour Relations Board.

Recommendation 18: Expand (or clarify) the jurisdiction of the OLRB to award punitive damages and damages for harm to the integrity of the union where an offence is found pursuant to s. 104.

Recommendation 19: Expand (or clarify) the jurisdiction of arbitrators to award punitive damages in appropriate cases.

Recommendation 20: The NDP amendments specifically recognizing arbitrators jurisdiction to relieve against time limits both in referrals through the grievance procedure and to arbitration ought to be reintroduced.

Recommendation 21: Reintroduce just cause protection in the Act.

Recommendation 22: Reintroduce minimum guaranteed protections for probationary employees.