



ORHMA & GTHA Submission
September 2015

Ministry of Labour Changing Workplace Review

 GREATER TORONTO
HOTEL ASSOCIATION

SERVING THE HOTEL INDUSTRY SINCE 1925



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**MINISTRY OF LABOUR
CHANGING WORKPLACE REVIEW 2015
ORHMA & GTHA SUBMISSION**

September 18, 2015

Special Advisors C. Michael Mitchell and Hon. John C. Murray,

Thank you for the opportunity to respond to the Ontario Ministry of Labour's Changing Workplaces Review Consultation Paper, released in May 2015.

The Ontario Restaurant Hotel and Motel Association (ORHMA) along with The Greater Toronto Hotel Association (GTHA) has heard from its membership and we are concerned about the impact any labour reforms will have on Ontario's hospitality industry.

Unfortunately, it is not about revenue growth in the Ontario hospitality industry anymore, it's about the pressures on the expense lines. While we are pleased to be able to provide you with Ontario's hospitality industry perspective on the provincial government's labour reforms we are cautious about any changes impacting our hospitality economy.

We anticipate that this submission is considered when proceeding with labour reforms.

Ontario's Hospitality Economy: Ontario's hospitality industry is one of the most dynamic and competitive sectors of the provincial economy contributing 4.3% of the provincial GDP, generating over \$23 billion in sales and is a major employer of over 400,000 jobs. That equates to an estimated \$9 billion in tax revenues generated for all three levels of government.

In today's Ontario the hospitality industry, with more than 22,000 foodservice establishments and 3,000 accommodation properties, has the potential to create more jobs, more investment and more service destinations. With over 201,000 businesses related to tourism products and services representing over 17% of all business in Ontario, hospitality and tourism GDP in Ontario is greater than that of agriculture, forestry/logging, commercial fishing/hunting and mining industries combined.

The industry is uniquely positioned to contribute to the economy of every Ontario community. It directly employs over 400,000 Ontarians representing 7% of the total provincial employment. In the City of Toronto alone restaurant employment is over 70,000 and in hotels over 32,000 workers.

Ontario's Hospitality Challenges: The hospitality industry is a significant component of the provincial economy and character, yet is vulnerable to economic volatility, global events, unexpected disasters, and government policies.

While still struggling to recover following the 09/11 crisis where Ontario's tourism traffic shrunk by over 20 million annual international visitors, the 2008/09 financial recession has changed the industry for a long time. It's not about revenue growth anymore it's about pressures on the expense lines reducing profit margins to unprecedented levels. Since 2001 the accommodation sector's profit has been reduced by 5.4% whereas the foodservice sector now operates with razor thin bottom lines at 2.8% pre-tax profit margin. Both sectors operate below the Canadian national averages.

It is important to understand that Ontario's hospitality industry has undergone a major shift brought on by recent challenges such as the recent minimum wage increases. The attached two appendixes illustrate this impact:

Appendix 1 –Shows the highest proportion of all minimum wage earners at 39% work in the hospitality industry.

Appendix 2- Compares CPI increases to the recent minimum wage increases- four Year increases at 50% while CPI went up 15.4%.

Pressures on the expenses have had a significant impact to Ontario's hospitality profit performance as the following appendixes illustrate:

Appendix 3 – Ontario's accommodations performed over the national average till 2003 and now continually underperform the national bench mark.

Appendix 4- The accommodations sector has seen the average labour cost percentage once operating less than the national average, climb operating at over 2% from the national average.

Appendix 5- The foodservice sector in 1990 performed at 9.6% profit margin and dropped by 56% to 4.2 % in 2013.

Appendix 6 – Illustrates Ontario's foodservice margins against the national average. In both the accommodations and foodservice sectors, every Province performs at a higher profit margin than Ontario. The graph also shows the variance between Ontario and the national average widen from only 0.4% in 2001 to 1.4% in 2013.

Consumer confidence and disposable income stimulate the economy more than many initiatives including governments issuing bonds. This simple economic case can be applied to the hospitality industry. Policies that support profit growth in the industry will lead to investment and job growth benefiting the overall economy including government revenues.

Appendix 7 – Shows correlation of the impact of foodservice and accommodations margins to Ontario’s Youth Unemployment. While operators have introduced every trick in the book to meet performance expectations many curtailed new hires with extreme cut backs to part time employment. Historically foodservice and the accommodation industry along with retail has been the highest recruiter of youth.

Provincial Government Policies: Business profits are an important element of growing the economy including growing jobs. Most of the industry's small businesses are struggling to be sustained and make ends meet. Pressures are entrenched in regulations brought on by governments that usually are well intended but have severe consequences on the hospitality industry.

Job growth limitations are caused from shifts in operating practices such as:

- Managers wearing many “hats” performing many tasks as a way of increasing productivity and reducing expenses.
- Mandated minimum wages increases forcing employers to freeze or offer marginal increases to those line employees earning “just” above the minimum wage.
- Reducing operating hours to compensate is a common practice.

Ontario’s Changing Workplaces Review: The *Employment Standard Act* (ESA) and the *Labour Relations Act* (LRA) review have the potential to increase costs and make a hospitality operation more onerous to operate.

The Ontario Restaurant Hotel and Motel (ORHMA) and the Greater Toronto Hotel Association (GTHA) appreciate the opportunity to be consulted during the Ministry of Labour’s Changing Workplaces Review 2015. We understand the purpose of these consultations will consider how the Labour Relations Act, 1995 (LRA) and the Employment Standards Act, 2000 (ESA) could be amended to best protect workers while supporting businesses in our changing economy.

The ORHMA and GTHA believe good employee practices are imperative for the benefit of both the employee and the employer. We advocate for employment legislation that balances the legitimate needs of employees for security and predictability with the equally important employer needs of labour flexibility based on business demands.

The hospitality industry has unique operational demands based on its business model. Customer traffic demands have wide shifts and unpredictable fluctuations affecting business levels and in turn staffing and scheduling. Organizations of any type decide whether they can employ a push or a pull strategy to sell their goods and services. A push strategy allows for improved labour considerations such as predictable hours of work, scheduling and even rates of pay. This has certainly been aligned in particular with the manufacturing or the primary sector. However in the service sector other than perhaps the public and not-for-profit sector, there is a need to employ a pull strategy. Profit is made only when a customer demands the service. Therefore with a pull strategy workforce utilization automatically becomes precarious based on the business model. It demands flexibility with hours and scheduling.

Employment Standard Act: Ontario's hospitality sector supports the existing *Employment Standards Act* (ESA). We realize that continuing education on the ESA with both employees and employers is a key component of a productive workforce environment.

- **Support Sectoral Exemptions:** Flexibility is of vital importance to our industry as it relates to employment standards. This is why legislation across Canada currently ensures there are sectoral exemptions to ensure that certain industries – such as the restaurant sector – have flexibility for both the employees and the employers in areas such as scheduling and shift work. This is why Ontario's hospitality industry strongly supports maintaining the sectoral exemptions in the current ESA in order to ensure there is flexibility for both the employees and the employers in areas such as scheduling and shift work. We call for no changes to current models of scheduling, unpaid leaves of absences, sick days and maintain Ontario's youth employment rate for students under the age of 18.

- **Youth Employment:** The hospitality sector is a major source of youth and entry-level employment. We provide young people with valuable job experience and training. As the government considers employment standard legislation, we recommend that no changes be made to provisions such as benefits for part-time work or flexible schedules that may have an adverse impact on youth employment.

- **Part Time Employees:** We support maintaining the current provision where employers are not mandated to provide benefits to part-time workers. If employers are to provide benefits to part-time employees the employer will end up limiting part-time hires as labour expense will be similar. This would severely impact youth employment.

- **Student Wage Rate:** Minimum wage is the lowest wage rate an employer can pay an employee. Most employees are eligible for minimum wage whether they are full-time, part-time, casual, paid an hourly rate, commission, piece rate, flat rate or salary. We support maintaining the student minimum wage - This rate applies to students under the age of 18 who work 28 hours a week or less when school is in session, or work during a school break or summer holidays. Currently, it is \$10.30 and it is slated for an increase to \$10.55 on October 1, 2015. If it is eliminated, students will be paid the general minimum wage currently at \$11.00 and going up to \$11.25 on October 1, 2015. This will have a huge impact to the overall business and among economic concerns it will greatly affect youth employment.

- **Overtime:** The 44 hours weekly and overtime averaging should continue to be permitted. Employees have approached our members about seeking time off in lieu of overtime pay. We recognized a preference for overtime pay however, section 22 (7) of the ESA should be amended to allow more flexibility for both employees and employers when considering overtime.

Hours of Work Limits: The existing ESA hours of work limits are complex and confusing for both employers and employees as these cause mix-ups.

An employer and employee can contract out from some limitations but not all of the hours of work limitations. An example would be contracting from 8 hours free from work between shifts and not from 11 hours off in a day, defined as any rolling 24-hour period. We request that the limits be pinned down to the minimum number (i.e. 8 hours free from work between shifts limit is largely subsumed within the 11 hours off in a day limit).

- **Vacation Pay:** The ESA requires employers to pay vacation pay on or before the payday for the period in which the vacation falls unless the employee agrees in writing that his or her vacation pay will be paid on each pay cheque as it accrues. This creates extra administration for employers as they need to create two payments. Employers should have more flexibility to choose how vacation pay is paid as long as in a timely manner and meets the requirements of the Act

Labour Relations Act: We recommend that the government maintain the current provisions in the *Labour Relations Act* (LRA) as it relates to how workers choose union representation, bargaining structure and bargaining rights. ORHMA and the GTHA continue to not take a position on whether a workplace should be unionized or not. We are satisfied with the current LRA but if amended there would be concerns moving away from its balanced approach.

- **Certification and De-Certification:** We recommend there should not be any changes to the way the unions are chosen to be represented and we are against any proposals calling for a general return to card-based certification beyond the exception that now exists in the construction industry, in which an exemption makes sense given the mobility of employees and the diversity of worksites.

In a card based certification system, the cards are submitted to the appropriate labour relations board, along with the application for certification and, if the number of cards exceeds a specified threshold, the union is certified as the exclusive agent for the employees in the bargaining unit making the process of unionization easy. If the argument in a ballot-based certification system is for “opportunities for management to target workers prior to the balloted vote” then it seems to imply that the employer will commit unfair labour practices. We are unaware of any such practices by employers in Ontario’s hospitality sector and note that if this occurs there are adequate remedial provisions in s. 11(2) of the *LRA*, including the capacity for the OLRB to order automatic certification.

Weighed against a card based certification proposal is the employee’s security in knowing that in a secret ballot, he or she can cast a vote without any risk of that vote being identified by either management or organizers of the certification drive. While our hospitality sector is not a setting in which one’s position on unionization might later be expected to cause tension in the workplace, a secret ballot removes all doubt. Many provinces such as Newfoundland and Labrador has recently dropped its card-based certification rules and joined Ontario, British Columbia, Alberta, Saskatchewan and Nova Scotia in requiring a secret ballot vote for certification.

The ORHMA and the GTHA takes no position on unionization and our members support the continuation of the balanced approach that currently exists with the Labour Relations Act.

Conclusions: We understand that the provincial government has good intentions to protect employees and employers in Ontario. We want to ensure you are aware that Ontario's hospitality industry is facing significant provincial policy changes that directly impact their business bottom line leading to unintentional consequences.

Impact on Jobs: We are asking the government for a job loss review as a result of any proposed amendments to these acts. This will allow a clear understanding on the impact of such amendments.

Impact on Business: The government needs to carefully review any changes to the ESA and the LRA to ensure that unintended consequences do not unduly impact businesses labour costs and add undue administrative burdens. We urge the government to conduct a business cost analysis on any proposed amendment to the Act before changing any current regulation.

Timing of Proposed Amendments: We ask the government to take into consideration the timing of any proposed amendments to the ESA and LRA that would have a cost implication to business.

A Note on Franchising: Any amendments to these acts that would deem franchisors to be joint or common employers with franchisees would change decades of business history and legal jurisprudence. Changes would fundamentally undermine the system of franchising in Ontario. We recommend that no changes be made to the current Act as it relates to joint or common employers with franchisees. Franchising has allowed thousands of Ontarians to go beyond the role of manager to become employers in a small business that employ and welcome many residents to their first time job; our youth; retired seniors, immigrants; those with disabilities and those seeking part-time work.

In closing Ontario's hospitality industry recognizes being fair and having an appreciative relationship with their employees establishes strong work environments where staff retention is vital to operating their day to day businesses. We also do know that education is the best method for employers to understand the law and are to strive for compliance.

The ORHMA and GTHA will continue to participate in the government's labour review and work with the Ministry of Labour to utilize opportunities to educate our members on existing legislation. .

WHO WE ARE: The **Ontario Restaurant Hotel & Motel Association** (ORHMA) is Canada's largest provincial hospitality industry association, representing 11,000 business establishments throughout the foodservice and accommodations sectors. The ORHMA was established in 1999, following the merger of the former Ontario Restaurant Association and the Ontario Hotel & Motel Association, both with roots dating back to the 1920's.

The **Greater Toronto Hotel Association** (GTHA) represents 178 hotels, with approximately 36,000 guest rooms and more than 32,000 full time jobs. Founded in 1925, the GTHA enables competing hotels to work together on issues of public policy and charitable ventures, provides information and service to its members, and advocates to raise their profile and prosperity as a vital component of Toronto's tourism industry

Should you have any questions about any of the comments contained in this submission, please do not hesitate to contact the undersigned.

Sincerely,



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