



September 18 2015

Ontario Ministry of Labour – Changing Workplaces Review – Public Consultations

Attn: Mr. C. Michael Mitchell, Hon. John C. Murray

Filed Jointly By:

Barbara Bierman – Ontario Federation Of Independent Schools, (OFIS)

Jules DeJager – Ontario Alliance of Christian Schools (OACS)

Jason Heemskerk—League of Canadian Reformed School Societies (LCRSS)

We thank the Ontario Ministry of Labour for their good work in establishing sound frameworks for Ontario workplaces, both large and small. As leaders of private school groups in Ontario, we recognize the validity of the work of the Ministry in upholding employment standards and ensuring that non-compliant employers are held accountable for improper employment practices.

We understand that each year the Ministry determines a list of employer categories for intentional review, a practise that we feel is proper given the Ministry's mandate. In 2012, the Ontario Ministry of Labour listed private schools as a selected category of employers for review regarding compliance with the Ontario Employment Standards Act and proceeded to make several school visits in the course of that year. We are not sure how many private schools were inspected that year or to what extent these visits found private schools in compliance with Ministry expectations. We trust the review was generally beneficial.

We do recall that this process involved a few of our member schools. Most of our inspected schools met the inspection expectations. In some cases, the school was required to make improvements which were completed in a timely manner.

In some of the school inspections, the question arose regarding the management of the classroom teachers especially related to issues such as overtime, vacation time / pay and nutrition breaks during the workday. Our school leaders questioned why private school teachers had to be included in these matters as they understood teachers to be an identified professional group that had a series of exemptions to many of these concerns. A reading of your document titled **Your Guide to the Employment Standards Act, 2000**, especially page 184, can be understood to state that teachers were exempted from the following:

- Minimum wage
- Hours of work
- Daily rest periods
- Time off between shifts
- Weekly / bi-weekly rest periods
- Eating periods
- Overtime
- Paid public holidays
- Vacation with pay

However, some of our school leaders learned that teachers in private schools were not exempted from this list since they did not meet a strict definition of a teacher in Ontario as defined by the Ministry of Labour. We share this concern and our presentation is our investment into solutions to resolve this matter.

As leaders in the private school sector, we are also concerned about the current definitions of a “teacher” and how a strict interpretation of this definition by the Ministry of Labour will impact our member school operations. For example, the imposition of the overtime entitlement in a private school will cause the majority of our dedicated teachers to hit the 44 hour limit somewhere between Wednesday evening and Thursday morning of a typical school week. Dedicated private school teachers, like their public sector counterparts, work longer than eight hours a day in order to be properly prepared for the next day’s instruction, keep up with marking and other assessment tasks. Not unlike a lawyer working long hours in preparation of a court presentation for a client.

When we examine the definition of a teacher in **The Guide**, we are told that a teacher is defined in the **Teaching Profession Act**. When we go to this Act, we learn that a teacher is defined as follows:

“teacher” means a person who is a member of the Ontario College of Teachers and is employed by a board as a teacher...

When we investigate what is meant by a “board” we find that answer in the **Education Act** where a board is defined as *“a district school board or a school authority”*. These definitions effectively exclude all teachers employed in private schools; thereby creating a separate and unequal class of professionals who number in the thousands. A private school teacher’s professional task is the same as their counterparts in publically funded schools but the respect for their professional status by the Ministry of Labour is strikingly different.

Attached to this presentation is a narrative from Braemar House School¹, a member school of the Ontario Federation of Independent Schools (OFIS) that received a visit by a Ministry of Labour inspector. As you can see from this summary, the implications of a strict interpretation of the current definition of a teacher simply confounds the understandings and the practice of employing professionally trained teachers in a school workplace. This is one school that was negatively affected by a well-intentioned Ministry of Labour officer whose judgement was restricted by the Ministry of Labour’s rigid definition of what constitutes a teacher. This led to the contrasting realities of the private school compared to the way a publically-funded school is expected to manage its teachers.

In another case involving Orangeville Christian School, a member of the Ontario Alliance of Christian Schools (OACS), this matter of whether to exempt or include the classroom teachers became an issue with the inspector. On behalf of the member, the OACS wrote a letter² to the inspector questioning her instruction to the school. Interestingly, the OACS never received a formal reply from the inspector or the regional office manager. We were told that this letter had gone to the Toronto office within the Ministry for consideration. Eventually, the Orangeville Christian School inspector dropped her insistence that the teachers not be exempted as professionals. We wonder what the officials at the Toronto office did with these stated concerns in the OACS letter.

The League of Canadian Reformed School Societies shares the concerns expressed above and as leaders of a combined cohort of approximately 300 private schools in Ontario,



¹ See Appendix A for the narrative of this experience written by former Executive Director, Annette Minutillo.

² See Appendix B for a copy of this letter.

we would like to make a recommendation to rectify this situation so that private schools can structure their employment practices in similar ways to our public school counterparts and treat our teachers with respect for their professional status in Ontario.

We would also like to point out that our freedom to hire professionals of our choosing to take on the task of teaching is given to us by the Ministry of Education. The Ministry of Education's *Private Elementary and Secondary Schools* website states the following about teachers in private schools:



Teachers in Private Schools – Principals and teachers in private schools are not required to be certified by the Ontario College of Teachers. (<http://www.edu.gov.on.ca/eng/general/elemsec/privschr/>)

In this statement you will see that the Ministry of Education does not strictly apply the definition of what constitutes a teacher by the *Teaching Professions Act*, or the *Education Act*. If they did, they would not have called those who teach without their OCT teachers. Rather the Ministry of Education rightly looks at the *type* of work that is done, and *where* that work is done. The type of work is providing instruction for students, and the instruction is done in a private school.



In addition, we would like to point out that, to our knowledge, those involved in the art of instruction in universities, vocational and career colleges are treated as teachers under Ministry of Labour guidelines and many (if not most) of those professionals neither hold their Ontario College of Teachers credentials, or work for public school boards.

With all this in mind, we suggest that the working definition of a teacher for Ministry of Labour purposes be stated as follows:

A teacher is a person who is a member of the Ontario College of Teachers (OCT) and/or a non-OCT teacher with special skills employed by a public or registered private school board, for the purpose of delivering instruction to students.



We believe this change of definition will place all teachers working in Ontario on the same footing, regardless of the educational institution for which they work.

By making this change the Ministry of Labour would accomplish three things. It would resolve an obvious contradiction of definition by Ministry of Labour officials. It would help minimize complications of interpretation by Ministry of Labour inspectors in the field as they do their work ensuring safe and properly regulated work environments are protected for Ontario workers. Finally, it would enhance the professional status of teaching professionals throughout the province.

We believe that all citizens of Ontario should be working to enhance the common good of the province. In this spirit, we encourage you to resolve this matter before you that respects the contributions of teachers in all of the classrooms in Ontario.

Respectfully submitted,

Barb Bierman, Executive Director of Ontario Federation of Independent Schools (OFIS)

Julius de Jager, Executive Director of the Ontario Alliance of Christian Schools (OACS)

Jason Hemskerk, Lead Coordinator for the League of Canadian Reformed School Societies (LCRSS)



Appendix A: Braemar House School Experience

Braemar House School is an independent elementary school with charitable status that focuses on strong academic programming within a nurturing environment. Class sizes are limited to sixteen students or less to provide for enriched and individualized learning. The Ministry of Education's Curriculum Guidelines are foundational, but augmented by significantly enhanced French, Information Technology, and Fine and Performing Arts programs. The school participates annually in the Canadian Achievement Tests (CAT 4), a standardized test given to students in Grades 1 to 8, with the majority of students performing at levels one to two grades higher than Canadian averages. All classroom teachers are qualified with the Ontario College of Teachers, and the school remains attentive to the Ministry's *Ontario Schools, Growing Success, Learning for All*, and the *K to 12 School Effectiveness Framework* documents. By all definitions, Braemar is a professional learning community.

In May of 2012 the Ministry of Labour conducted an inspection of Braemar House School under the Employment Standards Act. The Officer assigned was diplomatic and sympathetic, most notably when she sought ESA compliance on provisions that were especially challenging in the educational workplace. She struggled in particular with explaining why these provisions were required for Braemar's teachers and not for exempted teachers in publicly funded schools whose duties were clearly identical, except to note that Ministry of Labour defines a teacher according to the Teaching Profession Act, and not the Education Act.

The definition of a teacher in the Education Act is as follows: *"teacher" means a member of the Ontario College of Teachers*. The Teaching Profession Act states: *a "teacher" means a person who is a member of the Ontario College of Teachers and is **employed by a board***. Braemar's teachers have the same training, duties, responsibilities and qualifications as their public system counterparts and as members of the Ontario College of Teachers are recognized as teaching professionals. The Teaching Profession Act however overlooks them, merely because they are not employed by a public school board.

In the audit report the Ministry of Labour Officer detailed concerns around supervision rotations, uninterrupted half-hour lunch breaks, expectations around longer hours during peak marking times or interview times (more than 48 hours per week), and inadequate record-keeping with respect to hours worked. When Braemar queried the inconsistency between public and private teachers, a Reviewer with the Ministry of Labour responded that the difference "between teachers in the private system and those in the public system has to do with the latter being represented by a union". Certainly all government employees are exempted from specific ESA standards and most are unionized; it may be that public school teachers are an exempted group because they're government employees. Examination of the other exempted groups under ESA would suggest however that most of these exemptions seem generated by the demands of the sector or industry. Architects, Lawyers, Farmers, Accountants, and Doctors are exempt from ESA provisions for Hours of Work and Eating Periods, Overtime Pay, and Minimum Wage. However none are represented by unions. In fact, teachers' unions don't generally

negotiate for these provisions either, recognizing instead the unique responsibilities, scheduling and duties of the education sector.

As a result of the audit, Braemar teachers are now required to document every minute worked, whether teaching, marking or planning at home, supervising overnight field trips, coaching teams, directing the Musical, or meeting with parents. While at-school hours may be easier to document, capturing evening and weekend hours requires significantly more paperwork. Staff lunches and breaks cannot be combined with student supervision duties, and schedules have to be carefully orchestrated to ensure teachers get completely duty free (i.e. child-free) breaks throughout the day. None of these are the preference of or serve the teaching staff. In addition Braemar must apply annually for Excess Hours and Averaging Agreements with the Ministry of Labour, simply to allow teachers to follow the same schedule and calendar as public school teachers. Finally, policy statements and teaching contract templates had to be completely rewritten in order to capture the expectations and exceptions that Braemar's teaching staff were now subject to.

Braemar's experience seems to have been one of the first and few audits of private schools undertaken by the Ministry of Labour with respect to employment standards. Nonetheless it has affected the school considerably, and not with any recognizable benefit to teaching staff. Since the Teaching Profession Act fails to recognize all teaching professionals, the Ministry of Labour might have served Braemar's teachers better by looking to the Education Act.

Annette Minutillo

Former Executive Director (2002 to 2014)

Braemar House School
Brantford ON



Appendix B: Letter to the Ministry of Labor- Orangeville Christian School

Friday, April 27, 2012

Ms. Cheryl Armstrong
Employment Standards Officer #469
Ontario Ministry of Labour

Dear Cheryl,

Thank you for the opportunity to speak to you regarding employment standards issues in private schools.

I would like to address a concern that has come from your interaction with one of our member schools; Orangeville Christian School Society in Orangeville, Ontario. Notwithstanding our recognition that OCS must comply with any compliance orders received from your office, we wish to raise a concern that we have identified in the Act and supporting documentation for some time.

Our concern is the manner in which the **Employment Standards Act** and its supporting **Guide** address the requirements for our school teachers. We have noticed that teachers are listed in the **Guide** as having ESA exemptions. However, on closer examination, we discover that the term “teacher” is defined by the legal description provided in the Teaching profession Act.

“teacher” means a person who is a member of the Ontario College of Teachers and is employed by a board as a teacher but does not include a supervisory officer, a principal, a vice-principal or an instructor in a teacher-training institution. (“enseignant”) R.S.O. 1990, c. T.2, s. 1; 1996, c. 12, s. 67; 1997, c. 31, s. 180 (1, 2).

In your conversations with the Principal of Orangeville Christian School, you are requiring the school society to track the number of hours that these employees are working in excess of 40 hours per week. If these teachers work more than 48 hours a week, the school society must have an agreement in place with the Ministry of Labour to allow this variance.

We are concerned and somewhat confused. The member schools of the Ontario Alliance of Christian Schools (OACS) have been treating their teachers as an exempt category of

employees in line with the general treatment of teachers in the Act and the Guide. Your Order of Compliance raises several questions which we would like to resolve.

The OACS position is, and it is shared by the teacher association that represents these teachers, **Edifide**, that teachers in private schools must be granted the exemptions provided to teachers under the Employment Standards Act.

We would like to know why that has not happened in this case and what can be done to ensure that future audits in our member schools will not continue to compound this problem.

I look forward to your comment and explanations regarding this manner. I am willing to address this concern to whomever the Ministry of Labour wished to direct to resolve this issue. Perhaps it is a matter of misunderstanding and a Ministry directive can settle the matter.

Sincerely,

Mr. Julius de Jager
Director of School Quality Programs & Human Resources
Ontario Alliance of Christian Schools

Cc Mr. Paul Marcus, Principal of Orangeville Christian School
Ms. Diane Stronks, Executive Director of Edifide