Thunder Bay
Chamber
of Commerce

Maintaining Ontario's Competitive Edge: The Business Perspective on Labour Reform

Presentation to the Advisors of the Changing Workplaces Review

By Charla Robinson, President
Thunder Bay Chamber of Commerce
charla@tbchamber.ca
Ph: 807-624-2626

Good afternoon. I am Charla Robinson, President of the Thunder Bay Chamber of Commerce. Our Chamber represents nearly 1,000 businesses with over 14,000 employees across the city. Thank you for the opportunity to respond to the Ontario Ministry of Labour's Changing Workplaces Review Consultation Paper.

As you know, any changes to the Ontario Labour Relations Act and the Employment Standards Act would have profound implications for Ontario's economy. As such, we are pleased to be able to provide you with the business community's perspective. The recommendations I will highlight today are a sample of those that will be found in the Ontario Chamber of Commerce's upcoming release, "Maintaining Ontario's Competitive Advantage".

Our underlying message to you, the Special Advisors, is a simple one: At a time when the cost of doing business in Ontario is rising, **we need to ensure changes to Ontario's labour laws do not further contribute to the cumulative burden experienced by businesses.**

The Ontario Labour Relations Act and the Employment Standards Act touch every business in the province. These Acts outline employer obligations--everything from overtime pay, to leaves of absence, to how easy it is to start a union. All these types of issues are covered under the two Acts. Any changes to these Acts would have profound implications for Ontario businesses and the Ontario economy.

My presentation today will provide you with recommendations aimed at raising awareness of the potential impacts that major changes to Ontario's labour laws could have on employers.

<u>Ensure union certification rules are fair and transparent</u>

Some groups are proposing to allow Ontario workers to unionize by simply signing a union card--without the need for a secret vote. Currently, the process to unionize involves an application demonstrating at least 40

percent support among workers followed by a supervised secret ballot vote.

We believe that the secret vote is an essential component of the union certification process. It provides workers with the opportunity to make decisions free of interference and external pressures.

Our recommendation: Ensure transparency in the union certification process. Maintain the Labour Relations Act requirement for a secret ballot when attempting to certify or decertify a union.

Ensure a fair union certification system for construction workers

Bill 144 re-established the card-based certification system for the construction sector. The card-based system means that certification of a union may be ordered by the Ontario Labour Relations Board, without a certification vote, where more than 55% of the employees have signed membership cards to join a union. This amendment only applies to the construction industry.

Certification based on membership cards removes the employee's right to vote on whether or not they choose a union. Secret ballot voting safeguards employees from external pressures and helps ensure their true opinion is represented. While a secret ballot vote is conducted in a neutral environment by the Labour Relations Board, the collection of signatures on union membership cards is not.

Once a workplace is certified by a construction union, the employer will become automatically subject to a province-wide collective agreement, which provides for a high level of wages and benefits for its members, particularly in the industrial, commercial and institutional sector (non-residential). The business loses its ability to negotiate individually with its employees or to negotiate its own collective agreement with the union.

Our recommendation: Eliminate the card-based certification system for small construction employers.

Recognize the differences in sectors' abilities to foresee future capacity requirements

Some groups are calling for provisions in the ESA that would require employers to post work schedules two weeks in advance. As it stands, the Employment Standards Act does not include any explicit provisions on scheduling.

Many employers with unionized workforces have established provisions under their collective bargaining agreement that outline the employer's obligations as they relate to scheduling. Loblaws, for example, recently reached an agreement with the United Food and Commercial Workers to introduce a series of pilots that will provide part-time workers with 10 days advance notice on scheduling.

This type of scheduling arrangement is not a replicable model for all sectors, however. Many businesses in the manufacturing sector, for example, must constantly adjust production in order to meet demand. Any legislated requirement that limits that manufacturer's flexibility will hurt their competitiveness—and by extension, Ontario's competitiveness.

The need for flexible scheduling is not limited to the manufacturing sector. The health sector is subject to surges in demand which must be met with an equivalent increase in staffing. Many employers in the sector noted it is impossible to predict how demand for health services will increase day-to-day, let alone two weeks in advance.

Our recommendation: Recognize different sectors' abilities to foresee future capacity requirements. Do not amend the Employment Standards Act to include specific provisions around employers' scheduling obligations.

Some groups are also proposing that the ESA be amended to grant employees the right to refuse work beyond 40 hours. This proposal ignores the shifting nature of demand for goods and services. Consider businesses in the tourism sector, for example, which often require greater staffing

capacity over the summer months and during long weekends. Limiting those businesses' ability to use overtime hours could have a detrimental impact on the economies of many small and rural towns that rely on seasonal tourism.

Our recommendation: Provide employers with the flexibility they require to respond to shifting demand for goods and services by maintaining the Employment Standards Act's provisions for the number of hours workers can work in a day or week (8 hours per day or 48 hours per week) and when overtime must be paid (after 44 hours in a week).

Ensuring all workers have access to the social safety net

According to the Ministry of Labour, non-standard employment has grown almost twice as fast as standard employment since 1997. The increase in non-standard employment is largely the result of the major restructuring that Ontario's economy has undergone over the past several decades, including the shift away from manufacturing and the growth in service industries (Ministry of Labour, 2015). This is not unique to Ontario, our competitors in the United States and in the rest of Canada have witnessed a similar trend.

While non-standard workers have greater flexibility, they do not qualify for many of the benefits typically afforded to employees in a traditional employment relationship. This means that, for example, they do not have access to key components of the social safety net, including Employment Insurance (EI) and the Canada Pension Plan (CPP), or workplace benefits including health benefits.

The shift away from the traditional employment relationship is reflective of structural changes in the global economy and requires a thoughtful response. Little will be accomplished by imposing onerous rules on Ontario employers through reforms to the ESA. Rather, Canadian governments should consider innovative ways to detach the benefits of the social safety net from traditional employment. The Guaranteed Annual Income (GAI), for example, is one proposal worth further study. A GAI provides those with no

income with a basic entitlement. As earned income increases, the benefit declines, but less than proportionately. The result is a system that creates an incentive to work.

Our recommendation: Canadian governments should take a broader and more effective approach to the growth of non-standard work by considering innovative solutions that would provide all workers with access to the benefits of the social safety net. The Guaranteed Annual Income (GAI) is one proposal worth further study.

Understand the role that contracting plays in Ontario's economy

Some groups argue that the government should implement, through the ESA, a system of "reverse onus on employee status", where a worker must be presumed to be an employee unless the employer demonstrates otherwise. This proposal is in response to what some groups perceive as the intentional misclassification of workers by employers.

The implications of the introduction of a reverse onus classification system—or an employment framework that creates hurdles to contract employment—are substantial.

Contracting is a fundamental part of many employers' business models. Employers frequently rely on third parties to provide services in areas including logistics, janitorial services, security, sanitation and waste, among others. Any explicit provisions in the ESA that would force businesses to change the nature of their relationships with their contract employees could raise the cost of doing business in Ontario.

This would have an especially detrimental impact on businesses in the manufacturing sector, who operate in a supply chain that uses a mix of permanent and contract employees. It is the many small- and medium-sized businesses within that supply chain that would bear the brunt of such changes.

There are also tremendous implications for the broader public sector. Many public entities, including universities, colleges, hospitals, and municipalities, rely on a mixed permanent/contract workforce. Forcing these institutions to cease the use of contract employment would almost certainly have a negative impact on the taxpayer.

Our recommendation: Consider the broader economic and fiscal impacts of any proposed changes to the Employment Standards Act that would mandate private and public sector employers to fundamentally restructure their employment relationships with their contracted workers.

Thank you for your time today!