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Submission on Behalf of Unifor Local 27

to the

Changing Workplaces Review Consultation

First, I would like to thank you for taking on the role of Special Advisors on this much needed and long overdue review of two of the most important pieces of legislation affecting workers in this province, The *Employment Standards Act, 2000* and the *Labour Relations Act.* My submission will focus mainly on the *Employment standards Act, 2000* and provide a case history I was involved with and recommendations in response to question 10, on page 16 of the Ministry of Labour's, Guide to Consultations.

I have the great privilege of representing 5400 members employed by 31 different employers in the London region. Over half of our members are employed in the health care sector with the remainder working heavy equipment production, manufacturing, auto parts suppliers and service.

Along with the responsibility of representing our members at the bargaining table, grievance and arbitration, we provide assistance with Employment Insurance, WSIB and CPP disability claims.

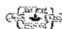
Our office often receives calls from non-unionized workers in the community requesting advice and assistance in dealing with their employer. These workers may be may be family members of Local 27 members, they may be former members now working in a non Union workplace or they call us because they have no one else to turn to and know we are here to help workers.

An example of one such call I received about two years ago illustrates the problem many non-unionized workers face in navigating their way to remedy through the Ministry of Labour as it relates to the *Employment Standards Act, 2000.*

This young man, I'll call him Andy, 22 years old working at two jobs, living on his own, trying to pay the rent and put food on his table called me with a problem. He didn't know whether he had been fired or laid off.

Andy had been working part time for a local car rental agency. His job was that of a lot person. He is the person that cleans and makes sure vehicles are ready to be rented out. His work hours varied week to week, but he usually worked between 24-30 hours a week. He earned two raises during his time there and made 40 cents above minimum wage.

Andy had several health and safety concerns ranging from not being provided personal protective equipment, working with unlabelled products with no MSDS information to not having a properly ventilated workplace when cars were worked on with their engines running.



After raising his concerns with his supervisor and getting no response he contacted the Ministry of Labour. An M.O.L. inspector was dispatched to the workplace and wrote several orders for the employer to comply with the *Occupational Health and Saftey Act.*

It was obvious to the employer that Andy blew the whistle on them. The following week, Andy found his name was no longer on the work schedule. When he asked his supervisor what was going on he was told they were slow and didn't need him. The next week he found out someone else had been hired to do his job. In the time Andy had worked for this company he received positive performance reviews and two small raises.

During the time Andy worked for this company he had no break or lunch periods. When he worked statutory holidays he was denied premium pay. When he requested his vacation pay he was told he was a contractor not an employee.

None of this is anything you haven't probably heard before. The denials of statutory entitlements are becoming the norm and not the exception especially for part time workers in the many sectors of the non-unionized work world.

To survive, workers like Andy often have to work two or more jobs, rely on friends and relatives, food banks, inadequate housing or if they are on the waiting list long enough subsidized housing. While workers like Andy pay a personal price to subsidize the malfeasance of his employer, we all pay more to subsidize employers providing precarious work who break the law.

When workers like Andy stand up and insist on receiving what is lawfully owed them it is almost always after the employment relationship has ended. Employers know that few workers will file a complaint against them. This is especially true in smaller communities where workers who make complaints to the Ministry of Labour have a hard time finding other work. Employers also know that getting caught has minimal consequences either legal or financial.

When Andy called our office, we advised him to write out a statement of claim and address this to his employer and provide them with an opportunity to respond. The employer ignored Andy's letter. After three weeks with no response he contacted the Ministry of Labour, Employment Standards Branch. An investigation was conducted and an order was made for the employer to pay Andy the nearly $1400.00 he was owed.

The employer ignored the order. We again contacted the M.O.L. and a fact finding/mediation was scheduled. The employer did not show up to the meeting but the Labour Officer was able to contact him by phone, the employer offered Andy half of what he was owed. Andy rejected the offer and a hearing was scheduled in Toronto.

The employer was counting on the fact that Andy was unlikely to incur the expense of travelling to Toronto. What the employer didn't count on was that our Union would be not only paying Andy's expenses to attend the hearing, we would be representing him. Two weeks later the employer agreed to pay Andy the full amount he was owed.

Officer involved in this case told me that he was aware of this employer doing this to at least five other workers. All settled for less than what was owed them.

The case I provided had a positive outcome for the worker. This is exception, not the rule.
More needs to be done to support workers who have rights under the law but no certainty in their enforcement or remedy when the complaint process concludes.

Respectfully in response to question 10 in the Ministry of Labour, Guide to Consultations and in particular " In your experience, what changes could help compliance with the *ESA*? we would suggest the following;

- **More use by the MOL of the sanctions contained in Part XXV of the *Act* including but not limited to an assessment of costs to offending employers to cover the cost of investigation and prosecution similar to the cost recovery model used by the Law Society of Upper Canada with an escalation of fines up to and including criminal prosecution for repeat offenders.**
- **An accessible public registry on the MOL website naming employers using the name they are conducting business under (not the numbered company they hide behind) and their officers.**
- **Representation of workers through either the Legal Clinics, the Office of the Worker Advisor or competent Trade Union representatives with costs paid by the employer where a violation is found.**
- **Re-establishment of the Wage Protection Fund that was scrapped by the Harris government.**
- **Notifying Canada Revenue Agency. If employers are cheating workers chances are they are often cheating the 'tax man".**
- **Automatic card check certification for organizing. Unions balance the power of the employer with the rights of workers.**
- **Adding a "just cause" provision to all employment contracts either explicit or implied**
- **Educating the employer community of the consequences of violating the *ESA*.**

On behalf of our membership, I thank you for the opportunity to make this submission.

Jim Reid, President
Unifor local 27