Partial Response to the Interim Report

of the

Changing Workplaces Review
Special Advisors

C. Michael Mitchell &
***The Honourable* John C. Murray**

Submitted by Email
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Supplementary Submission to the

Changing Workplaces Review

This paper is offered in response to the invitation to the comment on the *Interim Report of the Special Advisors*. We had made a submission last year touching on certain areas. In this response, we are offering comments on some of the recommendations and observations that are in the report. In making response on some of the options that have been offered up in the Report, we have reproduced our previous submission, the comments from the Advisors and our subsequent suggestions. We note that, although we are only commenting here on a limited number of issues, we commend the thorough review that has been done and hope that there will be a serious updating of the relevant legislation.

B & S Associates Professional Corporation is one of the largest Union-side Paralegal organizations in Canada and we are based in Hamilton. Our Associates have an average 25 years individual experience. Our focus is on representing Unionized workers with appeals of their WSIB Cases as well as representing workers and their Unions at Grievance Arbitration

Comments on the Recommendations:

With regard to the Authority of labour Arbitrators under the Labour Relations Act, the Review has only entertained very narrow considerations. We suggest again that options be expanded as covered below.

Excerpt from the Interim Review:

"4.7 Additional LRA Issues
…it appears that arbitrators no longer have the authority to extend time limits in the arbitration procedure (e.g., the time limit for referral to arbitration). Some stakeholders assert that the result of this situation is that potentially meritorious grievances can be defeated on technical grounds. This could be addressed through an amendment to the LRA. We invite comments on this point."

The *Review* has invited comments on this issue of the Arbitrator's authority to relieve against a late filing to Arbitration. This was effectively the law prior to 1995 and should clearly be restored.

Beyond this, however, what we had also recommended to the *Review* was that the authority of Arbitrators to make interim orders must be expanded to include the right to immediately return a worker to her or his employment . We again commend this for consideration.

In our earlier submission we had stated, in part:

> *Currently, labour Arbitrators have broad remedial and injunctive powers . However, they are specifically restricted from making an order to reinstate an employee on an interim basis . This restriction needs to be repealed. As those who engage in such disputes know, these kinds of cases can last for multiple days spread out over one or more years.*

We affirm our view. Arbitrators have the expertise to know when it is and when it is not appropriate to waive such a technical issue. Justice in the workplace should not be denied simply over a letter being sent a day late, which is the effect of current law.

5.3.3.2 Paid Vacation

The *Review* included a solid examination of the question of paid vacation. In our submission we had called for:

> *All workers in Ontario should be granted a minimum of three weeks of paid vacation per year after 5 years of employment as we see in British Columbia and Quebec, for example.*

We would commend either of the second or third options that the *Review* has presented:

Excerpt from the Interim Review:

Options:

1. Maintain the status quo of 2 weeks.

2. Increase entitlement to 3 weeks after a certain period of employment with the same employer – either 5 or 8 years.

3. Increase entitlement to 3 weeks for all employees.

5.3.8.3 Just Cause

The *Review* considered the question of 'just cause' for non-Union workers: something we had also raised. Our paper included the following:

> *When, for example, a senior worker is fired for no just reason, she must have better protection than simply being handed some money and told to go away. We very strongly urge the implementation of a system such as the one in place under the Canada Labour Code . Under that regime, a worker who feels she has been unjustly dismissed from employment can appeal and have that action adjudicated with the possibility of being returned to employment*

However, the *Review* also took into consideration the question of foreign workers and what rights they should have. We affirm our view that the ESA should be amended to include a '*just cause*' provision for *all* workers-Option 3. For Temporary Foreign Workers, we agree that Option 2 should be instituted.

Excerpt from the Interim Review:

"As a practical matter, most workers are permitted to be employed only by a single employer. If a TFW is dismissed by the employer, he/she is often required to return to their country of origin. Migrant workers and their representatives advised us that TFWs are often threatened with dismissal and with being sent home.

Options:

1. Maintain the status quo.

2. Implement just cause protection for TFWs together with an expedited adjudication to hear unjust dismissal cases.

3. Provide just cause protection (adjudication) for all employees covered by the ESA."

All of the above are respectfully submitted for your consideration.