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September 16, 2016

Honourable John Murray and
Mr. Michael Mitchell
Changing Workplaces Review
ELCPB 400 University Ave., 12th Floor
Toronto, Ontario M7A 1T7

Dear Honourable John Murray and Mr. Michael Mitchell,

We read the interim report on the Changing Workplaces Review with great interest. It was clear in the three hundred and twelve pages that you had taken the time to really listen to the different viewpoints expressed to you through the process, including ours. This is not always the case with these types of reviews and we want to thank you for the way you have been undertaking this important process.

In addition to expressing our opinions on the consultation process to date, we also wish to provide some feedback on the report. Our team has gone through the report extensively and prepared a response to the observations made in the eleven areas where we made recommendations. We ask that you take our further feedback into consideration as you prepare your final recommendations to the Minister. If you have any questions, please do not hesitate to contact me.

Sincerely,

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Hank Beekhuis
Provincial Director

CLAC's Commitments

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CHANGING WORKPLACES REVIEW – CLAC'S RESPONSES TO THE INTERIM REPORT

EMPLOYMENT STANDARDS

Recommendation 1: CLAC recommends that out-dated exemptions be removed from the *Employment Standards Act* (ESA). Furthermore, regarding special rules for certain work sectors or types of work, particularly in respect to overtime, we recommend that the government conduct a thorough review to ensure that such special rules exemptions are current and relevant. (Page 9)

Review Response:
5.2.3 Exemptions, Special Rules and General Process (Page 155ff)
The Review recognizes that "Some exemptions are decades old and have been present in some form since 1944." (Page 157)

Exemptions: On page 160 the Reviewers note their decision to divide exemptions into 3 categories:

1. Exemptions where we may recommend elimination or alteration without further review… (See page 161 for this list)
2. Exemptions that should continue without modification… (See pages 161-162)
3. Exemption that should be subject to further review… (See page 162, pages 178-180 for the list. Of potential relevance to us are Firefighters, Hospital employees, Truck Drivers, Construction employees, road, sewer, watermain maintenance)

Overtime: On page 156 the Reviewers seem to accept the findings of Vosko, Noack and Thomas "that only 29% of low income employees are fully covered by overtime provisions as opposed to approximately 70% of middle and higher income employees…."

Overall Conclusion: "we are likely to recommend that Ontario establish a new process of review to assess the merits of many of the exemptions to determine whether the exemptions are warranted or whether they should be modified or eliminated." (Page 160)

CLAC's Response: CLAC commends the reviewers for recognizing that many of the exemptions, particularly with regards to overtime, are outdated and need to be carefully categorized and scrutinized. While CLAC understands the need for further review and a better review process, we are disappointed that reviewers stopped short of making any recommendations for elimination of the most arcane exemptions. CLAC is also concerned about the possible detrimental effects on youth if the suggestion to eliminate the student minimum wage and the three hour minimum is implemented.

Recommendation 2: CLAC recommends that the enforcement mechanisms in the ESA be improved by allowing a worker or a third party to submit an anonymous claim against an employer. These complaints would be investigated by the Ministry of Labour. (Page 10)

Review Response:
5.5 Enforcement and Administration (Page 260ff)
The report specifically addresses the issues of barriers to making a claim, confidentiality, making an anonymous claim, and submission of a claim by a third party on pages 262, 272-276. Of most importance to us are the five options related to reducing barriers to making claims found on pages 275-276.

"**Options:**
1. Maintain the status quo with a general requirement to first raise the issue with employers but at the same time maintain the existing policy exceptions and maintain current approach of accepting anonymous information that is assessed and potentially triggers a proactive inspection.

2. Remove the ESA provision allowing the Director to require that an employee must first contact the employer before being permitted to make a complaint to the Ministry.

3. Allow anonymous claims, it being understood that the facts of the alleged violation must be disclosed to the employer by an ESO in order to permit an informed response.

4. Do not allow anonymous complaints, but protect confidentiality of the complainant, it being understood that the facts of the alleged violation must be disclosed to the employer by an ESO in order to permit an informed response.

5. Allow third parties to file claims on behalf of an employee or group of employees, it being understood that the facts of the alleged violation must be disclosed to the employer by an ESO in order to permit an informed response." (Pages 275-276)

CLAC's Response: CLAC appreciates the reviewers' serious consideration of how barriers to making claims can be reduced. CLAC favours option 3. CLAC believes that the implementation of this option would protect confidentiality, remove barriers, improve access to remedies and raise the level of compliance.

If option 3 is not adopted, of the remaining options CLAC would prefer option 4.

Recommendation 3: CLAC recommends that steps be taken to enable more flexibility with caregiver leave. This could be done by incenting employers (e.g., tax credit) to create compassionate policies for caregiver leave and by following the Canadian Human Rights Commission suggestion to permit flexible leave solutions that are not confined to the blocks of time specified in the ESA. Moving forward with both of these recommendations would enable

employer flexibility in continuity of staffing while allowing caregivers to fulfill both work and family responsibilities. (Page 12)

Review Response:

5.3.6. Other Leaves of Absence (Pages 215-219)
While the report notes on page 217 that "the new federal government has committed to providing Canadians with more generous and flexible leaves for caregivers and more flexible parental leave," our calls for employer incentives and a move to more flexible leave solutions is ignored. Weeks remain as the fixed standard of measurement for a Family Caregiver leave, and there is no indication that the reviewers are open to incenting employers.

CLAC's Response: While CLAC is encouraged by the trend towards more generous and flexible caregiver leaves, our organization is convinced that allowing day leaves, especially where employers are of a sufficient size to handle such leaves, would better serve the interests of both the caregiver and the employer.

For example, Helen is CLAC member and a PSW in a large long-term care facility. She is the primary family caregiver for a spouse who is battling cancer. Helen's spouse requires help to get to the many appointments related to treatment and at home when outside health professionals are setting up treatment at home. Helen has met with her employer and worked out an arrangement to take day leaves, when required, to service the needs of her spouse.

CLAC also believes that incenting employers to create more flexible compassionate caregiver policies would enable both caregivers and employers to better meet their responsibilities. For example, the government could provide a small tax benefit to employers who create flexible caregiver leave policies and provide to the government evidence that these policies are applied in their workplace.

LABOUR RELATIONS

Recommendation 4: CLAC recommends that "just cause" be made the standard for termination of employment during a workplace transition. This standard is already in the *Canada Labour Code*, Section 36.1, and it should also be in the *Ontario Labour Relations Act* (OLRA). (Page 13)

Review Response:
4.5.2 Just Cause Protection (Pages 104-106)
Certification to First Collective Agreement
The report notes that three Canadian jurisdictions, Federal, BC, and Saskatchewan have a form of employee protection during a workplace transition (pages 105-106). The report also notes that employers did not comment on this issue in their submissions. The tone of the report is favourable to protection although no overt expression of support for protection is given. Two options are put forward:

Options:
1. Maintain the status quo.

2. Provide for protection against unjust dismissal for bargaining unit employees after certification but before the effective date of the first contract." (Page 106)

CLAC's Response: CLAC is pleased that the interim report addresses the need for just cause protection during a workplace transition. CLAC supports the inclusion of Option 2 in the OLRA.
CLAC's recommendation is supported by actual experience. For example, when Jim's workplace voted to change unions and make CLAC its bargaining agent, the employer saw this as an opportunity to "clean house." Three employees, including Jim, were terminated. CLAC was powerless to intervene, unless anti-union animus could be established, on behalf of these employees. This kind of situation must be remedied.

Recommendation 5: CLAC recommends that the lack of worker protection in a transition period be remedied by allowing the successor union to inherit all of the rights, duties, and privileges of the previous union. Also, the provisions of the most recent collective agreement should remain in force until the provisions of the new collective agreement commence. (Page 14)

Review Response:
4.3.3 Successor Rights (Pages 82-85)
The report focuses primarily on successor rights when the sale of a business occurs or in "contracting out or contract tendering situations." (Page 83) The report does not explicitly examine successor rights in cases where one union replaces another as the bargaining agent in a workplace. This means that the issue of worker protection during such a transition is not addressed by this review.

CLAC's Response: CLAC is disappointed that the examination of successor rights did not include workplace transitions where one union replaces another. CLAC believes that this oversight leaves workers unprotected and vulnerable. CLAC asks that the final report include an examination of this issue.

CLAC has experienced cases where employees have been disciplined by an employer in a transition period, and CLAC has no recourse. The Union`s only options are to invoke Section 96 or launch a Human Rights case, because there is no ability to use the grievance procedure agreed to in the Collective Agreement. CLAC believes that bargained rights are employee rights that must be sustained in a transition period.

Recommendation 6: CLAC recommends a three-part test to determine whether existing bargaining units should be amalgamated or accreted. First, there must be no risk of intermingling of work in the locations under consideration. Second, there must be a geographical separation that may include the crossing of a municipal or regional boundary. Finally, the work in question must not be transferable from one site to another. In cases where these three criteria are met, the existing bargaining unit and bargaining rights remain intact and will not be amalgamated or accreted. (Page 15)

Review Response:

4.3.4 Consolidation of Bargaining Units (Pages 85-88)

The report emphasizes that many Unions called for "the introduction of a consolidation provision in the LRA like the one in place between 1993 and 1995." (Page 87) That provision allowed the OLRB, upon application of either the employer or the union, to consolidate separate bargaining units affiliated with the same employer and represented by the same union in one or many locations. (Page 86)

Our proposed three-part test is not offered as an option. However, the report does take note of our call to respect the will of employees:

> "…a structure whereby the OLRB could merge and reconfigure bargaining units, especially where different unions are involved, might be viewed as a heavy-handed, top-down approach that could force change against the wishes of a significant number of employees." (Page 88)

This concern is reflected in a couple of the proposed options:

Options:

1. Maintain the status quo.
2. Reintroduce a consolidation provision from the previous LRA where only one union is involved.

3. Introduce a consolidation provision with a narrow test (e.g., allowing it only in cases where the existing bargaining unit structure has been demonstrated to be no longer appropriate).

4. Introduce a consolidation provision with a test that is less restrictive than proving that the existing bargaining unit is no longer appropriate. This provision could be broad enough to allow for the federal labour relations board's previous practice under the Canada Labour Code, as it was prior to the incorporation of the amendments recommended by the Sims Task Force in Chapter 6 of "Seeking a Balance: Canada Labour Code, Part I" with respect to bargaining unit reviews.71

5. Amend section 114 of the LRA to provide the OLRB with the explicit general power to alter a bargaining unit in a certificate or in a collective agreement." (Page 88)

CLAC's Response: CLAC appreciates the serious consideration given to the matter of bargaining unit consolidation. CLAC favours the implementation of Options 2 and 3.

Recommendation 7: CLAC recommends that a definition of "community of interest" be added to the OLRA. The definition should consider factors including the composition and history of the bargaining unit; the geographical proximity or isolation of the employees; the functions, duties, and skills of the entire workforce; and the administrative territories for subdivisions of the employer. (Page 15)

Review Response:
There is no discussion or consideration of adding this definition to the LRA. "Community of interest" is mentioned once on page 220, and the reference is to the OLRB's past decisions to consider part-time and full-time employees to be in separate bargaining units because they do not share a community of interest. The issue is left there.

CLAC's Response: CLAC asks that the reviewers grapple with the matter of adding a definition of "community of interest" to LRA. In our view, a definition is needed to clarify, in certain cases, the exact composition a bargaining unit.

Recommendation 8: CLAC recommends that the list of exemptions related to collective bargaining in the OLRA be updated and revised. The recent Supreme Court decision granting the RCMP the right to collective bargaining means that groups previously excluded from this right, such as agricultural workers, should be granted that right. (Page 16)

Review Response:
4.2.1 Coverage and Exclusions (Pages 50-54)
This report considers the recent jurisprudence from the Supreme Court in its consideration of extending the right to collective bargaining. (Page 53) In the end, the report proposes two options:

Options:
1. Maintain the status quo.

2. Eliminate some or most of the current exclusions in order to provide the broadest possible spectrum of employees' access to collective bargaining by, for example:

> a) permitting access to collective bargaining by employees who are members of the architectural, dental, land surveying, legal or medical profession entitled to practise in Ontario and employed in a professional capacity; and
>
> b) permitting access to collective bargaining by domestic workers employed in a private home.49" (Page 54)

4.2.1.1 Agricultural and Horticultural Employees
Because of the existence of the *Agricultural Employees Protection Act, 2002*, the Interim Report devotes a separate section to the matter of agricultural workers. The report notes that "the exclusion of agricultural employees from the LRA was the focus of significant attention during the consultations. Labour and employee advocacy groups contend that the AEPA is ineffective and that agricultural employees should be covered by the LRA." (Page 62)
The report goes on to propose four options:

Options:
1. Maintain the status quo by leaving the existing LRA exemption for agricultural and horticultural employees in place and maintaining the AEPA for agricultural workers.

2. Eliminate the LRA exclusions for agricultural and horticultural sectors under the LRA and repeal the AEPA for agricultural workers.

3. Enact new legislation, perhaps like the ALRA, for agricultural workers.

4. Include horticultural workers in any legislation covering agricultural workers." (Page 63)

CLAC's Response: In the area of "Coverage and Exclusions" CLAC favours the adoption of Option 2. For the benefit of agricultural and horticultural workers, CLAC supports the implementation of Options 2 and 4.

Recommendation 9: CLAC recommends that the OLRA require membership evidence to identify the employer that is the subject of a certification application. (Page 17)

Review Response:
4.3.1.3 Access to Employee Lists (Pages 74-75)
The report does not explicitly address the issue of requiring membership evidence to identify the employer. Instead, there is a focus on the question of whether an employer should be required to supply the union with a list of employees when an application for certification is filed.

CLAC's Response: CLAC's field experience indicates that the lack of current employer identification on membership evidence is an evidence gap that should be remedied. CLAC asks the Special Advisors to consider this matter as part of the Final Report.
CLAC has observed situations where the person signing a card no longer works for the employer in question or a person works for multiple employers.

Recommendation 10: CLAC recommends that the OLRA be modernized to allow for the use of electronic signatures and electronic filing of labour relations documents. (Page 17)

Review Response:
4.3.1.2 Electronic Membership Evidence (Pages 72-73)
Our case and additional arguments in favour of this practice is put forward in the report on page 73. Four options are proposed:

Options:
1. Maintain the status quo.

2. Return to the card-based system in place from 1950 to 1993, possibly adjusting thresholds (e.g., to 65% from 55%).

3. Return to the Bill 40 and current construction industry model.

4. Permit some form of electronic membership evidence." (Page 73)

CLAC's Response: CLAC commends the reviewers for their consideration of electronic submissions related to certification. Unfortunately, the use of electronic filing for other labour relations documents, responses, and applications are not addressed in this report. Our organization asks the reviewers to widen their scope and consider a more broad-based approach to electronic filing. Whatever method is used, CLAC is opposed to raising the threshold from 55% to 65%.

Recommendation 11: CLAC recommends that in the area of successor rights, the legislative framework should bring back the "vested rights" contained in earlier versions of the OLRA for employees of building service providers. Specifically, CLAC recommends that when one employer replaces another employer, the collective agreement carries forward to the new employer, and the existing union retains its certification and bargaining rights. In the alternate, we recommend that the bargaining agent's bargaining rights be retained. (Page 18)

Review Response:
4.3.3 Successor Rights (Pages 82-85)
The matter of bringing back "vested rights" is not addressed. Successor rights in the building services sector, however, is directly addressed: "Labour groups have proposed that successor

rights be extended to ensure that employee rights are maintained when a building service contract changes firms." (Page 84) The report offers three options:

Options:

1. Maintain the status quo.
2. Expand coverage of the successor rights provision, similar to the law in place between 1993 and 1995, to apply, for example, to:

    a) building services (e.g., security, cleaning and food services);

    b) home care (e.g., housekeeping, personal support services); and

    c) other services, possibly by a regulation-making authority.

3. Impose other requirements or prohibitions on the successor employer in a contract for service situation (e.g., provisions to maintain employment, employee remuneration, benefits and/or other terms of employment; a requirement that the union representing the employees under the former employer be provided with automatic access to the new employee list or other information)." (Pages 84-85)

CLAC's Response: CLAC commends the Special Advisors for considering the extension of successor rights. None of the proposed options really captures what CLAC recommended, and we are hesitant to put our full support behind any of the proposed options.