CMPA
Canadian Media
Producers Association
Ottawa | Toronto | Vancouver

October 14, 2016

Mr. C. Michael Mitchell, Special Advisor
The Honourable John C. Murray, Special Advisor
Changing Workplaces Review, ELCPB
400 University Ave., 12th Floor
Toronto ON M7A 1T7

Via email: CWR.SpecialAdvisors@ontario.ca

Dear Mr. Mitchell and Mr. Justice Murray,

Re: Submissions respecting the Special Advisors' Interim Report on the Ministry of Labour's *Changing Workplaces Review*

The Canadian Media Producers Association (CMPA) appreciates the opportunity to make submissions in response to the Special Advisors' Interim Report concerning the Ontario Ministry of Labour's *Changing Workplaces Review*.

I. INTRODUCTION

The CMPA is the country's leading member-based trade association for independent producers engaged in the development, production and distribution of English-language television programs, feature films and digital media. The CMPA works on behalf of members to promote and stimulate the Canadian production industry with the goal of ensuring the continued success of Canada's independent production sector and a future for content that is made by Canadians for both Canadian and international audiences. As a core element of our work, we negotiate labour agreements on behalf of our members with the industry's unions and guilds, and support producers in the administration of those agreements.

Our submissions are limited to matters pertaining to the film, television and digital media industry. We respectfully reserve our rights to address other issues that may flow from these consultations.

An Overview of Labour Relations in Ontario's Film, Television and Digital Media Industry

The film, television and digital media production industry is an Ontario success story. The province's production volume has reached $2.71 billion. The industry directly employs approximately 22,760 individuals in high-quality, highly skilled creative jobs. When the resulting spin-off employment is taken into account, this figure more than doubles to 46,250 jobs.

The CMPA enjoys mature collective bargaining relationships with all of the trade unions and guilds representing actors, writers, directors, technicians and other such classifications involved in Ontario independent productions. We consider the unions and guilds full partners in ensuring a safe and successful working environment for all those employed in our industry. To this end, the CMPA negotiates and is signatory to collective agreements with the Alliance of Canadian Cinema, Television and Radio Artists (ACTRA), the Writers Guild of Canada (WGC), the Directors Guild of Canada (DGC), NABET 700-M UNIFOR, and Local 411 of the International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada (IATSE). While the Interim Report notes the decline of unionization in the private sector, we are proud to note that the film, television and digital media industry stands out, as the vast majority of productions are produced under our collective agreements.

Throughout Canada with the exception of Quebec, producers voluntarily adhere to the collective agreements negotiated by the CMPA. Voluntary recognition is an adherence system that reflects our sector's mature labour relations environment. It recognizes that while most production will occur under these agreements, the economic constraints faced by a limited number of productions do not support the cost structures present in those agreements.

In order to address this "low budget" reality, the CMPA regularly seeks in collective bargaining to negotiate terms and conditions into our existing agreements that will expand work opportunities for industry participants represented by the unions and guilds. In so doing, these initiatives seek to reduce the number of productions that must work outside of our agreements.

In short, the film, television and digital media industry enjoys an informal voluntary recognition mechanism that is working well. Our collective agreements contain provisions relating to all aspects of the engagement of actors, writers, directors, technicians and other categories of workers operating in the sector. Specific examples include but are not limited to provisions relating to wages, pensions, health and welfare benefits, training, hours of work, overtime, vacation and holidays. Our ACTRA, WGC and DGC agreements also provide for significant royalties and back-end revenues for the use of artists' and creators' works. Such protections, rights and benefits belie the negative connotations that may typically be associated with non-standard employment in other industries, and serve to raise those employed in our sector beyond the definitions of being "precariously employed" or "vulnerable workers" as described in the Interim Report.

The Business of Film, Television and Digital Media Production

The film, television and digital media industry is highly complex and a production's success rests in large part on the careful management of a web of inter-related business challenges. Keys to managing these challenges are the elements of stability and predictability. Productions must come together under exceptionally tight timeframes and there is little room to address unanticipated obstacles to a project's smooth execution. A lack of stability or predictability as to the laws governing our sector can have a significant and deleterious effect and place not only an individual production in jeopardy, but the broader industry as well.

In addition to Ontario's thriving domestic protection environment, the province has set itself apart as a prime destination for foreign, and in particular, US studio production. Ontario competes with jurisdictions from around the world in attracting foreign production, and Ontario's enormous success in this regard has to date resulted in an incredible influx of investment and significant job creation. In addition to harming the domestic production industry, a lack of stability and predictability can serve to divert foreign production away from the province.

The CMPA believes that the film, television and digital media industry does not require additional regulation or legislation. The maturity and balance of the relationships between the CMPA and producers on the one hand, and the industry's unions and guilds and their members on the other, is evident in the agreements that we negotiate and we believe that our labour relations serve as a model to which parties in other industries may strive. Should you conclude that certain changes to the legislation are appropriate, however, we urge you to carefully consider the implications to our sector as well as the axiom, "do no harm" when recommending what these changes should be.

II. CMPA SUBMISSIONS

4.2.2 – Related and Joint Employers / 5.2.2 – Who is the Employer and Scope of Liability

We have combined our submissions on the matters relating to the topic, *Related and Joint Employers* under the *Labour Relations Act, 1995* (LRA) with those relating to the topic, *Who is the Employer and Scope of Liability* under the *Employment Standards Act, 2000* (ESA).

We have significant concerns with the options enumerated concerning possible amendments or additions to the existing true employer concept under the LRA and related employer provisions of the LRA and ESA as they relate to our sector.

As discussed above, two key, inter-connected elements required to ensure the industry's continued success are predictability and stability. When structuring their affairs, producers must have a clear understanding concerning matters of corporate liability.

For legitimate business purposes (which have been explored by labour boards throughout Canada and have been found to be sound and not to violate labour law), a producer must incorporate a new corporate entity for each new season of a television show. The same is true for any production; production companies must by necessity be "sole purpose" entities. As each corporate entity is obviously legally separate and distinct from any other, any obligations owing by one corporation are not legally owed by another.

As you are aware, the imposition of liability owed by one company onto another amounts to a piercing of the corporate veil; a remedy reserved in labour and employment law for only the most extreme cases to address truly nefarious conduct: conduct that violates the rights of employees or the bargaining rights of unions, not practices undertaken for a legitimate business purpose.

Modifications to provisions that would reduce the threshold for determining when to attach liability to a company other than that which is signatory to a collective agreement or employment contract in respect of a production in question, or the introduction of additional provisions to find "joint employers" could have far-reaching and significantly deleterious effects that shake the very foundations upon which the film, television and digital media industry is based. For example, as a part of their standard risk assessments, production financiers require a clear understanding as to the liabilities a particular entity holds in relation to a production when determining whether to extend financing. Absent this clarity, production financing – the very life-blood of the industry – could be placed in jeopardy.

For these reasons, the CMPA submits that changes of these sorts should be avoided. We therefore urge you to maintain the status quo in respect of the existing LRA and ESA true and related employer concepts and provisions.

4.3.2 – First Contract Arbitration / 4.4.3 – Renewal Agreement Arbitration

We have combined our submissions on the matters relating to first contract and renewal agreement arbitration.

The CMPA respectfully encourages you to maintain the status quo by declining to recommend changes to LRA provisions respecting first contract arbitration, or the introduction of provisions respecting renewal agreement arbitration or mediation.

The mature relationships enjoyed by the CMPA and each of its labour partners allow us to work cooperatively and without outside intervention in our collective bargaining negotiations on complicated matters of significant importance to producers and union members alike. In addition to our belief that the introduction of such provisions is unnecessary, we are also concerned with the unintended outcomes that could arise when placing the power to make decisions or recommendations relating to the film, television and digital media industry in the hands of arbitrators or mediators who lack the necessary industry expertise. The issues at play in our collective bargaining negotiations are extremely

complex and require solutions developed by industry professionals who possess an understanding of the business of film, television and digital media: namely, those professionals who sit at the bargaining table. Our industry has functioned successfully without the proposed options to date and we respectfully submit that there is no reasonable basis upon which to conclude that these provisions are required for our industry going forward.

4.6.1 – Broader-based Bargaining Structures

The CMPA strongly opposes the introduction of recommendations concerning the imposition of any sectoral bargaining arrangements, including but not limited to a Status of the Artist model. We also oppose the extension of the LRA to areas of the film, television and digital media industry not already covered by the legislation. We will address each of these issues in turn.

a. Sectoral Bargaining

In your report, you highlight union submissions arguing that sectoral arrangements may address the undesirable features of non-standard employment the unions believe are present in the arts sector by providing a more balanced framework for employers and employees, generating employee training opportunities and providing pension, health and welfare benefits that are the hallmarks of "good jobs".

The film, television and digital media sector has, over the course of several decades and through the collaborative efforts of the industry's unions and guilds, and the CMPA, developed a robust and sophisticated labour relations regime that recognizes the unique needs of our industry while offering significant protections, rights and benefits to those working within it.

Bargaining in this area has evolved along both craft and sectoral lines, with the result that unions represent employees based on their skills, and negotiate primarily sectoral agreements. These agreements achieve precisely those aims sought to be addressed by unions arguing in favour of legislated sectoral arrangements. Workers are well paid and provided significant pension, health and welfare benefits, are entitled to strong protections concerning working conditions, and numerous training opportunities exist to ensure the continued growth of their respective skill sets. In short, work within the film, television and digital media industry meets the very definition of a "good job". The goals sought to be achieved through legislated sectoral bargaining in our sector have already been met (and continue to be bettered) with much success and without intervention.

As the formal introduction of sectoral bargaining is not needed to *benefit* the industry, the question then becomes whether its introduction would serve as a detriment. As has proven to be the case in Quebec (discussed below), the CMPA submits that the legislated introduction of sectoral bargaining in Ontario could indeed prove harmful.

The provinces of Quebec and Saskatchewan and the federal government all have Status of the Artist legislation. The legislation in the province of Saskatchewan does not address labour relations issues and we will comment no further on it. The federal Status of the Artist legislation relates only to federally regulated undertakings such as broadcasters and the National Film Board and does not impact on CMPA members and so we will not address it either.

With respect to the province of Quebec, the Status of the Artist legislation is both costly and cumbersome for producers and has led to a fragmentation of jurisdiction as between unions and guilds. The costs of the Quebec Act have been cited as a disincentive to producing in that province not only for Canadian producers but for foreign producers as well, most notably the major US studios. Many projects originally destined for Quebec have been diverted elsewhere as a result of its labour environment, thereby costing the province both jobs and economic investment.

Since the introduction of the Quebec legislation, producers in that province must face nine (9) separate unions, many of which have multiple collective agreements. (Producers must grapple with approximately eighteen (18) agreements in total.) This stands in sharp contrast to the five (5) trade unions representing all persons engaged in film and television production in Ontario, where legislated sectoral bargaining and Status of the Artist legislation do not exist. Legal disputes relating to unions' jurisdiction within the Quebec sectors can be significant and costly, and it is at times unavoidable that producers must become involved at enormous time and expense. Producer representatives are in a perpetual state of collective bargaining, with individual negotiations often lasting well over a year. The result is a costly, process-heavily labour relations regime persistently lacking in certainty for producers attempting to plan, budget and produce their productions – a notions antithetical to the needs for predictability and stability that underlie this results-oriented, deadline-driven industry.

The CMPA submits that importation of anything remotely resembling a Quebec-styled Status model to govern labour relations in the Ontario sector would have a ***profoundly detrimental economic impact*** on the province's film, television and digital media industry.

Given that our sector already has in place a system that is (a) highly unionized; (b) organized primarily along craft and sectoral lines; and (c) effectively serves the needs of unions, employees and employers, and given the potential consequences that the imposition of a legislated model could have on the Ontario industry, we submit that this sector should be allowed to continue to exist and grow without outside interference.

b. Extension of the LRA

Labour relations within the film, television and digital media industry have evolved over time in a manner that has allowed producers and our labour partners to craft industry-specific solutions to the challenges we jointly face, outside of the confines of legislation and regulation that would serve to limit the industry's potential. For example, our approach to collective bargaining has led us to craft bargaining units that may be made up of employees, independent contractors, or a mix of both. As an industry, we have collectively agreed to ways of conducting our labour relations that, while unconventional, have proven enormously successful in providing both the stability and predictability that producers require and the representation, rights and benefits to which workers are entitled.

The mature bargaining relationship that we enjoy with our union and guild partners and our multiple, joint successes vitiate the need for the creation of separate LRA provisions for our industry. We therefore respectfully encourage you to maintain the status quo and decline to recommend the extension of the LRA to the film, television and digital media sector beyond the point to which it currently applies.

4.6.2 – Employee Voice

The CMPA supports the proposed option to decline to recommend the introduction of a model respecting "employee voice" as it may apply to the film, television and digital media sector. Given the strong role our industry's unions and guilds play in representing their members and ensuring their interests are consistently heard and taken into account, we are of the view that additional models are not needed to provide for the adequate representation of industry employees or contractors.

5.2.1 – Definition of Employee

The CMPA encourages you to recommend maintaining the status quo concerning the category of worker covered by the ESA.

Expansion of the ESA to cover contractors is not necessary in our industry. Each of the collective agreements in force in the film, television and digital media sector contain provisions that specifically address working conditions which, on the whole, are far superior to the minimum protections afforded in the ESA.

Inclusion of contractors within the ESA would also promote inequity. Artists and creators such as performers, writers and directors who are not contractors, that is, who are employees, are currently afforded the full protections of both the ESA and LRA. Contractors working within the film, television and digital media industry enjoy many tax and other benefits. Extending the applicability of the ESA to such individuals would therefore provide significant additional benefits to one group of workers but not the other. While employees would be covered by the ESA, they would remain unable to take advantage

of the benefits associated with a contractor's status. Conversely, contractors, who in addition to receiving the benefits of their status, would also receive coverage under the ESA.

We therefore believe that extension of the ESA to contractors within our industry is neither necessary nor desirable, particularly in light of the comprehensive set of protections already offered.

5.2.3 – Exemptions, Special Rules and General Process

The CMPA is wholly in favour of your proposed approach to recommend retention of the Special Industry Rules (SIRs) relating to the film and television industry. As you have noted, these exemptions fall within the category of SIRs that were transparently approved following stakeholder consultations. Further, each of our industry collective agreements provide strong protections concerning hours of work, rest periods, time off between shifts and eating periods that strike the necessary balance between the rights of workers and the realities of production. This in turn serves to bolster the rationale for retaining our sector's SIRs.

5.3.1 – Hours of Work and Overtime Pay

We wish to comment in particular on proposed option 7 concerning hours of work and health and safety, and proposed option 11 concerning a reduction in the overtime threshold.

a. House of Work and Health and Safety

The CMPA and its members consider the health and safety of all industry participants to be of the upmost importance. We are proud of our involvement alongside our labour partners and Ministry of Labour representatives on the Ministry of Labour's Section 21 Film and Television Health and Safety Advisory Committee and the work that this committee performs in ensuring the promotion of safe practices on all Ontario production. Further, we take our role seriously in promoting safe workplaces for industry participants.

While the CMPA believes the proposal concerning limitations on hours of work that will affect an individual's health and safety is well-intentioned, we are concerned with its subjective nature and therefore have questions as to how it would be properly interpreted and enforced. The B.C. law provides that an employer must not require, directly or indirectly, an employee to work excessive hours or hours detrimental to the employee's health or safety. The term "excessive" is not defined and therefore open to a host of varying interpretations. Further, whether the number of work hours will be detrimental to an employee's health and safety is likewise vague and may be difficult to assess.

We therefore believe that this matter is best left to our tri-partite industry health and safety committee, and to the CMPA and our labour partners to discuss in collective bargaining negotiations.

b. Overtime Pay Trigger

The CMPA urges you to decline to make recommendations concerning a reduction in the overtime pay trigger. An appropriate balance currently exists in the legislation to compensate employees for time worked in excess of an ordinary work week. These changes would result in significant cost increases to productions, thereby decreasing the Ontario industry's competitiveness. Such changes could also serve as a disincentive to attracting foreign production to the province.

5.3.2 – Scheduling

The CMPA respectfully urges you to maintain the status quo with respect to legislative and regulatory rules relating to scheduling for the film, television and digital media industry.

Production is an inherently deadline-driven environment and adequate scheduling plays a fundamental role in ensuring a project is completed on-time and on-budget. As such, the industry has developed a specific method for scheduling that takes into account the needs of production while balancing the need to provide appropriate notice of shifts to employees. What's more, producers face penalties under our collective agreements when changes to a schedule are made without sufficient notice.

The broad method by which productions are scheduled is applied throughout North America. Industry participants understand the system and how it operates. Given the level of mobility inherent in our industry that allows individuals to work throughout the continent, recommending the imposition of scheduling requirements beyond those already utilized in the broader industry could create significant confusion and serve to fundamentally alter the way in which productions must organize themselves when operating in this province.

The CMPA submits that the industry's scheduling system works and it works well. We believe that additional measures are not warranted and indeed could inadvertently harm an industry that must organize itself in a very particular manner to ensure its success. We therefore respectfully urge you to decline proposals to recommend the implementation of any additional legislative or regulatory measures for our sector on this topic.

5.3.5 – Paid Sick Days / 5.3.6 Other Leaves of Absence

Given the mature bargaining relationship that exists between the CMPA and our union and guild partners, we believe that the issue of paid sick days and questions concerning the introduction of additional leaves (whether paid or unpaid) are matters best addressed through negotiations at the collective bargaining table rather than being imposed through legislation or regulation. We therefore respectfully submit that you should decline to recommend changes to the ESA affecting the film, television and digital media sector on these issues.

5.3.8.2 Severance Pay

The CMPA supports the proposed option to recommend that the various triggers for severance pay be maintained.

Film, television and digital media production is inherently shot-term in nature and so employees working in this industry would not typically satisfy the five-year employment period necessary to trigger severance pay. Changes to severance pay obligations that would reduce or eliminate the five-year threshold would represent a fundamental shift for our sector and the triggering of severance pay obligations would add hard costs to productions, which, as we have noted, could serve to decrease the competitiveness of the Ontario industry. We therefore urge you to decline to introduce recommendations that would reduce the triggers for severance pay obligations.

5.3.8.3 – Just Cause

As noted above, while the vast majority of film, television and digital media productions are produced under industry collective agreements, certain economic constraints may force production outside of these structures. With respect to such productions, the CMPA respectfully submits that you should decline to make recommendations to modify "just cause" standards and processes.

III. CONCLUSION

The film, television and digital media industry's record of job creation and economic investment has been a boon for Ontarians. Further, the incredible efforts of our talented artists, creators, crews and producers have meant that the province now stands as one of the world's elite production centres.

The CMPA and the unions with which it negotiates have accumulated over fifty years of bargaining history, the results of which are sophisticated agreements that position the industry's employees and contractors in exceptionally favourably positions when compared with other similarly situated professionals.

For the reasons stated above, the CMPA submits that additional legislation and regulation, in so far as it seeks to govern labour and employment within the film, television and digital media industry, is not necessary and indeed, may in many cases be highly undesirable. We respectfully urge you to avoid recommendations that would upset the delicate balance achieved by the industry's union and producer partners, which has allowed Ontario's film, television and digital media industry to flourish with unparalleled civility, stability and success.

We would welcome the opportunity to continue to consult with you as you prepare your recommendations.

Sincerely,

Warren Ross
Senior Director, National Industrial Relations and Senior Counsel

cc:

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