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INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES, MOVING PICTURE TECHNICIANS,
ARTISTS AND ALLIED CRAFTS OF THE UNITED STATES, ITS TERRITORIES AND CANADA

October 14, 2016

To: C. Michael Mitchell, Special Advisor
Honourable John C. Murray, Special Advisor

Re: Response to the Changing Workplaces Review Special Advisors' Interim Report

This submission is in response to the Changing Workplaces Review Special Advisors' Interim Report. The IATSE has already provided submissions for this review, first on July 3, 2015, with additional submissions on March 9, 2016.

While these are solely the submissions of the IATSE, we have been consulting with ACTRA, the Canadian Actors' Equity Association, the Directors' Guild of Canada, the Canadian Federation of Musicians, and NABET 700 - UNIFOR. Collectively, our organizations represent over 50,000 workers in Ontario's entertainment industry and we are supportive of one another as industry stakeholders.

A. WHO WE ARE

IATSE was founded in 1893 when representatives of stagehands working in eleven cities met in New York and pledged to support each other's efforts to establish fair wages and working conditions for their members. Our union has evolved to embrace the development of new entertainment mediums, crafts expansion, technological innovations and geographic growth.

Today, our members work in all forms of live theatre, motion picture and television production, trade shows and exhibitions, television broadcasting, and concerts as well as the equipment and construction shops that support all these areas of the entertainment industry. We represent virtually off the behind-the-scenes workers in crafts ranging from motion picture animator to theatre usher.

B. OVERVIEW

The breadth and scope of the Special Advisors' Interim Report ("Interim Report") is expansive. It identifies a number of issues with the current legislative framework governing employment in Ontario that requires re-thinking and/or change in order to ensure that every working Ontarian's labour in all industries is fairly and adequately regulated. IATSE is supportive of all changes to the *Employment Standards Act, 2000* ("ESA") and the *Labour Relations Act, 1995* ("LRA") being contemplated by the Special Advisors which enhances both the rights and lives of workers in all industries.

As the Interim Report acknowledges, the arts, entertainment and recreation industry ("Entertainment Industry") has one of the highest concentrations of vulnerable workers engaged in non-standard employment. As such, IATSE members working in this industry face unique workplace challenges that the current legislative framework is ill-equipped to address. With this in mind, IATSE's response to the Interim Report highlights specific issues that are a priority to IATSE members. IATSE would be happy to further elaborate on some or all of the points identified in this response in person or in writing at the request of the Special Advisors.

C. OUR POSITION ON THE INTERIM REPORT

Employment Standards Act, 2000

5.2.1 – Definition of Employee

The current definition of "employee" as it appears in the ESA fails to include a significant portion of the IATSE membership engaged in work as freelancers in the Entertainment Industry. The relationship these members have with the engagers of their services possesses many of the indicia the Ontario Labour Relations Board and the courts have historically recognized as being the hallmarks of an employment relationship.

IATSE supports the legislative change to the definition of "employee" in the ESA contemplated in option #6 of section 5.2.1 of the Interim Report such that "dependent contractors" are included in the definition of "employee". IATSE also supports the passing of accompanying regulations to establish the criteria the Employment Standards Branch of the Ministry of Labour ("MOL") and/or Ontario Labour Relations Board ("OLRB") must take into account when making any employee status determinations, provided any such criteria

are drafted in a way that would clearly capture the work of freelancers in the Entertainment Industry. IATSE also supports the burden of proof and evidentiary onus obligations contemplated by option #4 of the Interim Report.

As addressed more thoroughly below, IATSE also supports identical legislative amendments to the definition of "employee" in the LRA.

5.2.2 – Who is the Employer and Scope of Liability

IATSE agrees that it is vital to ensure Ontario's legislative framework governing workplaces is able to quickly and effectively determine who is liable for providing minimum terms and conditions of employment for employees so that compliance with them can be ensured. IATSE supports the legislative changes to the ESA contemplated in option #2 of section 5.2.2 of the Interim Report such that employers and/or contractors are held responsible their contractors or subcontractors compliance with the ESA. IATSE also supports the removal of the "intent or effect" requirements in section 4 of the ESA that is contemplated in option #5.

5.2.3 – Exemptions, Special Rules and General Process

At a minimum, IATSE supports the maintenance of the status quo for the Special Industry Rules ("SIRs") exemptions relating to live performances (Ontario Regulation 160/05) and the film and television industry (Ontario Regulation 552/05). These exemptions were established under the principles and criteria developed by the MOL in 2005 and continue to have the complete support of all Entertainment Industry stakeholders.

IATSE does, however, note that an expansion to the exemption to the live performances exemption of the ESA should be considered. It is the nature of the live performance industry that workers must take work when they can get it. Projects in this particular industry, like in the film and television industry, tend to be intensive and seasonal. In order to survive and thrive in the live performance industry, workers want and need to be able to work long hours when the work is available. The freedom to do so would also allow workers in this industry to save enough money to survive periods when projects are fewer and farther between. Employers also want and need the benefit of worker continuity to ensure

the success of their endeavours given the short and tight timelines associated with the industry.

For all these reasons, IATSE supports an amendment to the live performances exemption of the ESA such that workers engaged in production of live performances of theatre, dance, comedy, musical productions, concerts and opera, as well as the production of trade shows and conventions be included in the live performances exemption. IATSE also supports a further amendment to the live performances exemption of the ESA such that workers in the proposed more inclusive definition of live performance industry also be exempt from the hours of work provisions set out in Part VII of the ESA like their counterparts in the film and television industry. These proposed amendments to the existing live performances exemption to the ESA will better meet the needs of both employees and employers working in the stage industry and therefore align with the SIR principles and criteria established by the MOL.

5.3.3.1 – Public Holidays

IATSE supports the legislative changes to the ESA contemplated in option #4 of section 5.3.3.1 of the Interim Report relating to public holidays. A specific percentage should be set for public holiday pay and paid on an employee's gross weekly wages. The current method for calculating public holiday pay chronically denies employees engaged in the transient and intermittent employment indicative of the live performances, film and television industries. By setting a specific percentage rate payable on gross wages, all transient workers will be able to enjoy the benefits of public holiday pay.

5.3.3.2 – Paid Vacations

IATSE supports the legislative changes to the ESA contemplated in option #2 of section 5.3.3.2 of the Interim Report relating to vacation entitlements. An employee's vacation time entitlement should be increased to 3 weeks after completion of the second year of employment provided the corresponding vacation pay percentages be amended accordingly as well. Limiting an employee's vacation time entitlement to 2 weeks indefinitely does not provide employees, especially long service employees, with the necessary time free from work to maintain a healthy work-life balance.

5.3.5 – Paid Sick Days

IATSE supports the legislative changes to the ESA contemplated in option #2 of section 5.3.5 of the Interim Report relating to paid sick days. Paid sick leave set at 5 days with a minimum period of employment before qualifying would allow employees to stay home when they are sick without fear of lost wages and/or termination.

5.3.6 – Other Leaves of Absence

IATSE supports the legislative changes to the ESA contemplated in option #3 of section 5.3.6 of the Interim Report relating to paid domestic or sexual violence leave. Paid leave set at 5 days with a right to extend the leave on an unpaid basis is vital to ensuring all victims of domestic or sexual violence are able to deal with the myriad issues these types of circumstances present without fear of lost wages and/or termination.

5.3.9 – Temporary Help Agencies

IATSE supports the legislative changes to the ESA contemplated in option #2 of section 5.3.9 of the Interim Report relating to Temporary Help Agencies ("THA"). In order to ensure that this subset of vulnerable workers is free from exploitation, client and THA must be treated as joint employers and mutually and severally liable for all violations of the ESA. IATSE supports the legislative changes to the ESA contemplated in option #4 of section 5.3.9 of the Interim Report relating to the disclosure of mark-ups of THAs and limits to be placed on any such mark-ups.

IATSE supports the legislative changes to the ESA contemplated in option #8 of section 5.3.9 of the Interim Report relating to the expansion of the termination and severance pay provisions to individual THA assignments.

Labour Relations Act, 1995

4.2.2 – Related and Joint Employer

IATSE agrees with the observations set out in the Interim Report in so far as bargaining structures need to reflect who funds and controls the work so that bargaining takes place with the real parties that have primary economic interest and ultimate control over the business. The current LRA framework often makes it impossible for employees working in the Entertainment Industry to organize and/or bargain with the true axioms of power that

make funding and/or production decisions in connection with productions and/or projects in the live performance, film and television industries.

For these reasons, IATSE supports the legislative changes to the LRA contemplated in option #2 of section 4.2.2 of the Interim Report relating to joint employers. IATSE also supports the enactment of specific joint employer provisions regarding THAs and their clients contemplated in option #4 (a) of section 4.2.2 of the Interim Report.

4.3.1.1 – Card Based Certification

For all the reasons articulated in IATSE's prior submissions to the Special Advisors, IATSE supports the legislative changes to the LRA contemplated in option #3 of section 4.3.1.1 of the Interim Report relating to the return of the current construction industry model of card based certification for all industries. Given the similarities between the Entertainment Industry and the construction industry, a return to the card based model is particularly vital. Again, for the reasons articulated in IATSE's prior submissions to the Special Advisors, IATSE also supports the legislative changes to the LRA contemplated in option #4 of section 4.3.1.1 of the Interim Report relating to electronic membership evidence.

4.3.1.4 – Off-site, Telephone and Internet Voting

For all the reasons identified in the Interim Report, IATSE supports the legislative changes to the LRA contemplated in option #2 of section 4.3.1.4 of the Interim Report relating to creation of alternative voting procedures outside the workplace.

4.3.1.5 – Remedial Certification

For all the reasons identified in the Interim Report, IATSE supports the legislative changes to the LRA contemplated in option #2 of section 4.3.1.5 of the Interim Report relating to IATSE the removal the requirement to consider whether a second vote is likely to reflect the true wishes of the employees. IATSE also supports the legislative changes to the LRA contemplated in option #3 of section 4.3.1.5 of the Interim Report relating to removal of the requirement to consider whether the union has adequate support for bargaining.

4.6.1 – Broader-based Bargaining Structures

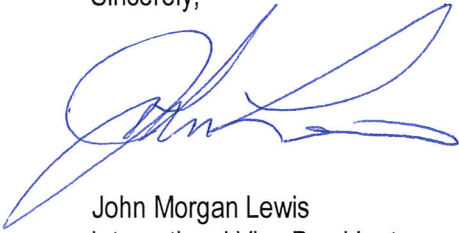
For the same reasons identified in IATSE's submissions relating to section 5.2.1. of the Interim Report above, IATSE supports the legislative changes contemplated in option #9 of section 4.6.1 of the Interim Report, an amendment to the definition of "employee" in the LRA such that freelancers working in the entertainment industry should be included in the definition of "employee" and entitled to the benefits contemplated by the LRA. Note that differing from option #9 as written in the interim report our support for the option is for the entire entertainment industry, including for instance live performing arts, not only the media industry.

IATSE also supports the introduction of *Status of the Artist* ("SAA") type legislation in Ontario as contemplated in option #8 of section 4.6.1 of the Interim Report provided it does not negatively impact the current and established bargaining structures in the Entertainment Industry. With this in mind, SAA type legislation would allow those individuals (typically professional artists) working in the Entertainment Industry that do not meet the expanded definition of "employee" contemplated by other parts of these submissions to also have access to collective representation and bargaining. There may be some instances where those deemed employees and others would share a workplace and we support a system, like the Quebec Status of the Artist Act, that allows for these individuals to be represented by the same agreement.

Given the similarities between the Entertainment Industry and the construction industry, which includes the operation of hiring halls and the wide-spread existence of pattern agreements, IATSE also supports amendments to the LRA which would eliminate mandatory ratification votes for collective agreements in the Entertainment Industry (section 44(1) of the LRA) and mandatory strike votes (section 79(5) of the LRA).

We appreciate the opportunity that has been provided to us to respond to this interim report and we look forward to working with the Ministry to accomplish our shared objective.

Sincerely,



John Morgan Lewis
International Vice President
Director of Canadian Affairs

cc: Ernie A. Schirru, Canadian Counsel
IATSE Local 58
IATSE Local 105
IATSE Local 129
IATSE Local 357
IATSE Local 411
IATSE Local 461
IATSE Local 467
IATSE Local 471
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IATSE Local 634
IATSE Local 667
IATSE Local 822
IATSE Local 828
IATSE Local 873
IATSE Local 924
IATSE Local B-173