IWLA
The Resource for Warehouse Logistics

PO Box 30039, RPO New Westminster
Thornhill, Ontario L4J 0C6
www.IWLA.ca

P: 905.270.6587
F: 905.756.1115
E: jlevi@IWLA.com

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DELIVERED VIA EMAIL

Changing Workplaces Review
ELCPB, 400 University Ave., 12th Floor
Toronto, ON
M7A 1T7

Attention: Special Advisors C. Michael Mitchell and Hon. John C. Murray

Dear Sirs:

Re: Submissions from the International Warehouse Logistics Association

On behalf of the International Warehouse Logistics Association ("IWLA"), we write to commend you for the time and effort you are taking to secure the future of employers and employees across the province of Ontario. We strongly support the review you have undertaken of the *Employment Standards Act* ("*ESA*") and *Labour Relations Act* ("*LRA*"), and the province's changing workplaces. We are encouraged by the balance you have been asked to strike in your mandate:

> **"to better protect employees while supporting business in our changing economy."**

Since the late 1800s, IWLA has represented warehouse and logistics providers across North America. We include in our membership the largest logistics and distribution companies on the continent. Our members specialize in providing warehouse services that manufacturers and retailers can use as replacements to and/or extensions of their distribution operations. Our members receive, store and distribute raw materials, work-in-progress and finished goods, and deal directly with everyone in the supply chain (*e.g.*, suppliers of raw materials, manufacturing plants, distribution groups, retailers and final customers/end users). Our members coordinate the transportation, inventory control and invoicing of the product.

While proximity to customers and markets is critical to success in the warehousing and logistics industry, any company within 200 kilometers of a marketplace is in range to effectively provide the service. Therefore, our competition comes from the border states of New York, Pennsylvania, Ohio and Michigan, as well as the province of Quebec. In our experience, Ontario is a relatively high cost centre when compared with bordering provinces and American states.

We fear that many of the options under consideration in your Interim Report will increase the cost of doing business in Ontario and ultimately result in significant, unintended negative consequences on job security and job growth. Reducing the competitiveness of our members in Ontario would have the effect of exporting thousands of jobs to other jurisdictions.

At a minimum, we ask that you remember to employ the "balance" required by your mandate, and that, as was recommended in the Keep Ontario Working submission, prior to any new or amended legislation, the Ministry of Economic Development and Growth be tasked with studying and releasing a detailed economic impact analysis of each of your recommendations. For example, Ontario's new *Business Growth Initiative* holds promise – if

implemented and enforced government wide, the initiative could facilitate the creation of proportional, targeted, and evidence-based regulation.[1] We hope your recommendations will keep this *Initiative* in mind.

Executive Summary/Highlights

4.2 Scope and Coverage of the *LRA*

4.2.1 Coverage and Exclusions

We ask that you recommend maintaining section 1(3) (b) of the LRA. A review of the many submissions in regard to this section indicates that a key issue appears to be the misclassification of employees as supervisory or managerial. Addressing this issue does not require the elimination of the managerial exclusion.

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

We ask that you recommend maintaining the *status quo*. We ask that you address the deficiencies in compliance with the *LRA* (*i.e.*, increase educational and/or enforcement efforts) as opposed to simply casting the liability net wider to seek out deeper or additional economic resources by weakening the joint/common employer test. Casting such a net would inevitably impact profitability and lead to decreased growth and business activity, higher prices and lower overall employment levels.

The claim that any beneficiary of labour (particularly in the case of a client receiving warehousing and logistics services) bears responsibility for employment and labour-related liabilities will usurp the underlying rationale for warehousing and logistics business providers and for business specialization in general. The claim that collective bargaining cannot occur with a subcontractor (*i.e.*, it must occur with the customer of the subcontractor), once again ignores the reality and business efficacy of warehousing and logistics providers. In our experience, whether small or large, single-site or multi-site, our member companies have been able to negotiate and reach collective agreements with a variety of trade unions.

4.3 Access to Collective Bargaining and Maintenance of Collective Bargaining

4.3.1.1 & 4.3.1.2 Card-based Certification & Electronic Membership Evidence

We ask you to recommend the maintenance of the *status quo* - the maintenance of the secret ballot vote process. The vast majority of employees in Canada and the United States enjoy the democratic right to a secret ballot process when deciding whether to be represented by a union. We submit that two factors - informed employees voting against union representation and the decline of manufacturing - and not the secret ballot voting process - have contributed to the decline in private-sector union density in Ontario.

4.3.1.3 Access to Employee Lists

We ask that you recommend maintenance of the *status quo*. Providing a union with employee list and contact information if it is able to demonstrate a certain level of membership evidence would: a) create a considerable intrusion into the privacy rights of employees; and b) increase the amount, length and cost of litigation at the OLRB.

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[1] Ontario Chamber of Commerce, The Mowat Centre & Leger, "Emerging Stronger 2016: Measuring Progress, Charting a New Course" (2016).

4.3.1.5 Remedial Certification

We ask that you recommend maintenance of the *status quo*. OLRB Vice-Chairs typically have years of experience previously representing either unions or employers. Their experience affords the best opportunity to identify unlawful conduct, appropriate remedies and overall balance in the workplace. Remedial certification orders should be subject to their discretion.

4.3.2 & 4.4.3 First Contract Arbitration and Renewal Agreement Arbitration

We ask that you not recommend either automatic or discretionary access to first contract arbitration or renewal agreement arbitration. The current structure of collective bargaining motivates the workplace parties to build trust relationships and consider workable solutions and compromises to achieve long-term, sustainable relationships. Any change to the remedial relief interest arbitration section of the *LRA* must be measured against its potential negative impact on meaningful compromise and agreement. Ontario's experience with interest arbitration for firefighters and police is evidence of the kind of concerns and potential detrimental outcomes that could be visited upon private-sector employers in Ontario if automatic or discretionary access to interest arbitration becomes available.

4.3.4 Consolidation of Bargaining Units

We ask that you recommend the maintenance of the *status quo*. Where labour boards are given the power to alter the scope of existing bargaining units, employee choice can be compromised. Smaller groups of employees that initially had a say in whether or not to be unionized lose their voice, as they are swallowed by larger employee bargaining units.

4.4 The Bargaining Process

4.4.1 Replacement Workers

We ask that you recommend the maintenance of the *status quo*. The ability of an employer to rely on a replacement worker encourages ongoing compromise toward reaching a collective agreement and, ultimately, labour relations stability. Without the ability to hire replacement workers, many employers could be effectively strangled by their unions, undercutting any necessity for the union to participate in the search for compromise and workable solutions toward achieving a collective agreement.

4.4.2.1 Right of Striking Employees to Return to Work

We support the elimination of the six-month time reference in the current *LRA* section, but ask that the provision otherwise remain the same.

4.4.2.2 & 4.5.2 & 5.3.8.3 Just Cause

We ask that you recommend the maintenance of the status quo and not the creation of a "just cause" standard into either the LRA or the ESA, nor access to an adjudicative process. In the three jurisdictions where a form of "just cause" remedial reinstatement exists, few reinstatements have actually been ordered; instead the costs of settlement have significantly increased.

5.2 Scope and Coverage of the *ESA*

When considering any change to the *ESA*, the IWLA asks that you keep top of mind the following three considerations: 1) The already high cost of doing business in Ontario versus other North American jurisdictions; 2) The impact of inconsistent regulation on Ontario employers that operate in more than one North American and/or

Canadian jurisdiction; and 3) The importance of regulatory harmonization among Ontario's various pieces of workplace legislation.

5.2.3 Exemptions, Special Rules and General Process

We support your conclusion that all exemptions should be reviewed at some point in the near future and that this task is too big to be undertaken within the context of the Changing Workplaces Review. We do not agree that a recommendation should be made now to eliminate, without further review, the classifications grouped into Category I of the Interim Report - particularly the manager and supervisor exemption.

5.3.1 Hours of Work and Overtime Pay Employees

We ask you maintain the status quo, save and except the following recommendations: 1) The elimination of the requirement for employee written consent to the averaging of overtime to a maximum of four weeks, and working longer than the daily and weekly maximums of 12 and 60 hours (but maintaining the daily rest period requirement of 11 hours); and b) That an employee's written agreement to a greater daily or weekly maximum, or a period of overtime averaging greater than 4 weeks, be accomplished via electronic means.

5.3.2 Scheduling

We recommend maintenance of the *status quo.* Requiring an employer to provide increased notice of an employee's schedule is extremely difficult and penal in our industry given the "just-in-time" services we provide. Singling out specific legislative provisions from the U.S. is not appropriate given employees in Ontario are much better protected than their American counterparts as a whole.

5.3.3.1 Public Holidays

We recommend the maintenance of the *status quo*. Ontario recently increased the number of public holidays to nine (9) days. This is at the upper end of the range across the country.

5.3.3.2 Paid Vacation

We recommend the maintenance of the *status quo*. Each additional week of vacation results in a 2% increase in employer costs. However, this does not consider the overtime costs associated with replacement labour and the costs of potentially increasing the size of our members' workforce. Each of these factors, along with employee absenteeism, hampers our members' ability to compete globally and service customers in a cost-competitive manner.

5.3.5 Paid Sick Days

We recommend the maintenance of the *status quo*. We ask that you recommend simplification and/or consolidation of the current leaves legislated under the *ESA*, not the addition of other leaves, let alone additional paid days of leave. The 10 unpaid personal emergency leave ("PEL") provide superior benefits than those provided by many other Canadian jurisdictions and American states bordering Ontario.

5.3.6 Other Leaves of Absence

We recommend that the *ESA* leave provisions be reviewed in an effort to consolidate some of the leaves.

5.3.7 Part-time and Temporary Work-Wages

We recommend the maintenance of the *status quo*. We believe there is a significant portion of the part-time, temporary/casual employees who want to only work part-time for a variety of reasons personal to their own

individual circumstances (*e.g.,* study obligations, family obligations, health issues, simple preference, *etc.*). Legislating equal pay with full-time employees may risk the elimination, or at a minimum, a reduction in the number of these positions available.

5.3.8 Termination, Severance and Just Cause

5.3.8.1 Termination of Employment

We recommend the maintenance of the *status quo*. The current qualifying period and cap on entitlements in Ontario already results in greater cost to Ontario employers than to employers in any other Canadian or American jurisdiction.

5.3.8.2 Severance Pay

We recommend the elimination of severance pay. As an alternative, we recommend a reduction in severance pay from one week per year of service to two days per year of service. Severance pay is not required in any other Canadian jurisdiction, or in the U.S.

5.3.8.3 Just Cause

We ask that you recommend maintenance of the *status quo*. The "just cause" reinstatement remedy in Quebec, Nova Scotia and at the federal level has not resulted in many actual reinstatements. Instead, the settlement costs associated with the employee terminations have simply increased due to the risks of reinstatement. Adding a just cause termination provisions would be yet another employer burden in the one province in Canada that also provides employees with severance pay in addition to termination pay or pay in *lieu* thereof.

5.3.9 Temporary-Help Agencies

We ask that you amend the *ESA* so that *prima facie* the temporary-help agency is the employer of assignment employees. There are several reasons for this request, all of which revolve around the importance of the temporary-help agency to our members, employees in Ontario and the Ontario government.

5.4.1 Greater Right or Benefit

We ask that you recommend Option 2 from your Interim Report. We ask that employers be recognized for providing greater entitlements, as opposed to penalized by being required to recognize both entitlements within company policies and/or collective agreements, and certain entitlements under the *ESA*. We also hope you will recommend providing clarity to the concept of comparing bundles of employments benefits.

Submissions – Issues & Options

Our submissions will be constructive and responsive to those issues and options identified in the Interim Report which are most relevant to our membership:

4.2 Scope and Coverage of the *LRA*

4.2.1 Coverage and Exclusions

We ask that you recommend maintaining section 1(3) (b) of the *LRA*.

While we recognize the desire to expand the scope of persons covered by the application of the *LRA*, we ask that the current exclusion provided by s. 1(3) (b) remain *status quo*,

> (3) Subject to section 97, for the purposes of this Act, no person shall be deemed to be an employee,
>
> …
>
> (b) who, in the opinion of the Board, exercises managerial functions or is employed in a confidential capacity in matters relating to labour relations.

Historically, the majority of workplace parties have recognized the inherent conflict of interest that exists between employees and those who supervise and/or manage employees. The Ontario Labour Relations Board ("OLRB") has established clear guidelines with respect to who is to be excluded from the scope of the bargaining unit pursuant to this section.[2] In practice, this exclusion has been recognized not by job title, but rather by the authority actually exercised by individual in question. An individual who exercises authority to impact the economic livelihood of another employee (*i.e.*, to hire, fire, discipline, *etc*.) is to be excluded from the scope of a bargaining unit.

A review of the many submissions you have received in regards to this section indicates that a key issue appears to be the misclassification of employees as supervisory or managerial. Addressing this issue does not require the elimination of the managerial exclusion. With respect, that approach is disproportionate and will cause unnecessary damage to a variety of business interests. Instead, the emphasis should be on education - to assist the workplace parties to better understand the type of individuals intended to be excluded from the scope of a bargaining unit pursuant to section 1(3) (b) of the *LRA.* To this end, we echo the recent submissions of the Workers' Action Centre[3] as evidence of the joint recognition of the continuing need for the exclusion of managerial employees from the coverage of the *LRA*.

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

We ask that you recommend maintaining the *status quo*.

As noted earlier, our members specialize in providing warehouse services that manufacturers and retailers can use as replacements to and/or extensions of their distribution operations, including the receipt, storage and distribution of raw materials, work-in-progress and finished goods. Our members also coordinate transportation, inventory control and invoicing of products. Often times, our members' services are provided "just-in-time." All of our services are generally non-core to the expertise of the manufacturers and retailers.

Commercial arrangements are, therefore, entered into to allow the manufacturers and retailers to assign these non-core functions to the members of IWLA. These are competitive commercial arrangements. They are not entered into to shield any organization from and/or to evade, *LRA* liability. Typically, the customer (*e.g.,* manufacturer, retailer, *etc*.) has little, if any, involvement in the day-to-day operations of our members' organizations.

Similarly, our members subcontract parts of their own operations and rely on the provision of temporary employees from temporary-help agencies to cover short and unexpected absences, and to cover fluctuating needs related to seasonality, individual projects and customer demands. The *LRA* and the *ESA* should not interfere with

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[2] See e.g. *The Corporation of the City of Thunder Bay v Canadian Union of Public Employees, Local 87*, [1981] OLRB Rep 1121; and *Recreation Assn. of the Public Service of Canada v CAW* (2015), 258 CLRBR (2d) 78 (OLRB).

[3] Workers' Action Centre & Parkdale Community Legal Services, "Building Decent Jobs from the Ground Up: Responding to the Changing Workplaces Review Special Advisors' Interim Report" (September 2016).

the clarity and certainty of the respective liabilities of the temporarily assigned employee, the temporary agency and the customer/client company.

The recent legislative amendments to the *ESA* to make clients liable for unpaid wages, overtime pay, public holiday pay and premium pay of temporary-agency employees have not, in our opinion, addressed the concerns your Interim Report describes that typically relate to the employees engaged via temporary-help agencies (*i.e.*, the growth of precarious work). Simply expanding the scope of liability and/or seeking deeper pockets has not addressed the issues facing this group of employees. At a minimum, we recommend that attention be paid to the overall harmonization of employment and labour regulation in regards to its application to the employees of temporary-help agencies.

Job security, competitive wages and benefits arise most often when governments allow the principles of supply-and-demand economics to flourish. Every employer in Ontario recognizes and has experienced the war for talent. An unparalleled dedication to client service is what sets our member companies apart from the competition and leads to their long-term sustainability and success. They cannot achieve these objectives without an engaged workforce; this is illustrated by the terms and conditions offered by the majority of our member companies. Please see the standard terms and conditions IWLA members have developed to assist with these objectives, attached as Appendix A. Additional regulation is not the answer; instead, allow supply-and-demand economics to bring success.

We understand that a proposed change in the well-established independent business relationship between client and subcontractor in Ontario (including subcontracting to temporary-help agencies) to equate it to that of a joint-employer or common employer is currently under consideration. This option would provide the OLRB with the power to declare two employers to be a joint or common employer "*in order for collective bargaining to be effective*" without a finding that the employers exert common direction and control over the businesses. Such a change would increase an employer's costs without making any real or substantive gains for employees.

A second option has also been proposed - a declaration that two companies are a joint or common employer when the commercial arrangements allow the client some degree of common control or direction over the other company's employees, even if the power is not actually exercised. This option would not assist employees. Governments should want all companies to focus on what they do best, and therefore, regulating and/or interfering in their best practices is not good policy and will not assist employers, employees or trade unions. We ask that you address the deficiencies in compliance with the *LRA* (*i.e.*, increase educational and/or enforcement efforts) as opposed to simply casting the liability net wider to seek out deeper or additional economic resources.

Either of the above-noted options would have a detrimental impact and penalize our members for pursuing best practices, for specializing, for innovating and for finding a way to be competitive and create sustainable jobs in Ontario. Either of these options would inevitably impact profitability and lead to decreased growth and business activity, higher prices and lower overall employment levels.

For customers of our members, there may also be tax implications to the options under consideration. Foreign customers of our members, most of which are American, have structured their business arrangements in accordance with an understanding of the existing legal definition of who the true employer is, and the tax laws of, and treaties between, their existing home-country and Canada. Changing the tax position of a foreign customer that subcontracts out its warehousing and logistics work to one of our member companies may motivate that customer to look at alternative logistics solutions provided outside of Ontario.

We notice a distinctly American policy theme in the options you list for consideration, in particular the options under consideration in this section. David Weil's writings, which you reference, and his "fissuring workplace" concepts, have an academic focus and lack a business analysis. As the Canadian chapter of an international organization, we question the applicability of U.S. policy to a solution tailored to doing business in Ontario.

A number of experts have questioned the applicability of David Weil's philosophical approach to business in the 21st century. His writings appear to ignore our global transition to a technology-based economy that creates and distributes products and services differently than it did in the past for *bona fide* competitive reasons. Changing business practices are inevitable and should be encouraged by governments that want to maintain a competitive position in the global economy.

Under David Weil's approach, all clients of our member companies would potentially be classified as joint employers with the IWLA member. This is dramatically different than the independent contractor standard historically used in the province of Ontario and would effectively eliminate the concept of independent contracting in Ontario.[4]

Our member companies are very familiar with the existing legislation, as it identifies who is the true employer in a common relationship. When engaging employees from temporary-help agencies, our members, for the most part, rely on the temporary-help agency's day-to-day control of it's (*i.e.*, the agency's) employees. On occasion, when the commercial agreement calls for our members to be responsible for the day-to-day control of the temporary-help agency's employees, the members understand that they are stepping into the shoes of the true employer for the purposes of the *LRA.* Our members believe the LRA provides them with clarity and certainty in this regard.

Recently, the Human Rights Tribunal of Ontario reaffirmed that the corporate entity that exercises direction and control over an employee has consistently been found to be the true employer of that employee.[5] Similarly, when two or more corporate entities have shared direction and control over an employee, they have consistently been found to be joint employers of the employee.[6]

For your consideration, we caution against blanket adoption of the joint employer policy gaining ground in the United States. The *Browning-Ferris Industries* ("BFI") decision of the U.S. National Labor Relations Board ("NLRB") which held BFI to be a joint employer with Leadpoint, a staffing services company, appears to have kick started a change in policy direction in the U.S. However, clearer understandings of the facts of this case are needed before applying it in Ontario. More specifically, we believe a review of the evidence illustrates BFI managerial representatives' exercised control over workplace wage ceilings, discipline, scheduling, work productivity and supervision of Leadpoint employees. Therefore, had this case been decided in Ontario, it is highly likely the OLRB would have made the same joint/common employer finding, albeit under the analysis currently available under the applicable sections of the *LRA*.[7]

Just as clear, concise and understandable laws are fundamental to good governance;[8] commercial arrangements are also intended to be clear, concise and understandable with respect to the respective rights and responsibilities of the customer and subcontractor (*e.g.*, warehouse and/or logistics provider). In the majority of commercial agreements, the client leaves the right and responsibility to direct and control our member company's employees to the member company.

On the rare occasion when a customer participates in the day-to-day control of a member company's employees, our current *LRA* guides the OLRB to a declaration of common employer subject to the circumstances.

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[4] *Ibid* at 4.

[5] *Sprague v MBEC Communications Inc.*, 2016 HRTO 1284.

[6] *Teamsters Local Union No 419 v Metro Waste Paper Recovery Inc. and The K.A.S. Group of Companies Inc.*, [2009] OLRB Rep 911.

[7] *Ibid*.

[8] Human Resources Professional Association, "A New Deal for Ontario's Changing Workplaces: A Review and Recommendations by the HRPA on the Employment Standards Act and Labour Relations Act" at 7.

The claim that any beneficiary of labour, particularly in the case of a client receiving warehousing and logistics services, bears responsibility for employment and labour-related liabilities will usurp the underlying rationale for warehousing and logistics business providers and for business specialization in general. The essence of these arrangements was always to provide the client - with limited, or different resources and expertise - access to non-core resources and expertise, know-how and logistics systems often necessary to be globally competitive in the 21st century.

The claim that collective bargaining cannot occur with a subcontractor (*i.e.*, it must occur with the customer of the subcontractor), once again ignores the reality and business efficacy of warehousing and logistics providers. In our experience, whether small or large, single-site or multi-site, our member companies have been able to negotiate and reach collective agreements with a variety of trade unions. As a number of our member companies have experienced, the current *LRA* provides a sound legislative structure that motivates workplace parties to reach a collective agreement. We also understand that the occurrence of strikes and lockouts has been in decline over the course of the last decade in Ontario.[9]

In addition, in Ontario, the majority of union certifications result in a first collective agreement. Conversely, in the United States, unions are far less likely to reach a first collective agreement. We believe this is attributable to weaker legislative protections under the *National Labor Relations Act* ("*NLRA*") in the United States. Again, this Ontario-based experience does not support the theory espoused in the Interim Report that there is a need to expand the joint and/or common employer test in order for collective bargaining to be effective.

Deeming the customer and subcontractor as "joint employers" will serve to stifle the growth and prosperity of our member companies, as customers will inevitably look outside the borders of Ontario for alternative providers.

We ask that you pause and give serious consideration to the risks inherent in expanding the scope of the current common employer test. Otherwise, we sincerely worry about an about-face change in direction in investment interest in the fragile Ontario economy. We join the Keep Ontario Working ("KOW") submission in asking that you recommend a weighing of the evidence of all possible effects on business costs and competitiveness, particularly given the increased competitive pressures, north-south re-orientation and increased capital mobility being experienced in Ontario. Ontario does not need additional regulation. Over 300,000 regulations exist in Ontario today, double the number existing in many other Canadian provinces, let alone its bordering American states. We need smart regulation - regulation that can foster equity with efficiency and minimal interference.[10]

4.3 Access to Collective Bargaining and Maintenance of Collective Bargaining

4.3.1.1 & 4.3.1.2 Card-based Certification & Electronic Membership Evidence

We ask you to recommend the maintenance of the *status quo* - the maintenance of the secret ballot vote process.

While not noted in the Interim Report, the vast majority of employees in Canada and the United States enjoy the democratic right to a secret ballot process when deciding whether to be represented by a union. A secret ballot process provides employees time to consider their options and relevant information about the pros and cons of unionization. A card-based process removes the opportunity to make a fully informed choice. For this reason, the elimination of secret ballot votes is widely rejected as undemocratic across most of the United States and Canada.

[9] Timothy Bartkiw, "Collective Bargaining, Strikes and Lockouts Under the Labour Relations Act, 1995" (Prepared for the Ontario Ministry of Labour, to support the Changing Workplaces Review of 2015, 30 November 2015) at 12.

[10] Keep Ontario Working, "Submissions to Changing Workplaces Review" (October 2016).

We have had the opportunity to review much of the CWR research commissioned in this area[11] and note the suggestion that the secret ballot vote process is associated with fewer applications for certification and a lower rate of union success. What the Interim Report does not recognize or acknowledge is that the reason for this phenomenon is that when employees are informed about the pros and cons of unionization and allowed to vote freely in a secret ballot, they tend to choose "no" to unionization. In other words, the declining rate of unionization is not the result of a poor voting protocol, but rather of educated employees.

We also know that Ontario's manufacturing sector has been in decline for several years,[12] due primarily to the availability of less-expensive means of production outside of Canada. Manufacturing has historically had a higher union density than any other private-sector industry. Respectfully, we submit that both of these factors (informed employees and the decline of manufacturing in Ontario) - not the voting process - have contributed to the decline in private-sector union density.

The research on which you have relied also identifies a decline in the rate of successful unionization when the time frame is lengthened between application and vote. Yet, we know the United States recently changed its secret ballot vote process from an average of 38 to 42 days between application and secret ballot vote, to a much shorter 21 to 23 days, with no statistical difference in outcomes.[13] This is directly contrary to Ms. Slinn's research.[14] We submit that this provides additional evidence to prove that swings in union density are caused by many other factors than simply the process itself.

Eliminating the democratic vote process would also be a step backwards. It is inconsistent with the process in almost every jurisdiction in Canada and the United States, and removes from employees the opportunity to have an "informed" say in their individual and collective futures. It will also place Ontario employers at a competitive disadvantage. For all of these reasons, eliminating the vote ought not to remain a realistic and appropriate option.

We support the recommendation that permits some form of electronic membership evidence.

Some of the submissions have asked for the option to allow membership cards to be signed electronically. At present, only physical signing is allowed. At one point in the history of the *LRA*, there were a number of processes to validate an employee signature on a union membership card, and an employer had the ability to challenge the authenticity of membership evidence. However, those processes no longer exist in the *LRA*.

Our support for this recommendation is conditional on there being an appropriate and meaningful way by which an employer and/or the OLRB can satisfy themselves that the membership evidence is authentic.

4.3.1.3 Access to Employee Lists

We ask that you recommend maintenance of the *status quo*.

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[11] Sara Slinn, "Collective Bargaining" (Prepared for the Ontario Ministry of Labour, to support the Changing Workplaces Review of 2015, 30 November 2015) [*Slinn*].

[12] Statistics Canada, "Table 282-0088: Labour force survey estimates (LFS), employment by North American Industry Classification System (NAICS), seasonally adjusted and unadjusted", online: <http://www5.statcan.gc.ca/cansim/a26?lang=eng&retrLang=eng&id=2820088&pattern=&csid=>.

[13] National Labor Relations Board, "Annual Review of Revised R-Case Rules" (20 April 2016), online: <https://www.nlrb.gov/news-outreach/news-story/annual-review-revised-r-case-rules>; and Nelson Cary, "The 'Ambush' Election Rule, One Year Later: An Interview" (11 May 2016), Vorys on Labor, online: <http://www.vorysonlabor.com/2016/05/articles/union-organizing/the-ambush-election-rule-one-year-later-an-interview/>.

[14] *Slinn*, *supra* note 12 at 12-13.

At present, a union seeking to represent employees at a workplace is not entitled to receive a list of employees until after the union has filed an application for certification, as part of the employer's response. The filing of the application assumes that the union has evidence that 40% or more of the individuals employed in the proposed bargaining unit. At this time, such lists are not required to contain contact information for employees.

Our members have two significant issues with the proposal to provide unions with an employee list and contact information when they are able to demonstrate that they have achieved a threshold lower than the 40% now required to file an application and be entitled to a secret ballot vote. First, respect for the privacy rights of their employees is an issue for our members.

Insofar as privacy is concerned, it is difficult to understand how such a considerable intrusion into the rights of employees could be rationalized based solely on the signing of union cards by a minority of employees (*e.g.,* 20%). Determining whether a union has a new minimal level of support in order to get access to this additional information about employees will only add to the amount of OLRB litigation without any obvious commensurate improvements for employees or trade unions. Adding another layer of OLRB litigation will only delay and increase the costs associated with the entire certification process.

4.3.1.4 Off-Site, Telephone and Internet Voting

We support a recommendation that telephone and/or internet voting be offered as an alternative to on-site voting, but not replace it.

At present, when the OLRB conducts a certification vote, both the employer and the union are entitled to have a representative attend to act as a scrutineer. The *LRA* does not dictate how or where a representation vote is to be conducted, although traditionally the OLRB has directed that the vote occur in the workplace. The underlying policy rationale, at least in part, is to ensure that employees have a reasonable opportunity to cast a ballot - which we suggest is paramount in a democratic society.

Our member companies believe the certification secret ballot process should continue to occur in the workplace. There is no demonstrable evidence in Ontario today to suggest that employers are unlawfully influencing employee choice. The rarity of unfair labour practice findings and/or remedial certification orders throughout the last decade supports our point.

Ensuring the greatest number of employees have an opportunity to vote freely and voluntarily (without undue influence from the employer, trade union representative and fellow employees) and the authenticity of the outcome of a vote should be the Government's primary objective. Any transition to telephone or internet voting must keep this objective at the forefront.

4.3.1.5 Remedial Certification

We ask that you recommend maintenance of the *status quo*.

At present, the OLRB may order the certification of a union without a vote if the employer has contravened the *LRA* in a way that makes it unlikely that the true wishes of the employees can be ascertained through another vote (referred to as "remedial certification"). The OLRB may also take into consideration whether the union has adequate membership support for the purpose of collective bargaining.

In our experience, the OLRB's power to remedially certify an employer is more than sufficient to deter unlawful conduct. The evidence speaks for itself - there have been relatively few remedial certification orders by the OLRB throughout the last decade. Moreover, the OLRB Vice-Chairs, the individuals empowered with the authority to exercise this remedy, typically have years of experience representing either unions or employers. Their experience affords the best opportunity to identify unlawful conduct, appropriate remedies and overall balance in the workplace.

As we understand it, you are also considering recommending the elimination of the OLRB's discretion to consider whether the union has adequate membership support for the purpose of collective bargaining. The assessment of adequate membership support has been present in the *LRA* for decades, in not only Ontario but other provinces as well. For example, the Newfoundland *Labour Relations Act* requires that its labour relations board be satisfied that at least 70% of the employees in the proposed unit have voted, and that a majority of those employees voted for the union.[15]

4.3.2 & 4.4.3 First Contract Arbitration and Renewal Agreement Arbitration

We ask that you not recommend either automatic or discretionary access to first contract arbitration or renewal agreement arbitration.

The current provision (introduced in 1986) for first contract arbitration requires the applicant (typically a union) to demonstrate that collective bargaining has been unsuccessful due to:

(a) the refusal of the employer to recognize the bargaining authority of the union;

(b) the uncompromising nature of any bargaining position adopted by the respondent without reasonable justification;

(c) the failure of the respondent to make reasonable or expeditious efforts to conclude a collective agreement; or

(d) any other reason the OLRB considers relevant.

There is no current provision in the *LRA* for renewal (or subsequent) agreement arbitration.

Options two and three of the Interim Report recommend automatic access to arbitration after either a defined time period or a remedial certification. Surprisingly, section 4.4.3 also contains an option to provide for access to interest arbitration during mature rounds of collective bargaining. Respectfully, automatic or discretionary access to interest arbitration would fundamentally disturb the current, laudable balance established by the *LRA.*

While we understand the desire for there to be an appropriate balance of power between a union and employer for the purposes of negotiations, the remedial relief section of the *LRA*, combined with the duty to bargain in good faith (to make every reasonable effort to reach a collective agreement), the statutory freeze sections (which arise upon the receipt of both the application for certification and the notice of desire to bargain), and ancillary strike/lockout provisions of the *LRA* already strike an appropriate balance of power.

In our experience, the current structure of collective bargaining motivates the workplace parties to build trust relationships and consider workable solutions and compromises to achieve long-term, sustainable relationships. Any change to the remedial relief interest arbitration section of the *LRA* must be measured against its potential negative impact on meaningful compromise and agreement. Ontario's experience with interest arbitration for firefighters and police is evidence of the kind of concerns and potential detrimental outcomes that could be visited upon private-sector employers in Ontario if the above-noted options are recommended. Negotiations between governments and the police and firefighter unions have come to rely on the narcotic effect of interest arbitration; fewer agreements are freely negotiated and, to compound matters, the interest arbitration proceedings themselves (which take time) are often establishing the provisions of a collective agreement that will have already expired by the time the arbitration award is issued.

[15] *Labour Relations Act*, RSNL 1990, c L-1, s 38 (2)(c).

4.3.4 Consolidation of Bargaining Units

We ask that you recommend the maintenance of the *status quo*.

At present, the most common bargaining unit definition ordered by the OLRB is for a single workplace of a specific employer at a particular geographic location. Once the bargaining unit is defined, the OLRB has no general power to reconsider or revise the description of the unit.

In our experience, where labour boards are given the power to alter the scope of existing bargaining units, employee choice can be compromised. Smaller groups of employees that initially had a say in whether or not to be unionized lose their voice, as they are swallowed by larger employee bargaining units. For this reason, while we are opposed to the additional powers set out in Options 2 through 5, if you are determined to recommend giving the OLRB the power to amend the description of a bargaining unit, we ask that you recommend that prerequisite protocols be put in place to ensure that smaller employer groups have a discrete voice.

4.4 The Bargaining Process

4.4.1 Replacement Workers

We ask that you recommend the maintenance of the *status quo*.

The Interim Report defines a "replacement worker" as a "worker hired to fulfill some or all of the functions of a worker who is either engaged in a legal strike or who has been locked out by the employer." Today, in every Canadian jurisdiction (save British Columbia and Quebec), during a lawful strike or lockout, an employer is permitted to rely upon a replacement worker to continue to meet customer needs.

The ability of an employer to rely on a replacement worker encourages ongoing compromise toward a collective agreement and, ultimately, labour relations stability. Without the ability to hire replacement workers, many employers could be effectively strangled by their unions, undercutting any necessity for the union to compromise or reach meaningful "agreement."

The fact that strikes and/or lockouts occur in fewer than 5% of Ontario workplaces operating under a collective agreement[16] is strong evidence that the current practice of allowing replacement workers has had a positive impact on the stability of labour relations. Altering this balance ought, therefore, to be very carefully assessed.

4.4.2.1 Right of Striking Employees to Return to Work

We support the elimination of the six-month time reference in the current *LRA* section, but ask that the provision otherwise remain the same.

The current provisions of the *LRA* provide an employee with a protected right to return to work after a lawful strike or lockout, provided the employee exercises this right within six (6) months of the commencement of the lawful strike or lockout. While in theory, an employee in Ontario is at risk of not being reinstated if he/she has not applied for reinstatement within the six (6) month window, in practice, more often than not, an employer will reinstate an employee who wants to return to work, even outside of the six (6) month window.

[16] Progressive Contractors Association of Canada, "Changing Workplaces Review Submission" (29 September 2016) at 7.

4.4.2.2 & 4.5.2 & 5.3.8.3 Just Cause

We ask that you recommend the maintenance of the *status quo* and not the creation of a "just cause" standard into either the *LRA* or the *ESA,* nor access to an adjudicative process.

There are often contentious issues around the reinstatement of an employee whom an employer wishes to terminate for strike-related misconduct. At present, the *LRA* does not provide "just cause" protection to such an employee, nor does it provide for access to a grievance or arbitration process.

Currently, the *LRA* contains protection for an employee against being terminated, where the reason for termination has an element of *anti-union animus*. However, the *LRA* does not provide "just cause" protection during any period in which no collective agreement is in force (three Canadian provinces do provide such protection). This includes the period between the issuance of the certificate (which gives a union the right to negotiate with the employer) and the successful negotiation of the first collective agreement, and during a lawful strike or lockout.

The *ESA* does not require an employer to have "just cause" to terminate an employee's employment; rather, it requires only that an employer provide notice of termination or pay in *lieu* and, if the employee is eligible, severance pay.

We respectfully submit the current prohibitions and available remedial provisions of the *LRA* (including sections 70, 72, 76, 86 and 96) and the OLRB's powers generally are more than sufficient to adjudicate any dispute(s) arising out of a matter within the scope of the *LRA (e.g.,* a dispute regarding an unlawful strike or lockout, a dispute regarding the period after certification but before the effective date of the first collective agreement, *etc*.).

Finally, the experience in the three jurisdictions referenced in the Interim Report that have a form of "just cause" reinstatement remedy is that few reinstatements have been ordered, and the cost of adjudicating these matters has fallen to employers. In Ontario, where an employer is responsible for not only notice but also severance pay (where applicable), the additional burden of litigation in a "just cause" dismissal is unnecessary and for little purpose.

5.2 Scope and Coverage of the *ESA*

When considering any change to the *ESA*, the IWLA asks that you keep top of mind the following three considerations:

1. The already high cost of doing business in Ontario versus other North American jurisdictions.

2. The impact of inconsistent regulation on Ontario employers that operate in more than one North American and/or Canadian jurisdiction.

3. The importance of regulatory harmonization among Ontario's various pieces of workplace legislation.

5.2.2 Who is the Employer and Scope of Liability

Please refer to our submissions in Section 4.2.2.

5.2.3 Exemptions, Special Rules and General Process

We support your conclusion that all exemptions should be reviewed at some point in the near future and that this task is too big to be undertaken within the context of the Changing Workplaces Review. We also agree that a common analytical framework should be established to evaluate existing and possible exemptions (possibly the Special Industry Rules process applied in Ontario since 2005).

However, we do not agree that a recommendation should be made now to eliminate, without further review, the classifications grouped into Category I of the Interim Report. Specifically:

(i) information technology professionals

(ii) pharmacists

(iii) managers and supervisors

(iv) residential care workers

(v) residential building superintendents, janitors and caretakers

(vi) special minimum wage rates for:

(A) students under 18, and

(B) liquor servers

(vii) student exemption from the "three-hour rule"

Managers and Supervisors

We urge the maintenance of the *status quo*.

The current exemption of managers and supervisors from the application of overtime pay and rules that govern maximum daily and weekly hours, rest periods and time off between shifts is a universal exemption applicable to all Ontario employers. Many Canadian provinces exempt managers from overtime pay and/or rest or eating periods.

The elimination of this exemption without a consultation process to hear from workers' representatives, managers, supervisors and employers would seem counterintuitive to the review process your Interim Report advocates. A review of the submissions makes it clear that you have not heard from the persons most affected by the potential elimination of this exemption. Nor have we seen any economic estimates of the cost of eliminating this exemption.

5.3 Standards

5.3.1 Hours of Work and Overtime Pay Employees

We ask you maintain the *status quo*, save and except the following recommendations:

1. The elimination of the requirement for employee written consent to:

   (a) the averaging of overtime to a maximum of four weeks; and,

   (b) working longer than the daily and weekly maximums of 12 and 60 hours (but maintaining the daily rest period requirement of 11 hours).

2. That an employee's written agreement to a greater daily or weekly maximum, or a period of overtime averaging greater than 4 weeks, be accomplished via electronic means.

Our members need simplification in the regulatory environment in which they operate. Ontario is currently recognized as a high-cost environment. We believe a more competitive Ontario will mean more jobs and better jobs. Raising the regulatory minimum floors and/or creating more regulatory complexity is not the answer.

5.3.2 Scheduling

We recommend maintenance of the *status quo*.

The Interim Report suggests that the lack of legislated, consistent scheduling of an employee's hours of work makes it very difficult for an employee to plan child care, undertake further training and education, maintain or search for a second job, make commuting arrangements and plan other important activities. The Interim Report cites examples of recent American legislation focused on addressing this issue.

To this, we have two responses:

1. When drawing comparisons with U.S. legislation, *ESA* statutory entitlements should be considered as a whole, not on a subject-by-subject basis. Ontario employees are already better protected by workplace legislation than their American counterparts (*e.g.,* number, types and length of leaves - *e.g.*, pregnancy leave in the U.S. is roughly 6-8 weeks vs. 52 weeks in Ontario). This should not be forgotten or dismissed.

2. Legislated, consistent scheduling of work hours is not possible in an industry such as ours, in which services are provided "just-in-time" with fluctuating volumes. This is not to say that our members do not try to provide as much advance notice to employees as possible - they do. But it does mean that it is neither necessary nor responsible to legislate advance notice of working hours and penalize employers for trying to remain flexible and nimble in an effort to respond to customer demands and remain competitive.

Each of the proposed options under consideration in this section comes with increased cost consequences to Ontario employers. Our members are concerned about not only compensating their employees fairly, but also their ability to compete and succeed. Requiring the provision of employee hours that are not aligned with the customer needs (which fluctuate continually in the global economy) strikes at the heart of supply-and-demand economics.

5.3.3.1 Public Holidays

We recommend the maintenance of the *status quo*.

Ontario recently increased the number of public holidays to nine (9) days. This is at the upper end of the range across the country. For employers with employees who work irregular hours, the calculations associated with public holiday pay are complex, create uncertainty with respect to common understandings of employee entitlement and remain an unnecessary burden.

As noted in the Interim Report, there have been various calculations relied on in the past, from averaging over a 13-week period to averaging over a 20-week period. Aligned with the objective of clarity and certainty, we could potentially support the adoption of a percentage if there was clarity and offsets for those employees who did not work complete years (i.e. full-time, but partial years).

5.3.3.2 Paid Vacation

We recommend the maintenance of the *status quo*.

The IWLA asks that some restraint be considered in a province where employers already experience increasing minimum hourly wage rates, a larger number of public holidays, expected enhancements to the Canada Pension

Plan, high electricity rates, and a cap and trade system. Any recommendation that increase the legislative entitlement of employees to additional vacation time and pay will result in a direct increase in employer costs without commensurate economic offsets.

Each additional week of vacation results in a 2% increase in employer costs. However, this does not consider the overtime costs associated with replacement labour and the costs of potentially increasing the size of our members' workforce, and assumes there are no skill shortages. Each of these factors, along with employee absenteeism, hampers our members' ability to compete globally and service customers in a cost-competitive manner.

We respectfully ask that you take into consideration the total amount of time (unpaid and paid) Ontario employees must already provide to employees, including vacation, public holidays, personal emergency leave days and the other 10 leaves legislated in the *ESA* (as applicable).

5.3.5 Paid Sick Days

We recommend the maintenance of the *status quo*.

The IWLA recognizes there is a balance to be struck between the needs of employees and employers. A number of our members are attracted to Ontario for its universal provision of education and healthcare. Our members treat employees fairly, with competitive compensation packages. Most importantly, our members seek to provide good jobs that will be sustainable for years to come.

The IWLA asks that this Changing Workplace Review not lose sight of supporting business while better protecting employees. We ask that you recommend simplification and/or consolidation of the current leaves legislated under the *ESA*, not the addition of other leaves, let alone additional paid days of leave. The 10 unpaid personal emergency leave ("PEL") days have been in the *ESA* for less than a decade and provide superior benefits than those provided by many other Canadian jurisdictions and American states bordering Ontario. These 10 PELs are complemented by the *Employment Insurance Act* illness benefits that provide a further safety net for employees.

As we make these submissions, we await your recommendations with respect to personal emergency leave days, and we hope recommendation(s) on how to simplify their integration with other leaves. We hope you will not only maintain the greater right or benefit section of the *ESA*, but also bring clarity to the concept of comparing bundled employment benefits. Our members need clarity and certainty in this area.

5.3.6 Other Leaves of Absence

We recommend that the *ESA* leave provisions be reviewed in an effort to consolidate some of the leaves.

Our members, like many other employers offering submissions, find the web of leaves confusing and burdensome. We ask that, following your recommendations regarding PELs, and once we have had an opportunity to review and consider those recommendations, we be given another opportunity to make submissions about leaves generally.

5.3.7 Part-time and Temporary Work - Wages

We recommend the maintenance of the *status quo*.

Our members rely on full-time, part-time, temporary/casual employees, subcontractors and temporary-help-agency employees. In just-in-time logistics operations, the need for a variety of employee classifications fluctuates from one customer to the next, from one season to the next, and from one project to the next. Logistics businesses carry considerable labour costs as a percentage of overall cost, a distinct from many other businesses with much lower labour cost percentages.

Our members employ students entering the job market for the first time, parents who have returned to the workforce and older workers who have returned to the workforce and/or have no interest in full-time employment. We expect there is also a cohort of employees who would, in fact, work more hours if they were available. However, in reality, we believe there is a significant portion of the part-time, temporary/casual employees who want only to work part-time for a variety of reasons personal to their own individual circumstances (*e.g.,* study, family obligations, simple preference, health issues, *etc.*). For example, many employees ask for reduced hours shortly after being hired or following the completion of their probationary period. We do not think this is a coincidence, but rather a reflection of their personal choice.

Legislating a requirement that part-time, temporary and casual employees be paid the same rate of pay unless qualifications, skills, service, seniority or experience justify the difference may seem like a solution, but it is not.

Will businesses work within their cost structures and merely reduce the number of people they employ? Will a full-time employee's incremental service hours quickly justify a different hourly rate of pay? Will these changes, if recommended, lead to increased employer costs with no commensurate economic benefit? Or should this be another area that is better left to supply and demand, where employers continue to establish compensation packages commensurate with attracting the desired talent?

5.3.8. Termination, Severance and Just Cause

5.3.8.1 Termination of Employment

We recommend the maintenance of the *status quo*.

As you are aware, the current qualifying period and cap on entitlements in Ontario already results in greater cost to Ontario employers than to employers in any other Canadian or American jurisdiction.

In other sections of the Interim Report, you observe that there is a significant lack of compliance with the *ESA.* Anecdotally, we have been told that the majority of the complaints filed with the Ministry of Labour with respect to *ESA* compliance relate to termination pay and the employer's failure to make such payments in a timely manner. We ask that you consider further educational initiatives and incentives prior to expanding the current termination-pay provisions.

5.3.8.2 Severance Pay

We recommend the elimination of severance pay. As an alternative, we recommend a reduction in severance pay from one week per year of service to two days per year of service.

Our member companies compete with employers located in other provinces of Canada and the U.S. As you are aware, severance pay is not required in any other Canadian jurisdiction, or in the U.S. If the objective is to support Ontario business while protecting workers, we ask that you consider the elimination of severance pay, or at a minimum, harmonization with the severance-pay requirements under the *Canada Labour Code* ("*CLC*") - two days per year of service.

5.3.8.3 Just Cause

We ask that you recommend maintenance of the *status quo*.

Historically, in a non-union workplace where employment is terminated without cause, the employee is entitled to notice of termination (working, pay in *lieu* or a combination of both). Reinstatement is not a current option.

"Just cause" as it exists federally, in Quebec and in Nova Scotia is supposed to be remedied via a "make whole" order that includes the ordered reinstatement of the employee. The "just cause" reinstatement remedy has not

resulted in many actual reinstatements. Instead, the costs associated with the employee terminations have simply increased due to the risks of reinstatement. Arbitrators in these jurisdictions have recently referenced common law reasonable-notice amounts awarded in other jurisdictions to reach resolutions in unjust dismissal cases.

This would be yet another employer burden in the one province in Canada that also provides employees with severance pay in addition to termination pay or pay in *lieu* thereof.

5.3.9 Temporary-Help Agencies

We ask that you amend the *ESA* so that *prima facie* the temporary-help agency is the employer of assignment employees.

We also ask that you recommend the harmonization of all other workplace-related legislation to recognize the temporary-help agency as the employer of assignment employees.

There are several reasons for our request:

1. Our members rely upon temporary-help agencies to achieve a number of important objectives (not to avoid employment liability), including:

   (a) addressing unexpected workforce requirements;

   (b) staffing for short-term assignments;

   (c) maintaining flexibility to meet fluctuating needs caused by just-in-time service delivery requirements;

   (d) having quick access to candidates; and,

   (e) recruiting and screening for a variety of skills.

2. Many of the options outlined in the Interim Report will increase the costs associated with the use of temporary-help agencies, making our members less competitive than our counterparts in neighbouring American states, such as Minnesota, Wisconsin, Michigan and Ohio.

3. A temporary position is often an employee's first exposure to one of our member companies, very often leading to a permanent position. In fact, the majority of recent permanent hires among our members started as temporary employees. If the use of temporary workers is made more expensive and difficult for Ontario employers, this will negatively impact those temporary workers looking to a transition into full-time employment.

4. While the Interim Report suggests a significant increase in the prevalence of temporary workers, research has shown that the most significant upward trend occurred in the 1980s, slowed into the 1990s, and since then has fluctuated with Canadian economic cycles.[17] In other words, there is no "crisis" regarding temporary workers in Ontario. To the contrary, temporary workers are a natural and necessary part of the business cycle.

5. It should not be overlooked that temporary-help agencies have themselves become large, global enterprises, serving organizations around the world. In North America alone, two of the largest

[17] The Association of Canadian Search, Employment & Staffing Services, "The Changing Workplaces Review" (September 2015) at 5.

temporary-help agencies place more than a quarter of a million employees each week. These agencies are large-scale employers in their own right and should be given clarity and certainty with respect to their rights and obligations as employers.

5.4.1 Greater Right or Benefit

We ask that you recommend Option 2 from your Interim Report

Many of our members have employment policies that provide greater entitlements than required by the *ESA*. Some have collective agreements with provisions that provide greater entitlements than the *ESA*. We ask that employers be recognized for providing these greater entitlements, as opposed to penalized by being required to recognize both entitlements within company policies and/or collective agreements, and certain entitlements under the *ESA.*

We hope that you will recommend not only maintaining the greater right or benefit section of the *ESA*, but also providing clarity to the concept of comparing bundles of employments benefits. Our members need clarity and certainty in this area, not increased costs to do business in Ontario.

5.4.3 Pay Periods

We ask that you recommend the maintenance of the *status quo*.

Legislating the harmonization of pay periods will only serve to increase employer administration costs without commensurate economic gains.

5.5 Enforcement and Administration

Education

The IWLA urges you recommend simple and plainly drafted language when updating the ESA. Recently, the MOL made important and successful efforts to raise the awareness and understanding of employees and employers of their health and safety obligations. We understand that Ontario has also shown improvement in workplace injury reduction largely attributed to increased education.

We hope that you will recommend initiatives focused on increasing employee and employer awareness, education and compliance with the ESA as opposed to simply increasing penalties and/or prosecutions. We understand that there is, and likely always will be, a resources issue with respect to the MOL's ability to enforce compliance. Efforts to educate and increase awareness, thereafter followed by a balanced and equitable enforcement regime has a better chance of creating and/or improving a culture of compliance.

Conclusion

Our members believe education, raising awareness and enforcement as a better balance to protecting employees while supporting business. We look forward to the opportunity to meet with the Special Advisors on these issues central to the ongoing success of IWLA members in Ontario.

Sincerely,

John Levi
Executive Director, Canadian Council of the IWLA