Kendal McKinney Law Firm
Suite #107, 552 Pitt St. West, Windsor, Ontario, N9A 5M2
Telephone 519-254-5182, Facsimile 519-254-5673
e-mail kendal.mckinney.law@gmail.com

14/October/2016

Via Facsimile: 416-326-7650

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

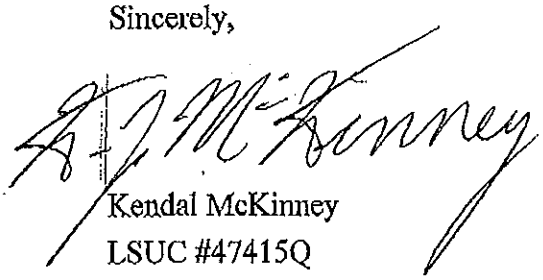
Dear Sirs and Mesdames:

The following are my submissions on the options presented in your review of the Labour Relations Act.

I regret that time has not allowed me to make a similar submission on the Employment Standards Act. I will make a separate submission on the ESA in the hopes that it will be accepted a trifle late.

Thank you for your work in these matters.

Sincerely,



Kendal McKinney
LSUC #47415Q

4.2.1 Coverage and Exclusions

With Respect to the current exclusions from the LRA:

Recommended: Option 2.

Kendal McKinney Law Firm
Suite #107, 552 Pitt St. West, Windsor, Ontario, N9A 5M2
Telephone 519-254-5182, Facsimile 519-254-5673
e-mail kendal.mckinney.law@gmail.com

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

a) permitting access to collective bargaining by employees who are members of the architectural, dental, land surveying, legal or medical profession entitled to practise in Ontario and employed in a professional capacity; and

b) permitting access to collective bargaining by domestic workers employed in a private home.

4.2.1.1 Agricultural and Horticultural Employees

With Respect to the current exclusion of Agricultural and Horticultural workers from the LRA:

Recommended: Option 2.

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

4.2.2 Related and Joint Employers

With respect to THA's, franchises, and other forms of joint employment, I regard option #2 as the bare workable minimum acceptable reform:

2. Add a separate general provision, in addition to section 1(4), providing that the OLRB may declare two or more entities to be "joint employers" and specify the criteria that should be applied (e.g., where there are associated or related activities between two businesses and where a declaration is required in order for collective bargaining to be effective, without imposing a requirement that there be common control and direction between the businesses).

However, I believe that option #4 represents a superior reform, with the exception of sub-

Kendal McKinney Law Firm
Suite #107, 552 Pitt St. West, Windsor, Ontario, N9A 5M2
Telephone 519-254-5182, Facsimile 519-254-5673
e-mail kendal.mckinney.law@gmail.com

option 4.(b)(ii), which is highly problematical.

With Respect to the current exclusions from the LRA:

Recommended: Option 4, but excluding sub-option 4 (b)(ii).

4. Instead of a general joint employer provision, enact specific joint employer provisions such as the following:

a) regarding THAs and their client businesses:

i. create a rebuttable presumption that an entity directly benefitting from a worker's labour (the client business) is the employer of that worker for the purposes of the LRA; and

ii. declare that the client business and the THA are joint employers;

b) regarding franchises, create a model for certification that applies specifically to franchisors and franchisees (see Option 3 in section 4.6.1, Broader-based Bargaining Structures, below), and introduce a new joint employer provision whereby:

i. the franchisor and franchisee could be declared joint employers for all those working in the franchisee's operations;

There is no principled reason why a general provision of this nature should include or exclude anyone, especially on a basis as arbitrary as industry, or sector, or under such an amorphous concept as a "vulnerable worker". As noted above, the opportunity for reform should be exercised in eliminating arbitrary and ad hoc exclusions (or inclusions) and treating all workers equally, to the fullest extent possible. The right to freedom of association is not meaningful if the thicket of legalistic divisions and exceptions is impenetrable.

Therefore sub-option 4.(b)(ii) is <u>specifically recommended **against**</u>.

ii. the franchisor and franchisee could be declared joint employers for all those working in the franchisee's operations only in certain industries or sectors where there are large

numbers of vulnerable workers in precarious jobs.

4.3.1 The Certification Process

With Respect to certification, while employers' concerns over democracy in the workplace are as touching as they are surprising, formalistic voting is hardly the be-all-and-end-all of democracy. The destruction of the card system was nothing less than an unprincipled and deliberate attack on unionism motivated by ideology and crass political partisanship. The measures adopted intended to interfere with practical and reprisal free freedom of association, and did so. These repressive measures should be repealed in their entirety, not just for the construction industry.

Recommended: Option 3.

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

In addition, pilot projects should be undertaken with respect to option #4 (Permiting some form of electronic membership evidence.) While I have little knowledge of such matters, electronic voting and other forms of participation via modern telecommunications probably is the way of the future. Working out how to do so while maintaining integrity in the process is probably going to be an ongoing process that requires the acquisition of skills and skilled workers to administer. Get started.

See also **4.3.1.4 Off-site, Telephone and Internet Voting. Option 2,** which is recommended for the same reasons. I don't have to like it to acknowledge that this is what people are going to want to do. Let's figure out how to do it right.

4.3.1.3 Access to Employee Lists

I am surprised that this continues to be a point of dispute. I will not bother to cite the precedents. Of course certification requires the release of the information. *Res judicata.*

4.3.1.5 Remedial Certification

I am once again touched by the concern of employers that the true wishes of the workers

Kendal McKinney Law Firm
Suite #107, 562 Pitt St. West, Windsor, Ontario, N9A 5M2
Telephone 519-254-5182, Facsimile 519-254-5673
e-mail kendal.mckinney.law@gmail.com

be made known after they have had a number of "friendly chats" with the workers about unionization, by having second votes or evidence of "adequate" support. I'll skip the rest of my sarcasm.

Recommended: Option 2 and Option 3.

2. Make remedial certification more likely to be invoked by removing the requirement to consider whether a second vote is likely to reflect the true wishes of the employees.

3. Remove the requirement to consider whether the union has adequate membership support for bargaining.

4.3.2 First Contract Arbitration

Recommended: Option 2 and Option 5.

2. Provide for "automatic" access to first contract arbitration upon the application of a party to the OLRB, after a defined time period (e.g., thirty days), in which the parties have been in a legal strike or lock-out position, has elapsed.

5. Not permit decertification or displacement applications while an application for first contract arbitration is pending.

4.3.3 Successor Rights

Recommend Option #2 OR a combination of Option #2 and Option #3.

2. Expand coverage of the successor rights provision, similar to the law in place between 1993 and 1995, to apply, for example, to:
   a) building services (e.g., security, cleaning and food services);
   b) home care (e.g., housekeeping, personal support services); and
   c) other services, possibly by a regulation-making authority.

3. Impose other requirements or prohibitions on the successor employer in a contract for service situation (e.g., provisions to maintain employment,

Kendal McKinney Law Firm
Suite #107, 552 Pitt St. West, Windsor, Ontario, N9A 5M2
Telephone 519-254-5182, Facsimile 519-254-5673
e-mail kendal.mckinney.law@gmail.com

employee remuneration, benefits and/or other terms of employment; a requirement that the union representing the employees under the former employer be provided with automatic access to the new employee list or other information).

4.3.4 Consolidation of Bargaining Units

Recommend Option #5

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

4.4.1 Replacement Workers

If both parties to a labour dispute suffer a loss of income, then both parties will have the experiential basis to rationally reassess the value of the other party's contribution to the relationship. If only one party suffers such a loss, it is not a bargaining relationship, it is an invitation to abuse and exploitation. Review the Royal Oak Mines case. Or spend a day in family court.

Recommend Option #2

2. Reintroduce a general prohibition on the use of replacement workers.

4.4.2.1 Application to Return to Work After Six Months From the Beginning of a Legal Strike

Recommend Option #2

4.4.2.2 Refusal of Employers to Reinstate Employees Following a

Kendal McKinney Law Firm
Suite #107, 552 Pitt St. West, Windsor, Ontario, N9A 5M2
Telephone 519-254-5182, Facsimile 519-254-5673
e-mail kendal.mckinney.law@gmail.com

Legal Strike or Lock-out

Recommend Option #4, with an exception available based on option #3, which would be the exclusive jurisdiction of the OLRB.

4.4.3 Renewal Agreement Arbitration

This could be a real boon to communities within which a major labour conflict occurs.

Strongly Recommend Option #2:

2. As in Manitoba, provide for access to arbitration after a specified time following the commencement of a strike or lock-out provided that:
a) certain conciliation and/or mediation steps have been followed;
b) the applicant for interest arbitration has bargained in good faith; and
c) it appears that the parties are unlikely to reach a settlement.

4.5.2 Just Cause Protection

Recommend Option #2

Sincerely,

Kendal McKinney
LSUC #47415Q
KENDAL MCKINNEY LAW FIRM