

## **Submission in Response to the Changing Workplaces Review**

### **Introduction:**

The Ontario Waste Management Association (OWMA) is writing to respond to the *Changing Workplaces Review, Special Advisors' Interim Report*. The OWMA is the largest waste management association in Canada and represents more than 250 members within Ontario's private and public sectors. OWMA members manage 85% of Ontario's waste and have diverse interests and capital investments in areas, such as waste and recycling collection, material recycling and resource recovery, organics processing and composting, hazardous waste recycling and safe disposal, and landfills and transfer stations.

We support efforts to improve the workplace for employees, but strongly believe that any actions taken must protect Ontario's economy while encouraging investment and job creation. If the government is considering adopting options developed by the Special Advisors in their interim report, we would strongly advise that each and every potential reform undergoes a thorough economic-impact assessment and public review.

Decisions that have major economic implications cannot be made while only considering one side of the issue. They must be informed by assessing all of the relevant facts and evaluating the potential for unintended economic consequences. Many of the options considered by the Special Advisors involve issues that have not been raised as concerns within our sector. However, their potential implementation could result in several challenges for the competitiveness of Ontario companies working to create local economic growth and increase environmental protection.

If the government does choose to proceed with any labour reforms that will directly or indirectly affect the waste management and resource recovery sectors, we would welcome the opportunity to work together on making improvements that maintain economic growth and retain good, well-paying jobs in Ontario.

### **Areas of concern for Ontario's waste management sector:**

There are several options presented in the report that give cause for concern. Proposed amendments to the province's *Labour Relations Act (LRA)* and *Employment Standards Act (ESA)* could have serious consequences for Ontario's economic competitiveness and for the ability of the waste management and resource recovery sectors to invest in new technology and expand operations to increase waste diversion. We would request that the government considers the following concerns when developing policies based on the options in the Special Advisors' report.

#### **4.2.2      *Related or joint employer***

The Special Advisors propose the option of expanding the related employer provision, and declaring that businesses and temporary help agencies that work together are joint employers, which should, therefore, assume joint liability under the LRA. Pursuing this reform would create uncertainty and disrupt contractual arrangements for companies and organizations operating in our sector.

Waste management and recycling facilities must operate at a steady pace to deal with the ongoing influx of materials. Flexibility to work with other firms is required to address immediate employment needs, deal with fluctuations in demand and manage special projects. The use of temporary help agencies helps to ensure continued productivity and efficiency in the waste management sector.

#### **5.3.9      *Temporary Help Agencies***

In addition to the labour requirements considered by the Special Advisors for businesses and organizations that work with temporary help agencies, the interim report also includes options to provide the same rate of pay to direct and temporary employees; cap the amount of time an employee can work on a temporary basis until being “converted into a direct employee”; and cap the number of temporary employees that can be a part of a client’s overall workforce at 20%. If adopted, these new requirements would impose a significant burden on companies and organizations in our sector, which work with temporary help agencies for the reasons laid out in the previous section.

#### **4.3.1.1      *Card-based certification:***

The Special Advisors propose the option of reintroducing card-based certification. The current vote model for all sectors, except construction, allows employees to vote in a secret ballot. By a majority vote, employees can certify or decertify their union. This model guarantees the democratic rights of employees to freely vote in a confidential manner and maintains fairness and transparency of the voting process for workers, unions and employers. The right to vote in a secret ballot should be protected.

#### **4.3.1.3      *Access to Employee Lists:***

Currently, unions are not entitled to receive an employee list before an application is filed. The Special Advisors’ report, however, considers allowing the Ontario Labour Relations Board (OLRB) to order an employer to disclose employee lists with contact information, including mailing and email addresses, before an application is submitted, if a union has gained 20% support among the workforce. The right of each individual

employee to privacy outweighs the additional support sought to organize workers. There are already several effective means to contact employees that respect privacy rights and allow unions to gain the support of those who want union representation.

#### **4.3.1.4 Off-site, telephone and Internet voting**

Certification votes currently take place at the workplace with both employer and union representatives acting as scrutineers. This system ensures accountability and provides all employees with a reasonable opportunity to participate in the vote. Changing the location or switching to electronic forms of voting, as considered by the Special Advisors, introduces a host of concerns, including the potential for voter fraud and challenges to maintaining the secrecy of the ballot. Any changes in this area require a rigorous review and thorough consultation on appropriate safeguards and their effectiveness.

#### **4.6.1 Broader-based Bargaining Structures**

The Special Advisors propose the option of expanding the use of broad-based, or sectoral, bargaining outside of the construction industry. This process allows a collective bargaining agreement to be negotiated for an entire sector that all unionized employers would be subject to. The current system allows unions to directly negotiate a collective bargaining agreement with a company or organization that fits the unique needs of their employees. This system is fair and creates a direct relationship between the union and the individual employer.

#### **4.3.2 First Contract Arbitration | 4.4.3 Renewal Agreement Arbitration**

The LRA contains provisions for first contract arbitration, which address the need for the OLRB to intervene if collective bargaining breaks down. However, first contract arbitration is not automatic. The LRA also does not allow disputes to be referred to binding interest arbitration during the collective bargaining process.

The Special Advisors propose the option of providing first contract arbitration on either an automatic or discretionary basis. They also propose options for renewal agreements that would give unions “access to arbitration after a specified time following the commencement of a strike or lock-out.” Providing access to automatic first contract arbitration and allowing applications for arbitration during contract negotiations would challenge Ontario’s economic competitiveness and detract from the current collective bargaining process.

Arbitration for fire, police and paramedic services has resulted in the imposition of substantial costs increases for employers. Having employers and unions negotiate new

agreements, by contrast, allows both sides to seek compromise that benefits workers while taking into account the financial and operational realities of an employer's company or organization. Providing increased access for the OLRB to intervene and impose conditions on employers would unnecessarily sideline the collective bargaining process and create significant uncertainty for our sector.

#### **4.4.1 Replacement Workers**

The Special Advisors propose the option to prohibit the use of replacement workers. This proposal is simply unworkable for the waste management sector. Without the ability to hire replacement workers during a strike or lockout, garbage would pile up in the streets, creating serious public safety and health issues. Prohibiting the use of replacement workers would also undercut the collective bargaining process by placing employers in a subordinate bargaining position. To ensure fairness for both employers and unions, these options should be rejected.

#### **4.3.3 Successor Rights**

Following the sale of a business, the LRA requires that its collective bargaining obligations flow through to the successor owner. The Special Advisors propose the option of expanding successor rights to contracting out and re-tendering. That would mean the bargaining rights of a unionized service provider would continue through to a new service provider if an employer chooses to re-tender the work or contract out to a new company. Such a change would greatly affect the ability of our sector to find efficient, affordable services to meet the evolving needs of the province to increase recycling and safely dispose of waste.

Sincerely,



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