



TRILLIUM AUTOMOBILE DEALERS ASSOCIATION

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Serving the Interests of Ontario New Car
and Truck Dealerships for over 100 years.

October 6, 2016

Ontario Ministry of Labour
Changing Workplace Review, ELCPB
400 University Ave., 12th Floor
Toronto ON M7A 1T7

Since 1908, the Trillium Automobile Dealers Association (Trillium) has been the voice of Ontario new car dealers of every brand and franchise. Currently, we represent over 1,000 new car dealers across Ontario and employ 53,000 women and men in well paying jobs. In 2015, our member dealers generated \$37 billion in economic activity.

Page 4 of the Special Advisors' Interim Report says the Review's key focus "will be on vulnerable workers in precarious jobs and the need for legislative amendments to address some of the issues facing these workers." It's extremely difficult to make the case that "vulnerable workers in precarious jobs" are employed at new car dealerships.

According to research from our national association, the Canadian Automobile Dealers Association (CADA) and Statistics Canada, the evidence shows new car dealers provide a thriving and well-paying career choice.

1. Average weekly employment in automobile dealerships - **53,391**
2. Automobile dealership employment as percentage of total retail employment - **7.5%**
3. Average weekly earnings of automobile dealership employees - **\$1,012**
4. **Amount by which average weekly earnings of automobile dealership employees exceeded average weekly retail earnings \$473**

Trillium believes before overhauling and potentially making radical changes to the Employment Standards Act (ESA) and Labour Relations Act (LRA), education and enforcement of the current laws are needed.

The government should not embark on making massive changes without considering

the economic consequences and the workability of such changes in the real world. Too often, Ministries fail to understand how employers are affected by legislation and regulations of other Ministries. This often creates complexity and burdens for employers that do nothing to promote productivity and economic growth. If the goal is to promote economic growth, what we don't want to do is introduce new regulatory burdens that compromise the ability of Ontario employers to create jobs and grow the economy.

Having reviewed the Interim Report, we will provide our suggestions on key items regarding the automobile retail sector below. If you require further information or have questions, I'm pleased to make myself available.

Recommendation 1

Maintain the Special Rule that Applies to Commissioned Automobile Salespersons

Trillium strongly supports maintaining the Special Rule with respect to pay periods that applies to commissioned automobile salespersons. As the Interim Report notes, this Special Rule is the only one that exists under the ESA prescribing a pay period – rather than being open ended. Trillium believes the system works and is a win-win for both employees and employers.

In short, we see no problem with, or concern to fix this system. By having a pay period and reconciliation period prescribed by regulation – there is clarity and certainty for dealers and salespersons regarding the responsibilities and expectations for both parties.

The “draw against commissioned earned” ensures a minimum wage (or possibly more), with the prospect of commissions to be earned. To put it another way, the dealer is providing an advance against future deliveries of a particular salesperson – while at the same time – guaranteeing a minimum income.

The Special Rule helps even out the ebb and flow of sales cycles. There are cases in automotive retail where a popular or unique vehicle may take weeks or even months to be delivered to dealers. For example, let's assume a sale for a very in-demand vehicle is made on September 1, but due to short supply and/or logistical issues, the vehicle will not be delivered to the dealership for the customer to take possession until December of the same year. Though a contract is signed, the transaction isn't made official until the customer “takes possession” of the vehicle. The Special Rule helps pay part of the future commission (when the customer takes possession in December) in the present - 3 months before the “sale” is official and the money is paid to complete the transaction.

Trillium believes the Special Rule provides certainty and clarity, and goes above and beyond the ESA for other employees in other sectors. Aside from the Special Rule, it must be noted that the sales and service side of the dealership are covered by the ESA without exemption and further regulation is not deemed to be necessary.

Recommendation 2

Do Not Disrupt Current Franchise Agreements and Respect the Arthur Wishart Act

Looking through the lens of a franchised new car dealer, we strongly urge the government not to disrupt the current franchisee/franchisor relationship with respect to employees or other matters. Trillium believes the employees of a dealership have a direct link to the dealership and not their related manufacturer. What automobile dealers value most, especially with regards to their franchise agreement, is certainty and clarity.

In the US, automobile dealers are regulated at the state level by auto-specific franchise legislation. Such legislation provides clarity and certainty to both franchisee and franchisor regarding each entity's rights and responsibilities. By contrast, Ontario's franchise legislation (*the Arthur Wishart Act*) governs all franchises regardless of the specific sector they operate in. We strongly recommend that any changes the province is considering or about to consider, to disrupt current and future franchise agreements in the auto sector be made in consultation with our Association and must be made under the *Arthur Wishart Act*.

Recommendation 3

Recognize Sector Differences and Keep Scheduling Flexible to Meet Demand

The Ontario Government must recognize different sectors' abilities to foresee future capacity requirements. Trillium strongly urges the Ontario Government not to amend the ESA to include a one-size-fits-all approach to scheduling obligations. Different sectors of the economy require different scheduling provisions. A uniform application of set scheduling requirements will have negative effects on automobile dealers' ability to remain flexible and serve the public.

For example, extra staff may be required when new models hit the showroom floor in order to meet consumer demand. Alternatively, extra service staff may be required when seasonal items like winter tires are in high demand or a recall has been issued. Failing to adequately staff the dealership using flexible scheduling will result in unhappy customers and compromise public safety.

Recommendation 4

Promote Workplace Democracy by Allowing Secret Ballots

The principle of a secret ballot is used when electing our elected officials – the very heart of our democracy. If we apply the secret ballot standard when electing representatives to all three levels of government who make important decisions on the federal budget, health care, education, property taxes and the like, then why should the same standard not apply when deciding to join a union or not? Trillium believes transparency in the union certification process is essential. The Government should maintain the Labour Relations Act requirement for a secret ballot when attempting to certify or decertify a union.

Recommendation 5

Respect Employee Privacy

The Labour Relations Act should be amended to require that the list of employees provided in response to a certification application not be used for any other purpose than for the present application for certification. This is key to respecting privacy and should be explicitly set out in law.

Proposing a blanket approach shows a lack of understanding and appreciation for the unique characteristics of all sectors of the economy, including automobile retail. Before any changes are proposed, it's imperative we understand the economic impact of any changes. We support a full cost-benefit analysis and economic impact analysis of any changes the government proposes. This process is too important to be guided by ideology and should be driven by data – in consultation with all stakeholders in a given sector.

Sincerely,



Frank Notte
Director of Government Relations