

REFORM THAT WORKS:

A Call for Evidence-Based Workplace Law Modernization in Ontario



A Submission to the Changing Workplaces Review

Submitted by: Keep Ontario Working with Philip Cross

**Keep
Ontario
Working**

About Keep Ontario Working

Over the past year, Ontario's leading industry and sector associations have worked together through the Keep Ontario Working initiative to motivate employers and employees alike to take a more active interest in the Changing Workplaces Review and ensure that we are improving legislation to support workers' rights and a prosperous economy. The Keep Ontario Working initiative is comprised of the province's leading employer bodies, including:

- Association of Canadian Search, Employment and Staffing Services
- Canadian Franchise Association
- Food & Beverage Ontario
- Food and Consumer Products of Canada
- National Association of Canadian Consulting Businesses
- Ontario Chamber of Commerce
- Ontario Forest Industries Association
- Ontario Restaurant, Hotel & Motel Association
- Restaurants Canada
- Retail Council of Canada
- Tourism Industry Association of Ontario
- Other employers and employer groups

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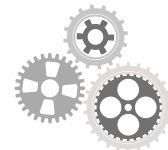
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A sincere thank you to our presenting partners



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Executive Summary

Over the past year, the Keep Ontario Working group of leading employers and sector associations in Ontario has worked to promote the need for evidence-based labour policies that strengthen, rather than compromise, the ability of employers to create jobs and grow the provincial economy.

Reform That Works constitutes the group's response to the Changing Workplaces Review Interim Report prepared by Special Advisors C. Michael Mitchell and John C. Murray. The Interim Report proposes numerous recommendations for legislative change of the Employment Standards Act, 2000 (ESA) and the Labour Relations Act, 1995 (LRA). The scope of the changes proposed by the Special Advisors is immense and will impact nearly every aspect of the relationship between employers and employees.

We acknowledge that labour and employment legislation should reflect the realities of the Ontario economy, which has experienced contraction in traditional manufacturing while experiencing growth in services. We are concerned that the Interim Report includes policies that would make it more difficult for Ontario businesses to grow and create good jobs by restricting the flexibility of part-time and contract employees, imposing one-size-fits-all changes to scheduling provisions, diminishing transparency and informed employee choice in the union certification process, and instituting "paperwork provisions" that will add new layers of red tape to the existing regulatory framework. We remind the Special Advisors that good jobs are the direct result of a strong and growing economy. Government cannot legislate prosperity. Rather, as the analysis presented in this report demonstrates, the implementation of some of the policy options put forward in the Special Advisors' report would have the perverse effect of discouraging investment and eliminating jobs, thereby diminishing economic opportunities in Ontario.

There is always a need to improve, but as the economic analysis in this report demonstrates, the ESA and LRA review are coming at a critical juncture in the economic development of the province. Employers and employees alike cannot afford misaligned public policy. Politics cannot drive decision-making. Evidence must.

Reform That Works seeks to advance policy solutions that are built upon a foundation of truly understanding the scale of the issues which the Ontario government has indicated they are trying to confront through the Changing Workplaces Review. With respect to claims that there has been an unprecedented spike in the number of people holding multiple part-time jobs to make ends meet, the evidence is non-supportive. According to new analysis of Statistics Canada labour market data, which we have analyzed in this report in some detail, the number of Ontarians working multiple jobs has risen only 22% since 2003. This number is down from the 36% increase in the previous 12-year period.¹ Perhaps surprisingly to some, the share of part-time employment in all jobs actually shrank in 2015 as compared to 25 years ago. This is true of both Canada and Ontario. This slight drop in part-time work is all the more remarkable because of the growing number of older workers who prefer part-time work.

Job tenure in Ontario is another feature of the labour market that undermines claims of precariousness, with tenure increasing steadily over time. Job tenure measures how long an employee has been employed by the same employer, and so can be an effective indicator of the security and stability of the work environment. By 2015, the average employee in Ontario had worked for the same employer for a record 106.3 months (or nearly 9 years). This data indicates that at no time in Ontario's history have employees in this province enjoyed such stable employment.²

Based on extensive analysis and consultation, the recommendations presented in this submission have been designed to improve legislation to support workers' rights, create jobs and grow the economy. We look forward to working collectively throughout the modernization of workplace law that will make Ontario the best place in which to live, work and invest.



A Statement in Support of Modernization



A Statement in Support of Modernization


Keep Ontario Working is a group of employer organizations supporting evidence-based workplace reform through the Government of Ontario's Changing Workplaces Review. Recognizing the changing global economy and its impact on Ontarians and Ontario businesses, we think it is important that Government approach public policy in a way that enhances opportunity and security for the province's employees, employers, and consumers.

As a first step in modernizing Ontario's economic policy, we welcome the Ministry of Labour's review of the *Labour Relations Act* and the *Employment Standards Act*.

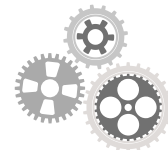
Central to the perspective of our group is a belief that the goals of economic growth and improved employee rights are not mutually exclusive. What supports the competitiveness of Ontario's economy can help enhance quality of work. Increased education and enforcement may assist with compliance to Government regulations, for example, and improve worker environments. At the same time, regulatory reform that raises thresholds only to reduce the ability of business to invest in and grow the labour force is counterproductive.

The Special Advisors, and in turn Government, must take a robustly evidence-based approach to policy reform. This why our chief recommendation to the Special Advisors is that each policy option resulting from the Review be subject to a structured and publicly reported economic impact analysis. This analysis should have clear acceptability thresholds, and the reforms implemented should be limited to those that pass such thresholds or are being implemented with a commensurate economic offset measure. We support reform where and when it is needed, but caution against change for change's sake. We are also encouraged by recent commitments from this government to reduce red tape as they modernize legislation.

We hope that the Special Advisors will seriously consider the analysis and recommendations that follow. The employer community is committed to being a constructive partner in the Changing Workplace Review. This submission aims to fulfill that commitment.



Summary of Recommendations



Summary of Recommendations

Building the Evidence-Base and Protecting Competitiveness

1. Building on Ontario's Regulatory Policy⁴, at least 60 days prior to the introduction of new legislation or legislative amendments, the Ministry of Economic Development and Growth should release a detailed economic impact analysis of each recommendation of the Special Advisors.
2. Complementing an economic analyses of specific Review recommendations, and modelled on non-governmental international indexes⁵, the Ontario Cabinet Office should establish and release an annual measure of the cumulative cost-of-doing-business in Ontario. This study would extend beyond regulatory burden and include input costs like corporate tax rates, energy costs, real estate, and average cost of labour. Updated annually, this metric would highlight the net impact of any new government policies implemented in the past year or proposed in the year ahead. The study would be benchmarked across time and against comparator jurisdictions. The first annual cost-of-doing business report should be released as soon as is possible and no later than the publication of the Changing Workplace Review economic impact analysis.
3. At least 60 days prior to the introduction of new legislation or legislative amendments, the Ministry of Finance should release an analysis of the fiscal implications of Review recommendations, particularly as they relate to potential increased costs in the Broader Public Sector due to possible regulatory changes regarding the utilization of part-time and temporary work.
4. Subsequent to the release of the Special Advisors' final report, the Government should establish a joint business-labour implementation working group as well as sector-specific implementation sub-committees, including a dedicated small business sub-committee as well as a dedicated youth employment sub-committee. These groups would ensure that policy design is appropriately sensitive to trends in the Ontario economy. The broader working group should release a set of implementation recommendations in advance of any new legislation or legislative amendments and

after having consulted the Province's economic impact analysis and cost-of-doing business report.

5. We support a call for a new government funded and publicly available survey of employment relations that is segmented by province and region.
6. Do not implement Review recommendations shown to have a net negative economic impact without concurrently implementing a commensurate economic offset measure.
7. Give businesses time to adjust to reform by ensuring that any new legislation or legislative amendments do not come into effect any earlier than 12 months after the passage of legislation.

Increased Education

8. It is critical that the Province simplify language in the *Labour Relations Act*, the *Employment Standards Act*, and associated explanatory documents, with the intention of improving employer understanding of compliance requirements.
9. Following the passage of any new employment legislation or legislative amendments, the Province should invest in a multi-lingual compliance awareness campaign to educate employers on employment and labour standards, including a dedicated and easy to navigate website as well as cross province seminars.
10. The Province should provide support to not-for-profit organizations, including post-secondary institutions, to work with employers, particularly small businesses, on an ongoing basis to increase awareness of and compliance with the *Employment Standards Act* and *Labour Relations Act*.



Enhanced Enforcement

11. Government should enable the Ministry of Labour to increase the effectiveness of their enforcement procedures.
12. The Province must ensure that the Director of Employment Standards, in accordance with the ESA, immediately establishes an interest rate and a method of calculating interest rates so that interest can be awarded in the circumstances currently allowed for in the ESA.
13. Amend the Employment Standards Act to allow employers to be required to pay interest on unpaid wages
14. Amend the ESA to allow collection processes to be streamlined and to provide additional collection powers in order to increase the speed and rate of recovery of unpaid orders, potentially by incorporating some of the collections-related provisions in the *Retail Sales Tax Act*.

Aligning Standards to Economic Realities

15. The ESA should maintain its greater contractual or statutory right provision.
16. The ESA should more clearly define what common workplace entitlements, be they paid or unpaid, make up a comparative entitlement for the purposes of constituting an expanded right or benefit.
17. Maintain the 50 employee threshold for Personal Emergency Leave.
18. Review the ESA leave provisions in an effort to consolidate leave categories.
19. Continue to take into account sectoral differences in the organization of work and its cost. Maintain Employment Standards Act sector and sub-sector exemptions. Some workers' rights groups argue for the abolishment of all exemptions.
20. Pilot projects in an attempt to achieve workable scheduling practices that balance the interests of

employers for flexibility and productivity with the employees' interests in predictability.

21. Amend the ESA to give employees the right to request in writing, after 1 year of service, that their employer decrease or increase their hours of work, give them a more flexible schedule or alter the location of their work. The employer should be required to give the employee an opportunity to discuss the issue and provide reasons in writing if the request is refused in whole or in part.
22. Amend existing reporting pay rights in ESA so as to increase minimum hours of reporting pay from current 3 hours at minimum wage to 3 hours at regular pay.
23. Increase regional access to the OLRB review process of ESO orders, by having the Ministry of Labour appoint part-time vice chairs in various cities around the province, potentially in the 16 centres where the Office of the Worker Adviser has offices.
24. Provide greater clarity and certainty with respect to franchisor's and franchisee's distinct employment and labour law liabilities and make clear that franchisors are not considered to be the employer of a franchisee or a franchisee's employee.

Fair and Transparent Labour Relations

25. Protect the LRA's existing requirement for a secret ballot for union certification and decertification.
26. Further explore the option of electronic voting in union certification processes, subject to appropriate safeguards for accuracy and privacy.
27. *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.
28. Establish a provincial office mandated to promote employee voice and workplace productivity.

The Economic Context





The Economic Context

In a global economic context, do you believe the Ontario economy is going in the right direction? Only **30%** of Ontario businesses say yes.^a

Academic Perspectives on the Changing Nature of Work

The government has signalled jobs and growth as its number one policy priority. As a voice for Ontario business, we feel a duty to echo this objective to the Special Advisors. Reform to the LRA and ESA may have a profound effect on Ontario's economy. We urge the Special Advisors to consider the economic competitiveness consequences of each policy option in light of a variety of variables including the reality that long-term economic projections for Ontario are for modest growth, global pressures continue to strain our status as an investment destination of choice, foreseeable high electricity prices, the pending economic implications associated with the introduction of a new cap and trade system, and the business costs associated with the enhancement of the CPP. Combined, these add up to an increased cost-of-doing business in Ontario. Small businesses, in particular, are expressing concern about economic viability.⁶

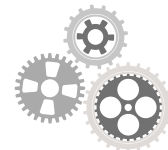
In this section, we will attempt to assess and measure the broader economic circumstances within which the Ontario economy finds itself. Through an analysis of Labour Market data provided through Statistics Canada, we will argue that the challenge of precarious work has been overstated by government and labour unions. Any reasonable discussion of solutions to precarious work must properly measure, through data, the true scale of the problem.

Anil Verma's report to the Special Advisors⁷ is particularly helpful at underlining the relationship between labour standards and the determinants of business growth. Businesses are feeling increased difficulty to attract investment in light of perceptions of highly mobile capital and ease of corporate relocation. Appreciating the significance of jurisdictional sensitivities and the fact that strengthened labour

laws can and have had a positive impact on growth, Verma nonetheless points out that "[t]here is a general consensus in the literature that all else being equal, higher cost of labour (including the costs attributable directly to regulations), discourages investment".⁸ Citing a European-based study⁹, Verma acknowledges that financial and labour market regulations have a negative effect on firm investment insofar as they result in lowered firm profitability.¹⁰ Work from Radulescu and Robson (2013)¹¹, is similarly supportive of claims that labour regulation seen as more flexible is positively correlated with investment flows.¹² An 85 country analysis¹³ concludes that "heavier regulation of labor is associated with lower labor force participation and higher unemployment, especially of the young".¹⁴

Some businesses are more vulnerable to regulatory change than others, particularly and predictably businesses that compete largely on the basis of low margins and high volumes, businesses where labour costs form a large fraction of total costs, and businesses in sectors affected by recession.¹⁵ As Verma puts it, the regulatory resistance these businesses express "can be seen as a pragmatic and rational response rather than an ideological opposition".¹⁶ As such, and insofar as investment and job creation are priorities, over-regulation, as much as under-regulation, must be carefully considered on a firm and sector level basis.

Kevin Banks¹⁷ offers similar cautions, noting that there are "good reasons to think that unit labour costs often matter a great deal in international competition".¹⁸ "By definition", Banks argues, "[unit labour costs] must matter at the margin for any profit-maximizing enterprise, and must constitute a major aspect of the cost structure of enterprises that produce labour intensive goods and services".¹⁹ Though by no means suggesting an automatic relationship between

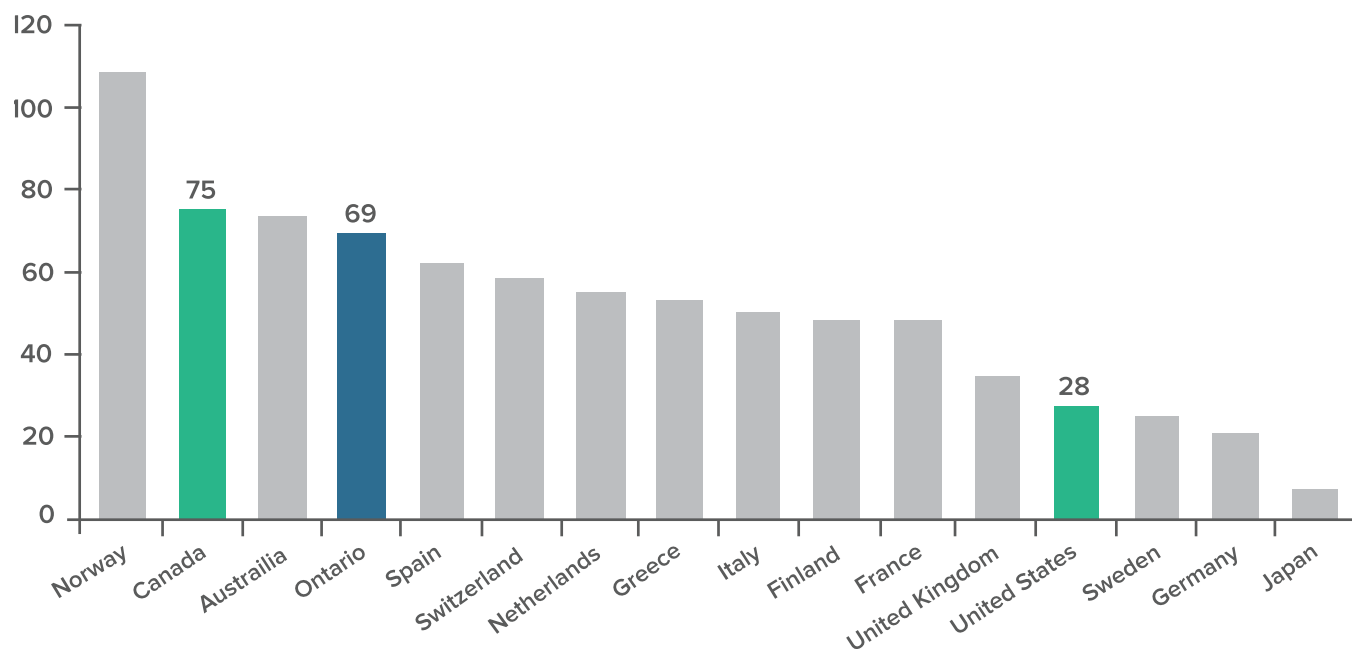


regulatory growth and productivity, Banks asserts that in as much as labour laws increase costs or slow adjustments— directly or indirectly— increased regulation may also impede productivity-enhancing organizational or technological change.²⁰

Similarly, research from the Ontario-based Institute for Competitiveness and Prosperity²¹ argues that existing federal and provincial laws provide strong protection for employees and that “[r]einforcing these laws by increasing minimum wage or enforcing stricter labour standards is not a good way to improve the lot of the precariously employed, because these changes might increase unemployment and decrease productivity”.²²

ICP has also called for a skills development approach to precariousness and has encouraged government to increase vocational education so as to create a professionalized routine-service workforce.²³ ICP also suggests that, in some cases of precarious employment, public policy should look at ways of supplementing workers’ income and benefits to ensure they can afford a decent quality of life.²⁴

Fig.1 Total Economy Unit Costs. \$US Market Exchange Rate 1997-2010
Per cent Change



Source: Ontario Ministry of Finance, 2014. *Ontario’s Long-Term Report on the Economy*. <http://www.fin.gov.on.ca/en/economy/ltr/2014/ltr2014.pdf>. Pg. 128.



Changing Nature of Work – Analyzing Labour Market Data

With these perspectives in mind, the Ministry of Finance’s forecast²⁵ of average annual GDP growth in Ontario of only 2.1 per cent between 2014 and 2035 is all the more concerning.²⁶ This rate of growth is significantly less than the 2.6 per cent average from 1982 to 2013. In the same report, the Ministry notes that Ontario’s cost competitiveness has already declined due to considerable growth in unit labour costs. The cost of producing a unit of output in Ontario has increased by 69% in the last 13 years. The Ministry estimates that comparable costs in the United States have grown by 28%.²⁷ Regrettably, this pressure appears to be contributing to a pronounced slowdown in employment growth. In the 1980s, Ontario added 24.7% more jobs. In the 1990s, it created 11.9% more jobs. But from 2005 to 2015, employment in Ontario rose just 8.5%. Although the recent recession has been a contributing factor to our economic challenges, all three of the periods referenced were hit with recession. In fact, the loss of jobs in 2008-2009 was markedly less than in the 1990-1992 recession.^b

Thinking back to five years ago, would you say that Ontario is better off or worse off when it comes to taking advantage of new opportunities in the global economy? **50% say worse off.**^c

Since 2003, Ontario’s job growth has been largely confined to the public sector, with education, health care and public administration expanding their payrolls by 28.5%. By comparison, private sector employment has risen by just 6.9% in the last 12 years, with slowdown especially noticeable in manufacturing. Factory jobs—historically one of the most important sources of employment in Ontario—peaked in absolute terms at 1.1 million in 2004. Since then, factory work fell to 939,000 jobs just before the recession in 2008 and now sits at 745,000 jobs—the fewest on record back to 1976.²⁸ This underscores that the real challenge for

Ontario is not only protecting against the proliferation of low-wage or precarious work, but guarding against the diminution of job opportunities altogether.³⁰

Additionally, no discussion of trends in Ontario’s economy can ignore patterns in the active labour force 55 years and older. As recently as the year 2000, the share of people 55 years and older in Ontario’s labour force was lower than in 1976 (10.4% versus 11.7%).²⁹ By 2008, their share of the labour force had risen to 15.5%, a reflection of both their increasing numbers and their decision to stay active in the labour force longer. By 2015, the cohort of older workers had boosted their share of Ontario’s labour force to exactly 20.0%. Since 2003, the number of people 55 years and older who work part-time has increased by 63% from 184,000 to 300,000. Two-thirds of these older part-time workers say part-time work is a personal preference.

It is important that Government recognize the peculiar effect the ageing labour force has on labour market data and the consequent need for regulation to be sensitive to this reality. A conflation, for example, of rates of involuntary part-time work among youth (which, incidentally, represents a minority of youth part-time workers) with voluntary part-time work among seniors, risks alarmism and perhaps a heavy handed regulatory approach that crowds out desired employment opportunities for a critical segment of the labour force. Part-time work and self-employment have proved to be invaluable tools to keep older workers engaged in the economy instead of taking their knowledge and experience out of the labour force by retirement.

All three of these trends—slow overall employment growth, fewer opportunities in the private sector as the public sector expands, and an ageing labour force—have implications for the type of jobs created in Ontario over the past decade and should be fully appreciated when developing future responses to employment patterns in the economy. In different ways, these trends have created a narrative of precariousness in Ontario insofar as they point to a fragility in the market. But as demonstrated in the broader empirical literature, the character, causes, and solutions of market vulnerability can be significantly different



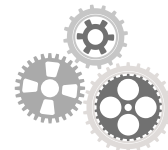
than the character, causes, and solutions of personal economic precariousness. It is therefore important that the Special Advisors distinguish between the two trends and ensure that policy options are appropriately aligned to demonstrated policy problems, including competitiveness challenges.

Based on the way the Ontario economy is operating now, would you say that in the next five years your organization will expand, decrease, or remain the same? Only **46%** said expand.^d



Understanding Non-Standard Work

A construction worker wearing safety glasses and a blue shirt is using a circular saw to cut through a wooden beam on a roof. The scene is overlaid with a teal gradient. In the background, another worker is visible on a different part of the roof.



Understanding Non-Standard Work

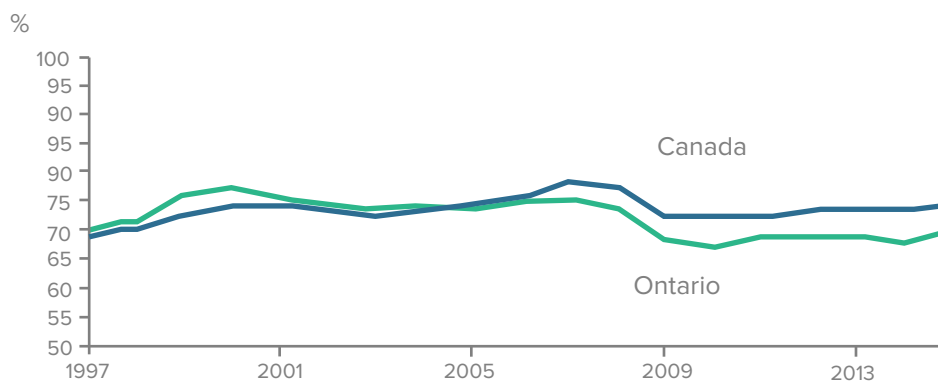
Keep Ontario Working believes it important that Government more fully understand the categories commonly associated with precarious work so as to ensure that policy solutions are appropriately tailored to demonstrated policy problems. A review of employment literature and statistics^e suggests that claims of an acute increase in what is sometimes called contingent, vulnerable, or precarious work may be overstated and misunderstood.

Firstly, it is important to stress that non-standard employment is valued by several segments of the labour force. In his report to the Special Advisors, Morley Gunderson³¹ discusses this potential desirability, particularly amongst marginalized populations and in the early stages of career development. Gunderson notes that non-standard employment can be of value to individuals looking for work-life balance, accommodating a disability, or transitioning from school to work or retirement back to work.^{23 33 34 35} He adds that certain forms of non-standard work can be extremely well-paid, in part to compensate for degrees of uncertainty. Moreover, some non-standard employees prefer higher wages to fringe benefits because of benefits already received through family members.³⁶ Gunderson adds that temporary work, in particular, can prove a useful stepping stone into more permanent jobs. Referencing Cappelli and Keller (2013)³⁷, Gunderson points to a US survey showing that “more than 90% of establishments

have converted temp agency workers to permanent employees”.³⁸ He adds that temporary work may be particularly helpful for disadvantaged workers seeking a route out of poverty³⁹ and concludes that “some non-standard employment can be ‘win-win’ for both employees and employers, meeting the diverse needs of an increasingly heterogeneous workforce, as well as the needs of employers for flexibility and adaptability”.⁴⁰ The challenge, as Gunderson characterizes it, is to ensure employment standards and labour relations legislation recognizes the diverse nature of non-standard employment and appropriately avoids a ‘one-size-fits-all’ regulatory response.⁴¹

Indeed, Ontario labour force data supports these claims. Consistent with Gunderson’s arguments⁴², two-thirds of older part-time worker say part-time work is a personal preference. For youth, over two-thirds claim they work part-time because of school. For middle-aged workers, the inability to find full-time work is the number one reason, followed by family responsibilities such as raising children. Overall, nearly 70% of Ontario’s part-time workers opted to do so of their own volition, not because of the lack of an alternative^f (Figure 3).⁴³

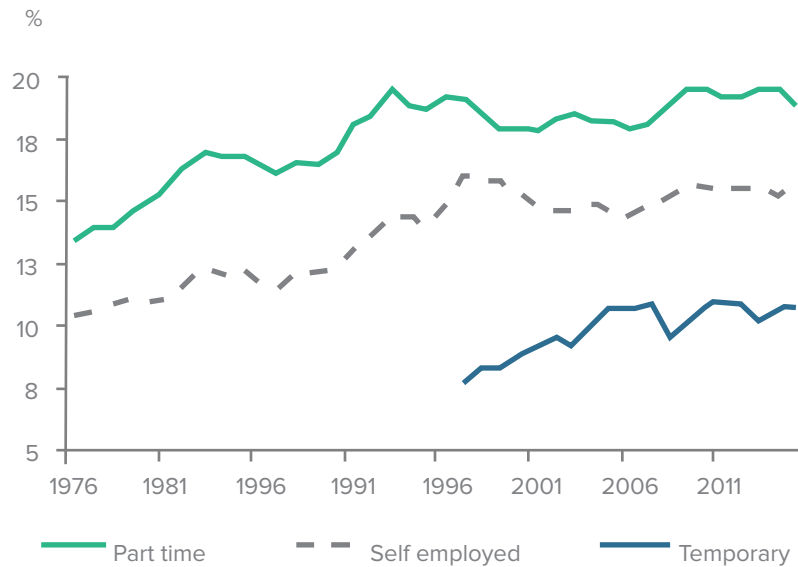
Fig.2 Voluntary as a Share of Part-time Employment



Source: CANSIM Table 282-0014



Fig.3 Share of Self-Employed, Part-Time & Temporary Workers, Ontario



Source: CANSIM Table 282-002, 282-0012, 282-0080

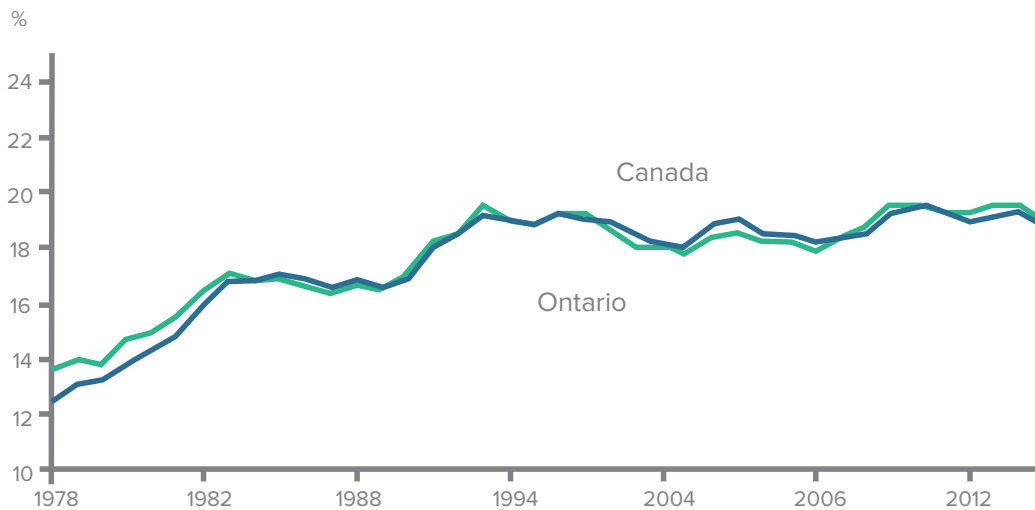
In addition to recognizing the employee-based value of non-standard work, it is especially important to appreciate that the data shows no marked shift in these job categories in recent years (Figure 1). Part-time jobs, for example, accounted for 18.8% of all jobs in Ontario in 2015, compared with a high of 19.5% after the 1992 recession. Although just over half (50.4%) of employed youths work part-time, double their rate in 1976, most of this shift occurred in the 1980s and 1990s when the share already reached 48%. Similarly, self-employment represented 15.7% of all jobs in 2015, below a high of 16.1% in 1997. These trends mirror similar patterns at the national level, with part-time jobs fluctuating between 18% and 19% of Canada’s employment since 1990 and self-employment declining slowly after 1997.⁴⁴ Further, though the share of temporary jobs in the labour force has increased from 7.8% in 1997— when Statistics Canada first began to measure it— to 10.8% in 2015, this figure has actually flatlined after reaching as high as 10.9% before the recession of 2008. Statistics Canada data does indicate that young Ontarians face an especially uncertain labour market. However, a

tendency toward part-time work among this cohort seems at least partially motivated by a desire to pursue educational opportunities. Further, the increasing number of youth with less than high school education dropping out of the labour force altogether and rising unemployment among university educated young Ontarians, suggests that the problem confronting this group may be more appropriately conceptualized as joblessness as opposed to precariousness.⁹

Perhaps surprisingly to some, the share of part-time employment in all jobs actually shrank in 2015 as compared to 25 years ago. This is true of both Canada and Ontario (Figure 2). This slight drop in part-time work is all the more remarkable because of the growing number of older workers who prefer part-time work.



Fig.4 Part-time Share of Total Employment



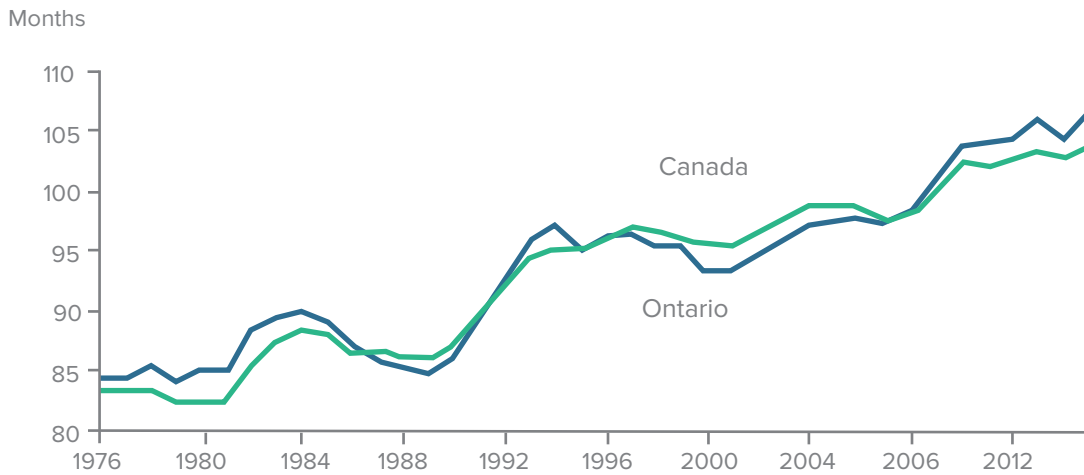
Source: CANSIM Table 282-0014

With respect to claims that there has been an unprecedented spike in the number of people holding multiple part-time jobs to make ends meet, the evidence is non-supportive. The number of Ontarians working multiple jobs has risen only 22% since 2003, less than the 36% increase in the previous 12-year period.⁴⁵ At 372,000, these multiple jobholders represent only 5.4% of the labour force in Ontario in 2015. Less than half (135,000) of multiple jobholders are working 50 hours or more. Those willing to work such long hours may be limited by slow economic growth, since their numbers rose during the boom of the late 1990s and before the 2008 recession, but fell when the economy turned down.

Job tenure in Ontario is another feature of the labour market that undermines claims of precariousness, with tenure increasing steadily over time (Figure 5). Job tenure measures how long an employee has been employed by the same employer, and so can be an effective indicator of the security and stability of the work environment. By 2015, the average employee in Ontario had worked for the same employer for a record 106.3 months (or nearly 9 years). As the data indicates, the trend is for job tenure to increase sharply in recessions years (the early 1980s and 1990s and 2009) when firms stop hiring new recruits and layoff low seniority workers.⁴⁶



Fig.5 Average Job Tenure

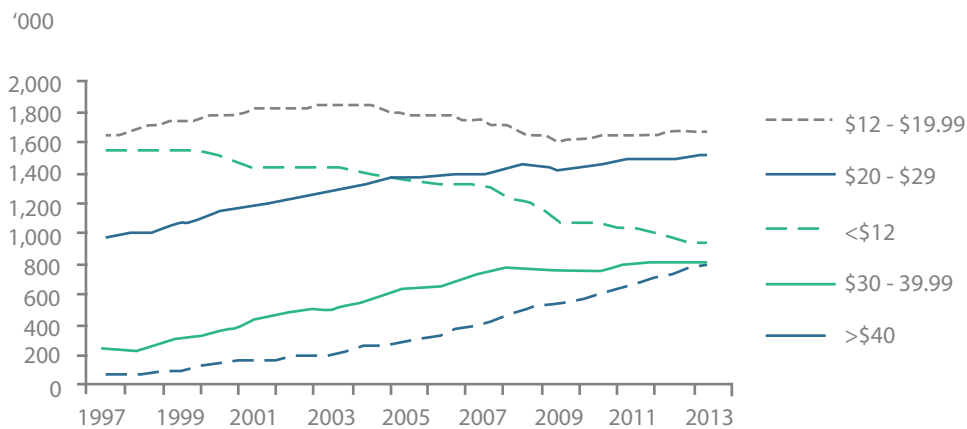


Source: CANSIM Table 282-0038

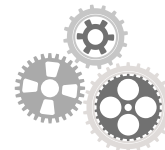
With respect to how long Ontarians are staying unemployed, the average spell of unemployment in Ontario was 20.0 weeks last year, below its cyclical peak of 22.4 weeks in 2011 and its high of 26.5 weeks in 1997 (when these data begin). Only 20.1% of Ontario's unemployed were unemployed for half a year or more in 2015, up from its pre-recession low of

16.2% but below its high of 25.4% in 1997. Again youth are an exception to this trend. The share of long-term unemployment among unemployed youth more than doubled during the recession from 5.1% in 2008 to 11.2% in 2015, comparable to the increases they experienced in previous recessions.⁴⁷

Fig.6 Employment by Hourly Earnings, Ontario



Source: CANSIM Table 282-0205



Lastly, concerning the relationship between non-standard work and wages, since 2003 the average hourly wage in Ontario has risen by 33.6%, while the median wage was up 29.2%, pointing to a faster increase in higher-paying than lower-paying jobs. The number of employees paid \$12 or less (close to today's minimum wage) has fallen significantly in absolute terms from 1,432,000 in 2003 to 803,000 last year, a drop of 43.9%.^h As a share of employment, the drop was even more pronounced, falling nearly in half from 27.1% of all employees in Ontario in 2003 to 13.8%. The number of employees paid between \$12 and \$20 an hour has declined by 10% since 2003 to 1.7 million, although all of this drop occurred before 2009, with an increase of 4% after the recession. Instead, jobs have risen the most for people paid higher wages. The number of employees earning between \$20 and \$30 an hour has risen 20.6% since 2003, to 1.5 million. Those earning \$30 to \$40 an hour expanded by 151%, to 1.8 million, while those remunerated at \$40 an hour or more has grown by 331% to 0.9 million.⁴⁸ As the preceding analysis suggests, the pool of vulnerable workers is much smaller than has been suggested by other stakeholder groups.

Non-Standard Work in the Public Sector

A critical but understated feature of the changing workplace in Ontario is the fact that public sector organizations have led the increase in non-standard employment since 2003. Of the 153,000 increase in part-time jobs between 2003 and 2015, 64,000 (or 41.8%) originated in the public sector industries of education, health care and public administration.⁴⁹ Overall, the share of part-time workers is slightly higher in Ontario's public sector industries than in the private sector, at 20.8% versus 18.5% in 2015. The use of part-time work is particularly heavy in both education and health care (23.5% and 23.6%), while public administration makes infrequent use of part-time workers (6.1%).

Assuming each part-time employee in the public sector costs \$40,000 less than a full-time employee, this represents a saving to government of \$13.36 billion a year.ⁱ As a lower estimate, and calculated on the

basis of Ontario's public sector having hired 63,000 more part-time workers since 2003, this represents an efficiency of \$2.52 billion in 2015. Even if the saving was assumed to be only \$20,000 per employee, the saving would still be \$1.26 billion annually.^j

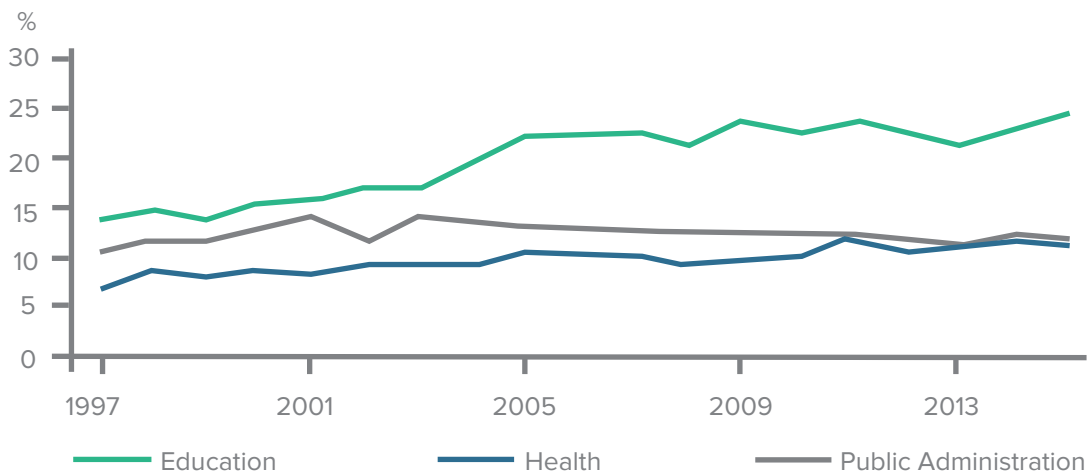
With respect to temporary work, this too appears to be a mechanism increasingly used by the public sector to control its costs. The education industry especially has resorted to non-permanent staff, which rose from 46,000 in 1997 to 120,000 in 2015. Temporary workers now make up 24.6% of the labour force in education, the most of any industry in either the public or the private sector (Figure 4). In both health care and public administration, non-permanent staff represent over 11% of the labour force. Overall, the public sector industries increased their use of temporary workers from 10.4% of their workforce in 1997 to 15.8% in 2015.⁵⁰

Using an assumed saving of \$40,000 a year from hiring a temporary instead of a permanent employee, the government's hiring of 245,000 temporary employees last year saved \$9.8 billion. In terms of the current government's attempts to bring its costs and deficits under control, the increase of 91,000 temporary workers since 2003 saved \$3.64 billion by 2015.

Conversely, private sector use of part-time employment is not widespread. In the private sector, over half of part-time jobs are concentrated in the two industries of retail trade and accommodation and food. The use of part time employment enables these industries to respond to consumer demands, which fluctuate significantly throughout the day. The employer community urges the government to consider that operating in a 9-5 Monday to Friday workplace is very different than working in industries that operate up to 24 hours, 7 days a week. In absolute terms, only the accommodation and food industry has substantially increased hiring of part-time workers, with 58,000 more such employees since 1997. It is relevant to note that two-thirds of these jobs are held by youths between 15 and 24 years old, who otherwise may have few paths into the labour market. With respect to temporary work, between 1997 and 2015 private sector use of temporary workers increased only modestly from 9.0% to 11.7%, again less than the public sector rate.⁵¹



Fig.7 Temporary Share of Public Sector Jobs, Ontario



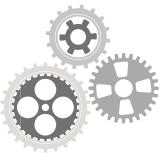
Source: CANSIM Table 282-0080

Keep Ontario Working believes that this analysis of public sector non-standard work demonstrates a central challenge with the Special Advisors discussion of “precarity”. While the public sector is densely unionized, it has a statistically higher number of people working in arrangements that the Advisor’s defined as “precarious”. This belies the underpinning of an argument that suggests that a growth in private sector unionization in typical unrepresented sectors would address precarity. There is no demonstrated evidence of this and, in fact, the public sector part-time and casual numbers suggest the opposite. The unionized public sector experience in Ontario would therefore suggest that there is no correlation between an increase in rates of unionization and a decrease in the work arrangements that the advisors define as “precarious”.

Thinking back to five years ago, would you say that Ontario is better off or worse off when it comes to restoring fiscal balance by improving the way government works? **69%** say worse off.^k

The Need for Data-Driven Policy





The Need for Data-Driven Policy

In order to assess impact on jobs and the economy, the Government of Ontario should conduct a cost-benefit analysis of changes to labour or employment legislation before those changes takes effect. 82.8% agree.¹

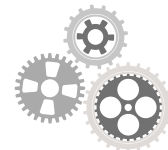
As the above economic analysis demonstrates, the ESA and LRA review is coming at a critical juncture in the economic development of the province. Employers and employees alike cannot afford misaligned public policy. Politics cannot drive decision-making. Evidence must.

With that said, an admitted challenge for both business and government is the capacity to identify, analyze, and communicate robust data sets. Though the information hitherto presented and commissioned by the Special Advisors has identified important general trends in labour force development, it lacks the specificity demanded by a process as economically significant as the Changing Workplaces Review. Keep Ontario Working echoes the concern of several of the Review's commissioned researchers who have noted that much of the Ontario-specific information needed to drive analysis is either inadequately collected or communicated by government. For example, as Gomez notes⁵², with the discontinuation of the Workplace Employee Survey, Canada no longer has an instrument to obtain sufficient information on employment relations activities. Bartkiw⁵³ has added a specific critique of the policy community's evidently limited capacity to collect information on: the usage of replacement workers in collective bargaining disputes; picketing activity; measures of union density by sector; distribution of unionized employment by bargaining unit size; and the cost impact of the arbitration system.⁵⁴ We would add our voice to those critical of existing data collection processes and support Gomez's call for a new government funded and publicly available survey of employment relations that is segmented by province and region.⁵⁵

Employer groups are well equipped to provide perspectives on economic trends, general policy

impact, and can highlight principles to guide policy development. It is the responsibility of the Government, however, to complement these perspectives by leveraging its data collection and analysis capacity to produce detailed economic analyses and projections of particular policy options. We think it is critical that Government not make decisions prematurely and thus only introduce legislative reforms once this data is processed and published by Government.

For this reason, our chief recommendation to Government is that each policy option resulting from the Review be subject to a structured and publicly reported economic impact test. This analysis should have a clear acceptability threshold, and the reforms implemented should be limited to those that pass such thresholds or have clear offset measures attached. Relatedly, we are asking that Government establish and release an annual measure of the cumulative cost-of-doing-business in Ontario. This study would extend beyond regulatory burden and include input costs like corporate tax rates, energy costs, real estate, and average cost of labour. Updated annually, this metric would highlight the net impact of any new government policies implemented in the past year or proposed in the year ahead.



Recommendations:

Building the Evidence-Base and Protecting Competitiveness

- 1.** Building on Ontario's Regulatory Polic⁵⁶, at least 60 days prior to the introduction of new legislation or legislative amendments, the Ministry of Economic Development and Growth should release a detailed economic impact analysis of each recommendation of the Special Advisors.
- 2.** Complementing an economic analyses of specific Review recommendations, and modelled on non-governmental international index⁵⁷, the Ontario Cabinet Office should establish and release an annual measure of the cumulative cost-of-doing-business in Ontario. This study would extend beyond regulatory burden and include input costs like corporate tax rates, energy costs, real estate, and average cost of labour. Updated annually, this metric would highlight the net impact of any new government policies implemented in the past year or proposed in the year ahead. The study would be benchmarked across time and against comparator jurisdictions. The first annual cost-of-doing business report should be released as soon as is possible and no later than the publication of the Changing Workplace Review economic impact analysis.
- 3.** At least 60 days prior to the introduction of new legislation or legislative amendments, the Ministry of Finance should release an analysis of the fiscal implications of Review recommendations, particularly as they relate to potential increased costs in the Broader Public Sector due to possible regulatory changes for part-time and temporary work.
- 4.** Subsequent to the release of the Special Advisors' final report, the Government should establish a joint business-labour implementation working group as well sector-specific implementation sub-committees, including a dedicated small business sub-committee as well as a dedicated youth employment sub-committee. These groups would ensure that policy design is appropriately sensitive to trends in the Ontario economy. The broader working group should release

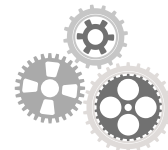
a set of implementation recommendations in advance of any new legislation or legislative amendments and after having consulted the Province's economic impact analysis and cost-of-doing business report.

- 5.** We support a call for a new government funded and publicly available survey of employment relations that is segmented by province and region.
- 6.** Do not implement Review recommendations shown to have a net negative economic impact without concurrently implementing a commensurate economic offset measure.
- 7.** Give business time to adjust to reform by ensuring that any new legislation or legislative amendments do not come into effect any earlier than 12 months after the passage of legislation.

Better Education and Enforcement

$$P_{nom} = P$$
$$q_{nom} = \left(1 + \frac{P}{100}\right) = (1+i)$$
$$D_{nom} = \frac{1}{q_{nom}} = \frac{1}{1+i}$$





Better Education and Enforcement

We appreciate that the Special Advisors have recognized gaps in existing enforcement programming, noting that there is a problem with enforcement of ESA provisions and that “Ontario may be well advised to consider different enforcement strategies to ensure compliance with the ESA”⁵⁸. Keep Ontario Working strongly agrees with this recommendation and believes that many of the workplace challenges Government is seeking to address can be solved by improving employer and employee awareness of workplace rights and subsequently enforcing, with greater regularity, violations of those rights. We see improved enforcement and education measures as an important area of common ground for government, employees, and employers. We agree with Leah Vosko and co-authors⁵⁹ that those businesses that are not complying with Ontario’s labour laws should face increasingly stringent consequences. But we would add that there is little value in creating new laws when old laws are not being followed, or in increasing the administrative burden of businesses that are and remain committed to positive employee relations and full compliance with labour standards.

With respect to enhanced enforcement measures in particular, it is critical that the Special Advisors give due consideration to the commissioned work of Vosko and co-authors⁶⁰, which observe that much of the failings in the existing enforcement system derive from an underuse of deterrence tools. As an example, the authors highlight that “[o]ver the six-year period for which data are available, there were almost 46,000 complaints which detected a violation. In about half of those cases (48%), the employer did not voluntarily comply, but in only 392 instances, or 1% of all complaints with violations, were Notices of Contraventions (NOCs) issued”.⁶¹ Vosko et al.’s data shows that recovery rates for monetary orders are low and that, between 2009-10 and 2014-15, of the \$47.5 million ordered to be paid to employees, only about \$19 million was collected.⁶² Vosko and co-authors call for expanded use of deterrence measures for enforcement of ESA violations.

As it relates to awareness and accessibility of the enforcement system, Kevin Banks’⁶³ report to the

Special Advisors is instructive. Banks makes the important point that “[b]arriers to access put redress for violations of the law out of reach”.⁶⁴ He observes that “[f]or most workers, legal claim processes are not familiar. For members of linguistic and cultural minorities, participating in such processes may also require overcoming linguistic and cultural barriers”.⁶⁵ We are glad to see that the Special Advisors⁶⁶ have made similar observations, stating that “[i]t is clear that the Act could be simplified and a variety of new and better ways found to communicate and to increase awareness, knowledge and understanding of workplace rights and obligations and to make such information accessible to all Ontarians”.⁶⁷ Notably, a frequent refrain from the business community is that many non-compliant businesses, especially small businesses, may be unintentionally non-compliant. It should never be the case that a business that wants to adhere to labour regulation ends-up being inadvertently off-side. Right now, based on the Ministry’s current educational resources, we fear the number of inadvertently non-compliant businesses could grow in the event of reform. It is important, therefore, that whether or not new regulations are added, the system be made significantly less complex and significantly more accessible to the average Ontario business, not just those who can afford considerable legal and human resource advisory services. In light of Banks’ research, we suggest that special attention be given to businesses owned or operated by members of Ontario’s immigrant community, who face additional challenges— linguistic or otherwise— in navigating a highly dense regulatory system.



Recommendations:

Increased Education

1. It is critical that the Province simplify language in the LRA, the ESA, and associated explanatory documents, with the intention of improving employer understanding of compliance requirements.
2. Following the passage of any new employment legislation or legislative amendments, the Province should invest in a multi-lingual compliance awareness campaign to educate employers on employment and labour standards, including a dedicated and easy to navigate website as well as cross province seminars.
3. The Province should provide support to not-for-profit organizations, including post-secondary institutions, to work with employers, particularly small businesses, on an ongoing basis to increase awareness of and compliance with the ESA and LRA.

Enhanced Enforcement

4. Government should enable the Ministry of Labour to increase the effectiveness of their enforcement procedures.
5. The Province must ensure that the Director of Employment Standards, in accordance with the ESA, immediately establishes an interest rate and a method of calculating interest rates so that interest can be awarded in the circumstances currently allowed for in the ESA.
6. Amend the ESA to allow employers to be required to pay interest on unpaid wages.
7. Amend the ESA to allow collection processes to be streamlined and to provide additional collection powers in order to increase the speed and rate of recovery of unpaid orders, potentially by incorporating some of the collections-related provisions in the *Retail Sales Tax Act*.

Sector Sensitive Standards





Sector Sensitive Standards

In reviewing the Interim Report, we are concerned that the Special Advisors are drifting toward a one-size fits all approach to employment standards. Given the significant sectoral diversity in Ontario's economy, that kind of approach will hurt growth by creating a benefit and cost structure that is disproportionate across employer and employee groups. As a general rule, the business community believes the most effective means of achieving net improved workplaces is to empower employers and employees, at the firm-level, to determine the appropriate balancing of competitiveness concerns and employee interests.

The vast majority of Ontario employers recognize that it is in their best interest to create fair workplaces that employees look forward to being a part of. In an effort to recruit and retain talent in a competitive global market, many Ontario businesses already offer employees workplace terms and conditions that exceed the ESA standards. While Keep Ontario Working acknowledges the critical importance of existing minimum standards, an expansion of the ESA based on a distrust of a sector or firm's ability to understand the particular needs of employees in their sector would send a strong negative signal to Ontario's business community.

Significant growth in the compliance requirements of employers would send an especially strong and negative signal to the small business sector, which faces unique challenges in both understanding and implementing employment standards. As Gunderson notes, small firms often do not have a sophisticated human resource department so as to be informed of regulations.⁶⁹

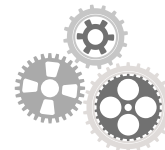
As an example of a potential insensitivity, we believe that the extension of Personal Emergency Leave to employers with less than fifty employees would be detrimental to small business. Extension would be especially concerning given that Gunderson⁷⁰, in a separate report to the Special Advisors, concludes that "it is not clear as to whether the pros of unpaid leaves dominate the cons so as to justify substantial changes" and that "difficult trade-offs are involved in this area, with the research evidence providing little guidance except to indicate that the more generous the leave

provisions, the longer the sick leave that is taken"⁷¹. While acknowledging the potential benefit of unpaid personal leave as it relates to increasing dual-earner families and productivity, Gunderson also observes that these provisions generate pressure for employers, particularly small employers, because of their often unanticipated use. Gunderson notes that there is a risk that workers will ultimately bear most of the cost created by these provisions insofar as employers may deem it necessary to shift cost back to workers in the form of lower wages.⁷² Further, Gunderson claims that "unpaid leave is likely to be regressive in that low-income families cannot afford to take an unpaid day off"⁷³.

Discussion around Personal Emergency Leave is an important reminder, therefore, that expansion of provision must happen only in cases of demonstrated need and with an appreciation that existing tailoring of legislation may be rooted in an appropriate awareness of unique firm-level impacts. There are at least four areas of proposed reform that we believe are critical to consider with this perspective in mind. They are: ESA exemptions; Greater Right or Benefit; Scheduling; and Common Employer Status and Contracting.

Exemptions

Perhaps the clearest example of the Interim Report's unfamiliarity with the economic diversity of Ontario is found in the Special Advisor's consideration of removing some or all sector exemptions from the ESA. Keep Ontario Working believes that abolishing sector exemptions would mark a significant and unacceptable change from Ontario's long-standing approach to Employment Standards legislation. In knowledge-based occupations, like information technology, exemptions have been developed to recognize the distinct demands of entrepreneurial culture. Similarly, exemptions in agricultural sub-sectors recognize the fact that agricultural production is highly dependent on global market demand, external factors including weather, and the perishable nature of products. Sectors like these require legislated workplace standards that are flexible. For these reasons, Keep Ontario Working advocates that the government continue to take into



account sectoral differences in the organization of works and its cost.⁷⁴

Greater Right or Benefit

Much like exemptions, the Greater Right or Benefit provision in the ESA provides employers and employees with flexibility in determining optimal employment relationships. The current intention of the provision is such that if an employer offers a benefit to an employee (whether pay, working hours, personal days, etc.) that is more generous than the minimum standards defined in the ESA, then the ESA does not apply to that employee, in that particular circumstance. As members of Keep Ontario Working have consistently argued elsewhere⁷⁵, this provision is a logical one given the wide variety of employment relationships that exist in Ontario's workplaces. It recognizes that employers, as the result of collective bargaining or competition for talent, often offer employees workplace terms and conditions that exceed the ESA standards. We believe this provision should be expanded and that the elimination of this provision could create confusion for businesses and employees.

Critically, and so as to protect the integrity of the Greater Right or Benefit provision, we would suggest that the Special Advisors consider an amendment that clarifies what common workplace entitlements, be they paid or unpaid, make up a comparative entitlement for the purposes of constituting a greater right or benefit. As the Interim Report⁷⁶ notes, the nature and scope of some ESA policy can make it difficult for employers to establish that their policies provide a greater right or benefit. Clarification in this area would be welcome.

Scheduling

The interim report includes policy options that would create rigid and universal requirements related to employers' posting of employee work schedules. Again, a one-size-fits-all approach to scheduling fails to recognize the diversity of Ontario's economy, and will remove the flexibility that many part-time employees enjoy. It has long been a reality in the Ontario economy that some sectors need more flexibility in scheduling than others— manufacturing, healthcare, tourism, and information technology being notable examples. Also,

as Gunderson⁷⁷ observes in his report to the Special Advisors, though flexible work arrangements and scheduling are often designed to meet the just-in-time delivery requirements of employers, they also regularly align with the needs of families looking to manage work-life responsibilities.⁷⁸ Gunderson argues flexible worktime arrangements should be accommodated as much as possible, with obvious exceptions for those instances where such arrangements are involuntarily imposed.⁷⁹

Though we share the Government's commitment to address precarious work, it's important that government, employees, and the employer community distinguish between the problems of precariousness and opportunities to provide employees with desired freedom. As suggested in the above economic analysis, Ontario workers are increasingly coming to value the ability to be their own boss, choose their own schedule, achieve a better work-life balance, and seek out new wage-earning opportunities. Young workers, in particular, place significant value on the ability to quickly adjust work schedules so as to accommodate academic and extracurricular demands. We should not be seeking to limit this flexibility

Common Employer and Contracting

Concerning for small and large businesses alike, the Interim Report explores options that would allow for changing the current legal standard for determination of common employers. The current law in Ontario already establishes a clear and effective test for determining whether two or more parties should be found to be joint or common employers. This test operates effectively and should remain in place. Changing the test for common employer status would be a fundamental and far reaching disruption to the current relationship between employees and employers and would create enormous uncertainty in an area of law which is currently clear. For business owners, there is legitimate concern that these changes may result in disruptions to contractual agreements without any consent of the contractual parties.

Franchisors and franchisees are particularly vulnerable to this risk.



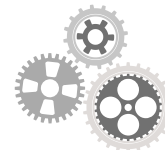
It has to be remembered that franchising has been a great growth engine for small business in the Canadian economy since the end of World War II, and there are today approximately 78,000 franchised businesses in Canada; many of these are small businesses that would not otherwise exist but for the franchise business model. Every time an entrepreneur invests their time and money to open and operate a franchised business new jobs are created. Some franchisors have been tremendously successful, and are now themselves, large even public companies. But all franchisors started small, and somewhere in their history, sold their first franchise and found their first franchisee to take a risk and invest. Some succeeded, while many franchisors and franchisees failed along the way. Some franchisors never become large and are themselves still small businesses.

This relationship between franchisor and franchisee is governed by a contract, the franchise agreement, which is a license of a brand and “system” (the body of knowledge needed to operate the business). But the franchisee is still an independent business person. So while they receive the benefits that a franchisor has to offer, such as manuals and training or marketing expertise, the franchisee’s investment is at risk like any other business investment. The franchisee is not simply a manager of a business owned by the franchisor, franchisees are independent business people who run their own businesses and it is their own money they risk losing if they do not operate properly, or if someone else were to take over responsibility for running it (such as the franchisor). In the case of a restaurant, for example, the franchisee spends their own money and/or secures borrowed funds from banks (at their own risk) and invests in the property (usually by way of lease), the leasehold improvements, the fixtures, equipment, computer hardware and software, inventory, supplies, and the people who will be employed in the business. The franchisee may make decisions specific to what will make them competitive in their own market such as hours of operation and pricing. In some instances the franchisor may operate nationally but the competitive dynamics are very much local.

It is both inaccurate and unfair to argue that, because franchisors want to maintain consistent brand standards, franchisors exert a level of control that should automatically make them a joint or common employer with the franchisee. Such a characterization is a direct contradiction of the very nature of the franchisor/franchisee relationship— two independent parties coming together in a relationship governed by a contract, containing terms which are clearly defined. It would also set Ontario apart from any other province in Canada, and necessarily reduce the number of new franchised businesses expanding into this province from other jurisdictions.

The release of the Interim Report has already had a chilling effect as even the mere suggestion that franchisors could be automatically characterized as common employers has caused franchise companies from outside the province to reconsider their expansion into Ontario. In one case we are aware of, a US based franchisor with more than 2,000 outlets, and which has recently opened a corporate location in Alberta has decided to focus its franchise efforts outside of Ontario and in the short term put off looking for franchisee entrepreneurs in Ontario based upon the concerns the Interim Report creates. In a second case a Michigan based franchisor has decided not to expand to Canada so long as there is a risk of common employment in Ontario. In both situations, and these are simply two that have come to our attention, new investments by Ontario franchisees will not be made, new outlets using Ontario based contractors and labour will not be built, consultants of various sorts in Ontario (i.e.: architects, engineers, advertising agencies, accountants and lawyers) will not get retained, and there will be no jobs created for Ontario residents as employees of the franchisees. It should be remembered that Ontario is but one relatively small jurisdiction in the world for foreign brands to look to for growth. If Ontario becomes an outlier they will simply look elsewhere. If the franchisor is simply not willing to assume liability that they do not face elsewhere, they will avoid Ontario. If they are here already, they can seek to reduce their risk by not growing further in this province.

In addition, changing the standard for joint or common employer status may have the unintended



consequence of actually diminishing the compliance capacity of business, in part because franchisors will be forced to provide less support to their franchisees to avoid the risk of being deemed common employers. Relatedly, fewer entrepreneurs may be willing to invest in franchises, as they will encounter more risk and less reward. Increased oversight and involvement of the franchisor could increase operating costs, impacting franchisee profitability and eroding the degree of independence that many franchisees so greatly appreciate as small business owners.

In addition to suggesting changes for common employer status, some stakeholders have argued that the government should implement a system of reverse onus on employee status, whereby a worker must be presumed to be an employee unless the employer demonstrates otherwise. This proposal is in response to what some groups perceive as the intentional misclassification of workers by employers. Keep Ontario Working is strongly opposed to such a measure, believing that it would create a barrier to the legitimate use of independent contractors, temporary agency employees and other contingent workers. These types of non-standard workers enable the workplace flexibility the same stakeholders are advancing without acknowledging the reality that you can't support unplanned or extended absences for one group of workers without allowing an employer to engage another group of workers on an irregular and limited basis.

In regard to franchising, the coalition advocates for legislation to explicitly recognize that a franchisee is not an employee, as is done in several US states. The Ontario government has already chosen to regulate the offer of franchises, and the relevant statute (the Arthur Wishart Act), contains a definition of what constitutes a franchise.⁸⁰ Labour, employment and franchise law should be in accord so as to reduce uncertainty, as that also harms investment and entrepreneurial risk taking.

As such, Keep Ontario Working strongly opposes any changes to the LRA that would amend its related employer provisions and strongly opposes any changes to establish a new joint employer rule in the ESA. We support the status quo option in both sections 4.2.2 and 5.2.2.

In light of these concerns, Keep Ontario Working offers the following recommendations.

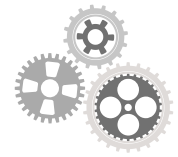
Recommendations:

Aligning Standards to Economic Realities

1. The ESA should maintain its greater contractual or statutory right provision.
2. The ESA should more clearly define what common workplace entitlements, be they paid or unpaid, make up a comparative entitlement for the purposes of constituting an expanded greater right or benefit.
3. Maintain the 50 employee threshold for Personal Emergency Leave.
4. Review the ESA leave provisions in an effort to consolidate leave categories.
5. Continue to take into account sectoral differences in the organization of work and its cost. Maintain ESA sector and sub-sector exemptions.
6. Pilot projects in an attempt to achieve workable scheduling practices that balance the interests of employers for flexibility and productivity with the employees' interests in predictability.
7. Amend the ESA to give employees the right to request in writing, after 1 year of service, that their employer decrease or increase their hours of work, give them a more flexible schedule or alter the location of their work. The employer should be required to give the employee an opportunity to discuss the issue and provide reasons in writing if the request is refused.
8. Amend existing reporting pay rights in ESA so as to increase minimum hours of reporting pay from current 3 hours at minimum wage to 3 hours at regular pay.
9. Increase regional access to the OLRB review process of ESO orders, by having the Ministry of Labour appoint part-time vice chairs in various cities around the province, potentially in the 16 centres where the Office of the Worker Adviser has offices.
10. Provide greater clarity and certainty with respect to franchisor's and franchisee's distinct employment and labour law liabilities and make clear that franchisors are not considered to be the employer of a franchisee or a franchisee's employee.

Fair and Transparent Labour Relations





Fair and Transparent Labour Relations

If a group of employees vote to form a union, that vote should be required to be a secret ballot. 65.3% agree.^m

The labour community has used the Changing Workplaces Review as an opportunity to advocate for fundamental changes in labour relations. While fully committed to protecting existing provisions in the Labour Relations Act, Keep Ontario Working strongly opposes major reform in this area. As noted above, Ontario's economic recovery is fragile and fundamental changes to employer-employee relations could threaten competitiveness. The group believes that there is no demonstrated need for fundamental changes to our existing labour regime – particularly if the primary goal is simply one of increasing rates of unionization.

We would again stress that calls for shifts in labour relations appear insensitive to the diversity of firm-types in the Ontario economy, perhaps most significantly the small business sector. Considering calls for sectoral bargaining as an acute example of insensitivity, we direct the Special Advisors to Morley Gunderson's⁸¹ work that, citing Chaykowski⁸², notes a breakdown in pattern bargaining due to an increased emphasis on firm-level variables such as ability-to-pay. Gunderson observes that even in unionized contexts, the survival of individual firms within a sector, as well as their unionized employees, can often depend on an ability to deviate from rather than conform to conventional bargaining patterns.⁸³ Gunderson also makes the important point that pattern bargaining has historically occurred in industries dominated by large firms.⁸⁴ A critical implication of these insights could be that small businesses are especially unprepared to absorb broad bargaining structures and thus that sectoral bargaining could create inequity in the labour relations system.

Additionally, while Keep Ontario Working recognizes that the research on collective bargaining conducted by Sara Slinn⁸⁵ and commissioned by the Special Advisors expresses a generally favourable view of

broad bargaining structures like those currently used in Quebec, it should be acknowledged that some of the stated benefits of the system, while in the short-term proving positive for employers, could have negative long-term consequences for competitiveness and thus the ability of the private sector to create or retain jobs. Indeed, Slinn, citing Jalette (2006), acknowledges concern that a decree system that reduces wage-based competition only does so within the jurisdiction subject to the decrees and thus may actually increase (in a direction disadvantageous to growth) wage-based competition between a decree-subject jurisdiction and international comparator jurisdictions that are not subject to decree. Slinn also notes that, as it relates to non-international businesses focussed on local competition, there are concerns about broad bargaining structures creating barriers to market entry. Slinn recognizes opposition to a decree system “on the grounds that workers covered by extensions chose neither collective representation nor the extended terms”.⁸⁶ Collectively, these insights suggest a greater need to subject labour relations proposals to a dual test—measuring impact both on employee rights and employment rates.

Of the various labour relations policy options identified in the Interim Report, two are particularly concerning to Keep Ontario Working: Card-Based Certification and Sectoral Bargaining.

Certification

The Interim Report includes options that would allow workers to unionize simply by signing a union card. The need for a secret ballot vote would be removed, marking a substantial change from the existing process. We believe the removal of a secret ballot vote diminishes employees' rights and would prevent workers from having a real say about whether or not they wish to be part of a union. Secret ballot voting safeguards employees from external pressures and helps ensure their true opinion is represented. While a secret ballot vote is conducted in a neutral environment by the Labour Relations Board, the collection of signatures on union membership cards is controlled entirely by union leadership.



Concerning calls for reforms that would enable measures like electronic secret ballot voting, Keep Ontario Working is open to this possibility insofar as it maintains the democratic integrity of the certification process. In Sara Slinn's⁸⁷ commissioned report to the Special Advisors, there is an acknowledgment that the literature is indecisive with respect to the benefit of alternatives to on-site organizing. Citing work from Getman et al. (1976)⁸⁸, Gresham (1983-84)⁸⁹, Bierman (1985)⁹⁰, Macklem (1990)⁹¹, and Hirsh (2010)⁹², Slinn notes that alternatives "such as home-visits and other off-site contact or electronic communication, are criticized by numerous commentators on the US labour law system, as poor and ineffective substitutes for personal interaction with workers at the workplace, debate, discussion or information".⁹³ She acknowledges, as well, that research⁹⁴ "found that home visits were a common and relatively effective union organizing strategy in Ontario".⁹⁵ As such, we would express openness to further exploring the option of electronic voting in union certification processes, but would suggest the Special Advisors proceed with caution.

Sectoral Bargaining

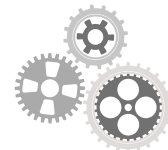
The Interim Report includes options that would enable Sectoral Standards Agreements, which extend standards and contractual provisions throughout identified regional/occupational/industrial labour markets. These Agreements would expand collective bargaining among disjointed groups of employers and employees. This could create a scenario where thousands of small employers are effectively subject to the demands of a single bargaining council.

In addition to the critiques of broad based bargaining noted above, we would again point to Sara Slinn's⁹⁶ report on collective bargaining to the Special Advisors, particularly its discussion of the Status of the Artist Act. Slinn observes that in the SOA system, artistic producers have formed few associations and thus artists' associations are often required to bargain with individual producers, which can be costly.⁹⁷ More importantly, Slinn states that "[a] 2002 federal government report concluded that the SOA had led to

greater organization among artists' associations, but had had little effect on artists' working conditions and socio-economic circumstances".⁹⁸ According to Slinn, when artists themselves were surveyed, a common view was "that the legal right to collective bargaining was of less importance to improving their economic circumstances than were a variety of direct measures such as tax exemptions, income averaging, and access to social programmes".⁹⁹ In Slinn's characterization, the federal report "concluded that artists regarded the SOA as a necessary but not sufficient mechanism for improving their socio-economic circumstances."¹⁰⁰ Applying these perspectives to the Ontario economy more broadly, one again questions the extent to which sectoral bargaining would be responsive to the voice of employees versus the voice of employee organizations. The research underlines the potential overemphasis of an ability for expanded bargaining to address the socioeconomic challenges government is seeking to remedy.

Recommendations

- 1.** Protect the LRA's existing requirement for a secret ballot for union certification and decertification.
- 2.** Further explore the option of electronic voting in union certification processes, subject to appropriate safeguards for accuracy and privacy
- 3.** The LRA 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.



Conclusion

Keep Ontario Working believes that any introduced reforms designed to modernize the province's labour and employment legislation must be evidence-based. The options recommended by the Special Advisors need to be subject to a structured and publicly reported economic impact analysis. This analysis should have clear acceptability thresholds, and the reforms implemented should be limited to those that pass such thresholds or are being implemented with a commensurate economic offset measure. We support reform where and when it is needed, but caution against change for change's sake.

Keep Ontario Working recognizes the changing global economy and its impact on Ontarians and Ontario businesses and thus we think it important that Government approach public policy in a way that enhances opportunity and security for the province's employees, employers, and consumers. Good jobs are created by a strong and growing Ontario economy. We also believe, and have sought to demonstrate in our submission, that issues of precarious work in the economy are often misunderstood and, in some cases, overstated. While there are workplaces in Ontario that are not meeting basic employment standards, these non-compliant employers are the minority. Generalized claims of a precarious work crisis could create a scenario wherein government is tackling tailored policy problems with blunt policy instruments. Temporary agency workers, part-time employees, contractors and other contingent and non-standard workers can be positive and legitimate parts of the workforce that enable the kind of flexibility that all workers and employers need to balance their economic and family objectives. It is critical that the Special Advisors understand that their recommendations could drive-up costs for companies already practicing positive employee relations thus having a negative impact on the ability of Ontario business to invest in growth, job retention, and job creation.

Workplace law reform conducted in absence of a consideration of the economic context risks discouraging investment and compromising the competitiveness of businesses in the province which are already struggling to maintain profitability amidst rising input costs. There is a sense amongst the employer community that politicians are either unaware or significantly underestimating the cumulative financial burden of recent policies that have increased the cost of doing business in the province. Employers stress that the resulting cost escalation of such negligence acts as a direct constraint on their business' ability to invest in the human and physical capital required to ensure the future prosperity of the province. As articulated at the onset of this submission, government cannot legislate prosperity. It is evident, however, that it does have the power through legislative reform to determine whether or not businesses will be positioned to continue to invest in the province.

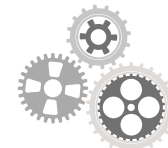
In addition to advocating for enhanced evidence-base policy, our group supports improvements in the education and enforcement of the ESA and LRA, all with an eye to improving effectiveness. We believe that many of the workplace challenges that Government is seeking to address can be solved by improving employer and employee awareness of workplace rights and subsequently enforcing violations of those rights. Those businesses that are not complying with Ontario's labour laws should face serious consequences. We see education and enforcement measures as an important area of common ground for government, employees, and employers.

We look forward to further consultation with the Special Advisors and Government on these important issues.



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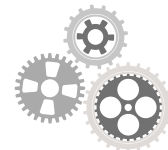
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Explanatory Notes

- a. OCC member survey, November 2015, n=1310
- b. Employment in Ontario fell 2.7% in 2009, compared with 5.0% in the recession starting in 1990 and 2.2% in 1982. Statistics Canada Cansim table 282-0002.
- c. OCC member survey, November 2015, n=1310.
- d. OCC member survey, November 2015, n=1310.
- e. Much of the data used in this study come from Statistics Canada's labour force survey. This survey is the most reliable source of labour market data for Ontario. While the monthly data can fluctuate because of sampling variability, we use the annual data which is very reliable and is benchmarked to Census data, which confirms its very high degree of accuracy. As well, users should remember that the various categories of the contingent labour force—part-time, temporary and self-employed jobs—are not mutually exclusive. The same person can appear in all three categories. Put another way, one cannot add up the number of workers in each of these categories to get an overall measure of the amount of contingency work in Ontario's economy.
- f. In Statistics Canada's classification, voluntary includes working part-time because of school, raising children, other family commitments, illness, personal preference and other voluntary reasons.
- g. OCC member survey, May 2016, n=816.
- h. Almost all (91.3%) jobs paying less than \$12 an hour actually paid between \$10 and \$11 an hour.
- i. The \$40,000 is a rough estimate, based on Statistics Canada's estimate that each of its own full-time employees cost \$100,000 a year including salary, benefits, the cost of equipping an office, training, etc. Since provincial salaries are slightly less than federal ones, we assume part-time employees save about half an average cost of \$80,000.
- j. A small part of public sector employment in Ontario is accounted for by the federal government. However, almost all the part-time and temporary workers in Ontario's public sector are in education and health care, which are administered by the provincial government.
- k. OCC member survey, November 2015, n=1310.
- l. OCC member survey, May 2016, n=816.
- m. CC member survey, May 2016, n=816.

