

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

Dear Special Advisors Mitchell and Murray,

On behalf of the Ontario Chamber of Commerce and its 60,000 business members, I would like to thank you for leading the Changing Workplaces Review. We welcome this process and the attention it brings to the challenges and opportunities in employer-employee relations. Over the last several months, we've engaged our membership and the broader business community so as to ensure that relevant stakeholders are aware of and constructively contributing to your consultations. Alongside other industry voices, we will be making a submission to the Review in response to your Interim Report. Before doing so, however, we wish to answer your request for early feedback on Personal Emergency Leave (PEL) policy.

As noted in our original submission to the Review, reform to the Ontario Labour Relations Act (LRA) and Employment Standards Act (ESA) will have a profound effect on Ontario's economy. Though we support reform where and when it is needed, and recognize the imperative to reduce precariousness in the province, we caution against change for change's sake. We urge the Special Advisors to consider the economic competitiveness consequences of each policy option and to recommend only those proposals that have passed a structured and publicly reported economic impact analysis as well as a demonstrated need test. Ontario's economic recovery remains fragile and long-term growth projections are modest. Global pressures threaten our status as an investment destination of choice, and the cost-of-doing business in Ontario continues to rise. Compounding compliance costs brought on by the Review could limit business' ability to create jobs in the province. Reforms should be implemented only when a robust evidence-base demonstrates the net benefit of such measures.

With this perspective in mind, we echo our earlier position on Personal Emergency Leave, namely that existing leave provisions are reasonable and that significant amendments could compromise productivity and investment and thus the economic wellbeing of both employers and employees. We believe that Government should preserve the 50 employee threshold for PEL and clarify the greater right or benefit provision in the ESA. We also think there is value in the PEL being broken down into more discrete categories, especially in the absence of an effort to consolidate PEL with the ESA's other nine leave categories. We are glad to see that the Special Advisors acknowledge these positions in the Interim Report, along with associated employer rationales. As you have noted, employers value regulatory frameworks that align with compliance capacity. Considered changes to the PEL, outside of those we have expressed support for, could add a level of complexity and onerousness that would be difficult for business to navigate. Our more detailed rationales are as follows:

Maintaining the 50 employee threshold: It is important to note, as you have in the Interim Report, that many small businesses have limited operational flexibility, particularly as it relates human resource management. Extension of PEL to this category of employer may constrain productivity and increase cost. Changes should not be considered without a full understanding of firm-level impact and a strategy from the Special Advisors as to how small businesses could be resourced by Government to absorb the additional pressures generated from an expansion of PEL policy. Importantly, the research on leaves commissioned by the Special Advisors and prepared by Morley Gunderson¹ 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 “[d]ifficult 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”. 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

¹ Gunderson, Morley. “Expected and Actual Impact of Employment Standards”. Prepared for the Ontario Ministry of Labour to support the Changing Workplaces Review of 2015. Project #7. September 30, 2015.

pressure for employers, particularly small employers, because of their often unanticipated use. Gunderson adds 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. Further, Gunderson claims that “unpaid leave is likely to be regressive in that low-income families cannot afford to take an unpaid day off”. Recognizing these potential behavioural responses, we recommend against a change to the thresholds.

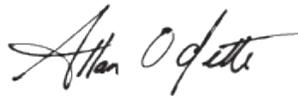
Greater Right or Benefit: As you know, the current intention of the ESA is such that if an employer offers a benefit to an employee (whether pay, working hours, personal days, etc.) that is more generous than the minimum standards defined in the ESA, then the ESA does not apply to that employee, in that particular circumstance. As we argued in our original submission, 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 simply in effort to recruit and retain talent in a competitive global market, often offer employees workplace terms and conditions that exceed the ESA standards. We believe this provision should be protected and that the elimination of this provision could create confusion for businesses and employees. We would further 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 for the PEL specifically. As the Interim Report notes, the nature and scope of current PEL policy can make it difficult for employers to establish that their leave policies provide a greater right or benefit. Clarification in this area would be welcome.

Categorization within PEL: Given the potential for confusion in the interpretation of leave criteria, the OCC is receptive to a division of PEL into clearer categories. We would be open to exploring how categories could align both with existing criteria in the PEL as well proposed new criteria such as domestic or sexual violence— which we believe, supported by appropriate privacy measures, should be recognized as grounds for personal leave. Having said this, we acknowledge that, for some employers, a broader consolidation of existing leave provisions is desired. The Interim Report acknowledges that the ESA presently provides ten unpaid job-protected leaves of absence. Prior to 2001, there were only two job-protected leaves, and between 2004 and 2014 seven new leaves were introduced.

We recognize, therefore, that a move toward consolidation could provide administrative relief to employers and employees who, in recent years, have been asked to adjust to a brisk pace of reform. We are willing to explore this option with the Special Advisors and Government. However, in the absence of a clear signal toward broader consolidation, and thus assuming PEL remains a standalone leave policy, we maintain an interest in seeing a further clarification of PEL.

Underlying each of these proposals is both a support for the Review itself and an openness to modifying our positions if and when the Special Advisors are able to present analyses demonstrating that our concerns around competitiveness can be appropriately mitigated by Government. We absolutely share the Special Advisors desire to improve workplaces for employees. Our objective is simply to stress that the competitiveness of Ontario business is integral to quality of work and thus that regulatory reform that raises thresholds only to reduce the ability of business to invest in and grow the labor force may ultimately be counterproductive. We ask that you take these perspectives into consideration. We would be happy to discuss these issues with you in more detail.

Thank you,



Allan O'Dette
President & CEO
Ontario Chamber of Commerce