Council Agenda

Tuesday, October 4, 2016

3:00 p.m.

Council Chambers

Pages

1. Call to Order

2. Disclosure of Pecuniary Interests Under the Municipal Conflict of Interest Act

3. Minutes of Previous Meeting

   a. Regular Council Minutes of September 6, 2016 1

4. Additional Items Disclosed as Other Business

5. Resolution Moving Council into Committee of the Whole to Consider Public Meetings, Delegations, Public Question Period, Correspondence, Reports, Motions for Which Notice Has Been Previously Given and Other Business

6. Public Meeting- 5:00 p.m.

   a. ZBA 2016-08 Thomas/McPhail Lot 21 South Side George Street, Harriston 14

7. Delegations

   a. Mayors Charity Golf presentation to Minto Refugee Settlement Committee, Ist Palmerston Scout Group and Minto Minor Ball

   b. Brian Baldwin, Seniors Advisory Committee Retirement

8. Public Question Period

9. Correspondence Received for Information or Requiring Direction of Council

   a. Ministry of the Environment and Climate Change, Harriston Drinking Water System 26

c. Staff Reports

d. Other Business Disclosed as Additional Item

11. Motion to Return To Regular Council

12. Notices of Motion

13. Resolution Adopting Proceedings of Committee of the Whole

14. By-laws

15. Adjournment

Council Minutes
Tuesday, September 6, 2016
2:30 p.m. Council Chambers

Council Present:
Mayor George A. Bridge
Deputy Mayor Ron Faulkner
Councillor Mary-Lou Colwell
Councillor Dave Turton
Councillor Judy Dirksen
Councillor Jean Anderson
Councillor Ron Elliott

Staff Present:
Bill White, C.A.O. Clerk
Annilene McRobb, Deputy Clerk, Recording Secretary
Terry Kuipers, Chief Building Official
Belinda Wick-Graham, Business & Economic Manager
Gordon Duff, Treasurer
Brian Hansen, Public Works Director
Mike McIsaac, Road Foreman and Drainage Superintendent
Chris Harrow, Fire Chief

1. **Call to Order** - 2:40 p.m.

2. **Disclosure of Pecuniary Interests Under the Municipal Conflict of Interest Act** - None.

3. **Motion to Convene into Closed Session**

RESOLUTION: 2016-166
Moved By: Deputy Mayor Faulkner; Seconded By: Councillor Dirksen
THAT The Council of the Town of Minto conduct a meeting Closed to the Public to discuss the following:

- Previous Minutes of the July 19,2016 Closed Session Meeting
- Personal matters about an identifiable individual, including employees; Clerks Department
- A proposed or pending acquisition or disposition of land - James Street, Palmerston
- Litigation or potential litigation.

Carried

4. **Motion to Convene into Open Session**

RESOLUTION: 2016-167
Moved By: Councillor Colwell; Seconded By: Councillor Turton
THAT The Council of the Town of Minto resume into open Council.

Carried

5. Minutes of Previous Meeting

a. Regular Council Minutes of August 2, 2016

RESOLUTION: 2016-168
Moved By: Councillor Dirksen; Seconded By: Councillor Elliott
THAT the minutes of the August 2, 2016 Council Meeting be approved.

Carried

6. Additional Items Disclosed as Other Business

Councillors Anderson and Dirksen, Deputy Mayor Faulkner and Mayor Bridge had items.

7. Motion to Convene into Committee of Adjustment 5:00 p.m.

Minor Variance, A4/16 Dan Sinclair, 310 Main Street East, Palmerston
See Schedule "A" for the Minutes.

8. Resolution Moving Council into Committee of the Whole to Consider Public Meetings, Delegations, Public Question Period, Correspondence, Reports, Motions for Which Notice Has Been Previously Given and Other Business

RESOLUTION: 2016-169
Moved By: Councillor Turton; Seconded By: Deputy Mayor Faulkner
THAT The Town of Minto Council convenes into Committee of the Whole.

Carried

9. Public Meeting - 3:18 p.m.

a) Notice of Engineer's Report Section 4 Drainage Act, Municipal Drain 116, 116 Part Lots 36 Concession 18, Town of Minto, Part Lots 6,7 Concession 4, Municipality of West Grey

Mayor Bridge Chair called the meeting to order. CAO Clerk White stated the purpose of the meeting is to consider the engineering report prepared by Dietrich Engineering Limited dated July 25, 2016 for Drain 116-2016. Notice and copies of the report was sent to four landowners, Town Staff, Ministry of Agriculture, Food and Rural Affairs, Saugeen Valley Conservation Authority and Chair Drainage Superintendent of the Municipality of West Grey.

Chair Bridge called upon Greg Nancekivell of Dietrich Engineering Limited to provide a summary of the report. He noted the total estimated cost of the project is $56,900.

Chair Bridge called on persons in attendance wishing to provide information that might influence Council's decision on the matter, and whether any person wished to add or remove their name from the assessment. No one came forward.

Chair Bridge noted "Council must decide whether or not to proceed with the project by provisionally adopting the engineer's report by by-law, or referring the report back to the engineer for modifications. There is no right to appeal assessments or other aspects of the engineer's report at this meeting; these appeal rights will be made available later in the procedure". A by-law will be presented at a subsequent meeting.

Chair Bridge adjourned the meeting at 3:25 p.m.

10. Delegations

a. Glen Hall, LaunchIt Chair, Live2Lead

LaunchIt Chair Glen Hall presented information on the Live2Lead Simulcast at the Norgan Theatre Friday October 7, 8 am – 12:30 pm. Live2Lead is a half-day, leader development experience to equip attendees with new perspectives, practical tools and key takeaways.

b. Linda Campbell, Harriston-Minto Fall Fair

Belinda Wick-Graham spoke for Linda Campbell about the upcoming Harriston-Minto Fall Fair September 16 – 18 at the Harriston Arena. The theme is "Keep Calm and Plow on"!

c. Linda Dickson, Bridgette Francis County Emergency Plan Annual Reporting

Linda Dickson, Emergency Manager and Bridgette Francis Emergency Management Programme Coordinator presented reports for Councils consideration.

MOTION: COW 2016-199
Moved By: Councillor Elliott; Seconded By: Councillor Anderson
THAT Council for the Town of Minto accepts the annual emergency management report, and further THAT this report serves as the annual review of the Town's Emergency Management Program for 2016.

Carried

MOTION: COW 2016-200
Moved By: Deputy Mayor Faulkner; Seconded By: Councillor Turton
That a report and recommendation be brought forward to Council regarding the new composition of the Town of Minto's Emergency Management Programme Committee.
BE it resolved that Council hereby appoints to the Town of Minto's Emergency Management Program Committee individuals from the following Town's Departments and/or Emergency Management support agencies:
Member of Council such as the Mayor or alternate
CAO/Clerk and/or designate
Public Works (Public Works Director and/or designate)
Finance (Treasurer and/or designate)
Parks and Recreation (Manager of Recreation Services and/or designate)
Chief Building Official and/or designate
Economic Development (Business and Economic Manager and/or designate)
Local Municipal Fire Department (Fire Chief and/or Deputy Fire Chief)
Wellington OPP (Inspector or Staff Sergeants, Sergeants)
Guelph Wellington EMS (Chief, Acting Chief, Supervisors)
Wellington Dufferin Guelph Public Health (Health and Safety Coordinator/Inspectors)
Emergency Management (CEMC and/or designate), and
Any other persons or agency representatives that may be appointed by Council from time to time.
And further that Council designates authority to the committee to appoint a Chair from their members;
And further that the Committee is responsible for overseeing the development of the Town of Minto's Emergency Management Program ensuring that appropriate public education

activities, training for emergency management officials and staff, and emergency management exercises are undertaken on an annual basis.
And further that the CEMC shall provide Council with an annual report on the status of the Town of Minto's Emergency Management Program for their review, consideration and approval.

Carried

MOTION: COW 2016-201
Moved By: Councillor Anderson; Seconded By: Councillor Dirksen
That Council supports the adoption of the Amendment Number 3 to the Emergency Response Plan for the County of Wellington and the Member Municipalities, and further that Council authorizes the passing of a by-law adopting the amendment to the Emergency Response Plan.

Carried

MOTION: COW 2016-202
Moved By: Councillor Colwell; Seconded By: Councillor Turton
That Council receives the report on the Strategic Direction for Emergency Management Programs and supports the recommendations and identified implementation of the recommendations and further that Council endorses the efforts of the Town's Emergency Management Program Committee with the assistance of the Emergency Management staff to undertaken the completion of the recommendations in a timely manner.

Carried

d. David Richenback, Chartered Accountant, 2015 Town of Minto Audit
David Richenback Chartered Accountant, Kyle Mallet CPA and Treasurer Duff presented the Audit of the Town's 2015 Consolidated Financial Statements.

MOTION: COW 2016-203
Moved By: Deputy Mayor Faulkner; Seconded By: Councillor Colwell
THAT the report dated August 30, 2016 regarding the 2015 Financial Statements and Financial Information Return be received:
AND FURTHER THAT the 2015 audited Financial Statements and Financial Information Return be approved as presented.

Carried

11. Public Question Period - None.

12. Correspondence Received for Information or Requiring Direction of Council
a. Ministry of Natural Resources and Forestry, Annual Oral Rabies Vaccine Program
b. Town of Lakeshore, Resolution re: Debt incurred 2015 Pan Am and Parapan Am Games
c. MPP Randy Pettapiece, Spearheading New Fire Safety Initiative News Release
d. Township of Carlow/Mayo, requesting support regarding Bill 171, Highway Traffic Amendment Act (Waste Collection Vehicles and Snow Plows), 2016
e. Saugeen, Grey Sauble, Northern Bruce Peninsula Source Protection Region Drinking Water Source Protection Newsletter

MOTION: COW 2016-204
Moved By: Councillor Elliott; Seconded By: Councillor Anderson

THAT the correspondence be received for information.

Carried

13. Reports of Committees and Town Staff, Matters Tabled and Motions for Which Notice Has Been Previously Given

a. Committee Minutes for Receipt

1. Maitland Valley Conservation Authority Board of Director Minutes of June 15, 2016

MOTION: COW 2016-205
Moved By: Councillor Colwell; Seconded By: Councillor Turton
THAT the Maitland Valley Conservation Authority Board of Director Minutes of June 15, 2016 be received for information.

Carried

b. Committee Minutes for Approval - None

c. Staff Reports

1. Mark Van Patter, Wellington County Planning, Clark Heinmiller Draft Plan Approval

MOTION: COW 2016-206
Moved By: Councillor Elliott; Seconded By: Deputy Mayor Faulkner
THAT Council of the Town of Minto supports the application by Ann Clark and Barry Heinmiller for a residential Draft Plan of Subdivision.

Carried

2. Chief Building Official Verbal Report, Palmerston Library Signage

The Chief Building Official noted the Library sign was placed too close to the sidewalk in error. The County will amend the Town's encroachment agreement to include the sign.

MOTION: COW 2016-207
Moved By: Councillor Turton; Seconded By: Councillor Anderson
THAT Council amend agreements in place with the County of Wellington in order to allow for the encroachment of the Palmerston Library sign.

Carried

3. Recreation Services Manager, Sexual Harassment Policy

The Recreation Services Manager noted the Joint Health and Safety Committee reviewed the policy and support the changes. On-line training is assigned to staff on this policy.

MOTION: COW 2016-208
Moved By: Councillor Elliott; Seconded By: Councillor Turton
THAT Council receives the Recreation Services Manager's August 31st, 2016 report regarding Workplace Anti-Violence, Harassment and Sexual Harassment Policy Update and approves the new policy.

Carried

4. Economic Development Manager, Town of Minto IPM Showcase

Economic Manager Wick-Graham presented an outline of the IPM County Showcase noting many of the items will be repurposed at the Palmerston Railway Museum.

5. Economic Development Manager, Façade Grant – Harry Stone's Pizza Burger
6. Economic Development Manager, Façade Grant –Sind Investments 237, 243 Main St W
7. Economic Development Manager, Signage Grant - Gramma Jo's 3 Elora St. Clifford
8. Economic Development Manager, Signage Grant – Family Home Health Care Centre 237 Main Street West, Palmerston

Economic Development Manger Wick-Graham presented information on Façade and Signage Grant applications received.

MOTION: COW 2016-208
Moved By: Councillor Colwell; Seconded By: Councillor Turton
THAT Council receives the August 18, 2016 report from the Business & Economic Manager regarding Facade Improvement Grant Application #H15 for the amount of $1,500 for the property located at 286 Main St. N. Harriston (Harry Stone's Pizza Burger) and approves this grant.
THAT Council receives the August 18, 2016 report from the Business & Economic Manager regarding Facade Improvement Grant Applications #P10 & #P11 for the amount of $3,000 and $2,335.75 for the properties located at 237 & 247 Main St. W. Palmerston (Family Home Health Care Centre and Kempston & Werth Realty Inc.) and approves these grants.
THAT Council receives the August 23, 2016 report from the Business & Economic Manager regarding Signage Improvement Grant Application #C04 for the amount of $1,000 for the property located at 3 Elora St. Clifford (Gramma Jo's) and approves this grant.
And Further that Council receives the August 23, 2016 report from the Business & Economic Manager regarding Signage Improvement Grant Application #P11 for the amount of $814.25 and for the property located at 237 Main St. W. Palmerston (Family Home Health Care Centre and approves this grant.

Carried

Following a short break Council moved on to Item 7 Minor Variance, A4/16 Dan Sinclair, 310 Main Street East, Palmerston See Minutes attached as Schedule "A"

MOTION: COW 2016-209
Moved by: Councillor Anderson; Seconded by: Dirksen
That the Committee of the Whole moves into Committee of Adjustment

Carried

Hearing Minor Variance, A4/16 Dan Sinclair, 310 Main Street East, Palmerston

MOTION: COW 2016-210
Moved by: Councillor Anderson; Seconded by: Councillor Turton
THAT the Committee of Adjustment moves into Committee of the Whole

Carried

9. C.A.O. Clerk, AMO Summary Report

The C.A.O. Clerk White reviewed the report. Mayor Bridge stated the FCM conference in June of 2017 in Ottawa and encouraged Council to attend. The C.A.O. Clerk is to report back on conference options for Council in light of the ROMA and OGRA conference split.

MOTION: COW 2016-211
Moved By: Councillor Anderson; Seconded By: Councillor Dirksen
THAT Council receives the C.A.O. Clerk's August 24 report AMO 2016 Conference Summary.
Carried

10. C.A.O. Clerk, Feed in Tariff Agreements IESO Contract Offers

MOTION: COW 2016-212
Moved By: Councillor Turton; Seconded By: Deputy Mayor Faulkner
THAT Council receives the C.A.O. Clerk's August 31, 2016 report Feed in Tariff Agreements, IESO Contract Offers, and considers a by-law authorizing the Mayor and Clerk to sign IESO contract offers and related documentation to proceed with Fit 4.0 solar installations, and that an equipment lease agreement with Arntjen Solar (SunSaver) return to Council for final approval.
Carried

11. C.A.O. Clerk, Draft Plan Extension 23T-1003, Harj Gill, Main Street, Palmerston

MOTION: COW 2016-213
Moved By: Councillor Turton; Seconded By: Deputy Mayor Faulkner
THAT Council receives the C.A.O. Clerk's report dated September 1, 2016 regarding Draft Plan Extension 23T-1003, Harj Gill, Main Street, Palmerston and approves the extension.
Carried

Councillor Colwell assumed the Chair

12. Treasurer, Budget Amendment Borrowing Schedule

MOTION: COW 2016-214
Moved By: Mayor Bridge; Seconded By: Deputy Mayor Faulkner
THAT Council accepts the Treasurer and Deputy Treasurer's August 26th 2016 Revised Capital Budget & Long Term Borrowing Report dated, and considers the amendment to Schedule A of By-Law 2016-19 in an upcoming session.
Carried

13. Treasurer, Approval of Accounts July and August 2016

MOTION: COW 2016-215
Moved By: Councillor Anderson; Seconded By: Councillor Dirksen
THAT Council receives the Treasurer's report regarding Approval of Accounts, and approves accounts by Department for August 14, 2016 as follows:
Administration $145,311.73, People & Property $1,866.06, Economic Development $8,446.18, Incubator $1,299.09, Tourism $3,927.22, Fire $5,142.80, Roads $996,935.31, Streetlights $8,621.30, Waste Water $35,052.23, Water $5,877.35, Minto

in Bloom $236.70, Recreation $12,598.51, Clifford $11,542.97, Harriston $12,212.01, Palmerston $30,189.51, Norgan $2,807.50.
AND FURTHER that Council approves accounts by Department for August 29, 2016 as follows:
Administration $20,917.54, Economic Development $7,313.46, Incubator $328.17, Tourism $281.00, Fire $5,798.40, Roads $130,710.41, Streetlights $948.35, Waste Water $14,596.22, Water $15,381.58, Minto in Bloom $316.40, Recreation $4,280.39, Clifford $12,766.73, Harriston $7,330.44, Palmerston $48,737.13, Norgan $ 3,585.94.

Carried

Councillor Turton assumed the Chair

14. Road & Drainage Foreman, Structure Repairs and Safety Guiderail Installations
Council discussed proceeding without tender. The C.A.O. Clerk noted preference is to tender but in this case the price was very low so an exception was needed for the specialized work.

MOTION: COW 2016-216
Moved By: Councillor Elliott; Seconded By: Deputy Mayor Faulkner
THAT the Council receives the Road Foreman's report regarding Structure Repairs and Guiderail Installations and approves hiring Reeves Construction Limited to supply and install Guiderail to Structure E for $12,500.00 plus HST and complete concrete repairs and supply and install Guiderail to Structure L for $39,500.00 plus HST, with both projects to be funded out of the Seip Lane capital allocation in the 2016 budget.

Carried

15. Road & Drainage Foreman, Structure P Rail Trail Fire

MOTION: COW 2016-217
Moved By: Councillor Colwell; Seconded By: Councillor Dirksen
THAT Council receives the Road Foreman's August 15, 2016 report regarding Structure P Rail Trail Fire and provides directions that staff works with the insurance company and engineer and bring a report back to Council.

Carried

16. Road & Drainage Foreman, Municipal Drain #2 Improvement

MOTION: COW 2016-218
Moved By: Deputy Mayor Faulkner; Seconded By: Councillor Anderson
THAT the Council of the Town of Minto receives the Road Foreman's report regarding the Municipal Drain Petition and Improvement under Section 78 of the *Drainage Act* and appoints Dietrich Engineering Limited to represent the Town's interest in this regard.

Carried

17. Road & Drainage Foreman, Winter Maintenance of Connecting Links Agreement

MOTION: COW 2016-219
Moved By: Councillor Anderson; Seconded By: Councillor Elliott

THAT Council receives the report from the Roads Foreman regarding the Winter Maintenance of Connecting Links agreement and considers approving two By-Laws in regular session authorizing the Mayor and C.A.O. Clerk of the Town of Minto to sign these Agreements.

Carried

Mayor Bridge reassumed the Chair

d. Other Business Disclosed as Additional Item

Councillor Anderson stated September 18th is the Terry Fox Run in Palmerston encouraged participation by either running or sponsoring a runner.

Councillor Dirksen reminded Council of the Harriston-Minto Fall Fair September 16-18 and the IPM Church Service at Norwell High School September 18, featuring a 120 voice choir.

Deputy Mayor Faulkner thanked the Town of Minto and County of Wellington Staff for all of their help getting ready for the IPM.

Mayor Bridge noted TG Minto has their afforestation tree planting Sunday September 11.

14. Motion to Return To Regular Council

RESOLUTION 2016-170
Moved By: Councillor Elliott; Seconded By: Councillor Dirksen
THAT the Committee of the Whole convenes into Regular Council meeting.

Carried

15. Notices of Motion - None

16. Resolution Adopting Proceedings of Committee of the Whole

RESOLUTION: 2016-171
Moved By: Councillor Colwell; Seconded By: Councillor Anderson
THAT The Council of the Town of Minto ratifies the motions made in the Committee of the Whole.

Carried

17. By-laws

a. 2016-65, amend the Emergency Response Plan for the County of Wellington and Member Municipalities

RESOLUTION: 2016-172
Moved By: Councillor Dirksen; Seconded By: Councillor Elliott
THAT By-law 2016-65; to amend the Emergency Response Plan for the County of Wellington and Member Municipalities; be introduced and read a first, second, third time and passed in open Council and sealed with the seal of the Corporation

Carried

b. 2016-66, Temporary Road Closures Specific Roads for International Plowing Match

RESOLUTION: 2016-173
Moved By: Deputy Mayor Faulkner; Seconded By: Councillor Turton
THAT Bylaw 2016-66; to approve a Temporary Road Closure, No Parking or Stopping and Speed Reduction on Specific Roads during International Plowing Match (IPM) and Rural Expo, September 20-24, 2016; be introduced and read a first, second, third time and passed in open Council and sealed with the seal of the Corporation

Carried

c. 2016-67, Connecting Link Winter Maintenance Agreement Hwy 9

RESOLUTION: 2016-174
Moved By: Councillor Anderson; Seconded By: Councillor Dirksen
THAT By-law 2016-67; to authorize Execution of An Agreement regarding 2016-2017 Winter Maintenance of Highway 9 with Integrated Maintenance and Operations Services.; be introduced and read a first, second, third time and passed in open Council and sealed with the seal of the Corporation.

Carried

d. 2016-68, Connecting Link Winter Maintenance Agreement Hwys 9, 8 and 23

RESOLUTION: 2016-175
Moved By: Councillor Elliott; Seconded By: Councillor Colwell
THAT By-law 2016-68; to authorize Execution of An Agreement regarding 2016-2017 Winter Maintenance of Highways 9, 89, and 23 with Integrated Maintenance and Operations Services Inc.; be introduced and read a first, second, third time and passed in open Council and sealed with the seal of the Corporation

Carried

e. 2016-69, authorize the Mayor and CAO Clerk to execute Agreements with IESO
RESOLUTION: 2016-176
Moved By: Councillor Turton; Seconded By: Deputy Mayor Faulkner
THAT By-law 2016-69; to authorize the Mayor and CAO Clerk to execute Agreements with the Independent Electricity System Operator (IESO) to permit installation of Feed in Tarrifs (FIT) on Municipal Property; be introduced and read a first, second, third time and passed in open Council and sealed with the seal of the Corporation

Carried

f. 2016-70, Confirm the Proceeding of the September 6, 2016 Committee/Council meeting
RESOLUTION: 2016-177
Moved By: Councillor Dirksen; Seconded By: Councillor Anderson
THAT By-law 2016-70; to confirm actions of the Council of the Corporation of the Town of Minto; be introduced and read a first, second, third time and passed in open Council and sealed with the seal of the Corporation.

Carried

18. Adjournment 5:59 pm

RESOLUTION: 2016-178
Moved By: Councillor Elliott; Seconded By: Councillor Colwell
THAT The Council of the Town of Minto adjourn to meet again at the call of the Mayor

Carried

_____ _____

Mayor George A. Bridge C.A.O. Clerk Bill White

Schedule "A"
Minutes of the Committee of Adjustment Hearing
Tuesday September 6, 2016 5:00 pm Council Chambers

Minor Variance File A4-16, Dan Sinclair, Lot 1, Part Lot 19, 310 Main Street East, former Town of Palmerston

Chair Bridge called the hearing to order at 5:02 pm stating: "Any decision reached by this Committee today cannot be used to set a precedent. Each application considered by the Committee is dealt with on its own merits and no two applications are exactly the same".

Secretary Treasurer White described the location of the subject lands noting the application is to permit construction of a three unit street town house with rear yard setback of 3.04m (10'-0"), whereas Sections 13.2.1.6 of the of Minto's Comprehensive Zoning By-law 01-86, as amended, requires a minimum rear yard setback of 7.6m (24.9') on the subject property.

Secretary -Treasurer White advised notice was given to property owners within 200 feet or 60 metres of the subject property, applicable agencies and posted on the property August 23. Town Staff had no concerns with the variance. Wellington County Senior Planner, Linda Redmond's report supports the application. The development is able to meet all requirements of the by-law, except for the rear yard.

Chair Bridge called on those wishing to speak. Applicant Dan Sinclair was in attendance and noted he proposed two entrances off of Queen Street and the current driveway off Main.

Chair Bridge requested any persons wishing to speak to the application to come forward and address the Committee of Adjustment through the Chair. No one came forward.

The Secretary -Treasurer provided the resolutions for the Committee to consider. Upon a resolution being carried or defeated; the Notice of Decision of the Committee of Adjustment is to be signed by all members of the Committee of Adjustment in favour of the decision.

The Secretary –Treasurer confirmed that all submissions received were in favour of the application and this would be stated on the decision as required by the Planning Act.

MOTION: COA 2016-04
Moved by Councillor Elliott; Seconded by; Councillor Turton
That Committee of Adjustment approve the application by Dan Sinclair for property Lot 1 Part Lot 19 municipally known as 310 Main Street East, Former Town of Palmerston, Town of Minto; to permit the construction of a three unit street town house with rear yard setback of 3.04m (10'-0"), whereas Sections 13.2.1.6 of the Corporation of the Town of Minto's Comprehensive Zoning By-law 01-86, as amended, requires a minimum rear yard setback of 7.6m (24.9') on the subject property.

Carried

Chair Bridge stated anyone wishing to receive a copy of the Notice of Decision to please sign the Request for Notice of Decision prior to leaving the Council Chambers following the meeting. Chair Bridge adjourned the Public Hearing at 5:08 p.m.

Mayor George Bridge

Secretary Treasurer Bill White

THE COUNCIL OF THE TOWN OF MINTO
PUBLIC MEETING AGENDA
ZBA-2016-08
Applicant: Don McPhail
TUESDAY October 4th 2016,
5:00 pm in the Council Chambers

A Public Meeting to consider an amendment to the Town of Minto Zoning By-law No. 01-86 for property located on Lot 21 S/S George Street, Former Town of Harriston, Town of Minto.

1. Mayor Bridge to act as the Chair of the Public Meeting

2. Chair Bridge to call the meeting to order and request any member of the public present to please sign the attendance record. Chair Bridge to state the following:

If a person or public body does not make oral submissions at a public meeting or make written submissions to the Town of Minto before the By-law is passed, the person or public body is not entitled to appeal the decision of the Town of Minto to the Ontario Municipal Board and the person or public body may not be added as a party to the hearing of the appeal before the Board unless, in the opinion of the Board, there are reasonable grounds to do so.

3. C.A.O. Clerk White to state the municipal address and legal description of the property, the purpose and effect of the application and date notices we sent.

The property subject to the proposed amendment is located on Lot 21 S/S George Street, Former Town of Harriston, Town of Minto.

The Purpose and Effect of the proposed amendment is to rezone the subject lands from Low Density Residential (R1C) to Medium Density Residential (R2) to permit a semi-detached dwelling. Other zoning relief may be considered where appropriate.

The Notices were mailed to the property owners within 400 feet or 120 meters of the subject property as well as the applicable agencies and posted on the subject property on September 2nd, 2016 The following comments were received:

a) Town of Minto staff
   - Building Assistant's report attached
b) Elizabeth Martelluzzi, Junior Planner, County of Wellington, report attached
c) Brandi Walters, Environmental Planner, Maitland Valley Conservation Authority

4. Chair Bridge to call on the applicant or his agent to provide comments regarding the proposed Amendment to the Comprehensive Zoning By-law No. 01-86.

5. Chair Bridge to call on anyone who wishes to comment in favour of the proposed Amendment.

6. Chair Bridge to call on anyone who wishes to comment in opposition of the proposed Amendment.

7. The applicant or his agent is given an opportunity for rebuttal.

8. Chair Bridge to give members of Council an opportunity to ask questions.

9. Chair Bridge to state IF YOU WISH TO BE NOTIFIED of the decision of the Council of the Town of Minto in respect to the proposed Zoning By-law Amendment application, you must make a written request to the Clerk of the Town of Minto at 5941 Highway 89, Harriston, N0G 1Z0 or by email at Bwhite@town.minto.on.ca.

10. If there are no further comments, Chair Bridge will adjourn this Public Meeting.

Town of Minto

DATE: September 22 2016
TO: Mayor Bridge and Members of Council
FROM: Stacey Pennington, Building Inspector
RE: ZBA 2016-08 Thomas/McPhail Lot 21 S/S George St, Harriston

STRATEGIC PLAN

Ensure growth and development in Clifford, Palmerston and Harriston makes cost effective and efficient use of municipal services, and development in rural and urban areas is well planned, reflects community interests, is attractive in design and layout, and is consistent with applicable County and Provincial Policies.

BACKGROUND

The subject land fronts on George Street; the lot size is 82.5' x 132'; the lot area is 10890 SF in size. The lands are designated Residential under Section 8.3 of the Wellington County Official Plan. The lands are zoned R1C/FF1 Low Density Residential/Flood Fringe Overlay Zone 1 as per the Town of Minto Zoning By-law 01-86 as amended. The zoning amendment is required for the applicant to construct a Semi-Detached Dwelling on the subject property.

The R2 Zoning also has permitted uses for Duplexes, Triplexes, Fourplexes, and Street Town houses, provided the lot meets the minimum requirements for lot size and dwelling location outlined in the by-law.

COMMENTS

Clerks
This application conforms to provincial planning policy Places to Grow, as well as the County of Wellington Official Plan.

The application is in line with the zoning and development of the surrounding properties. There are several single family dwellings in the immediate vicinity. Across George Street is the new development on the former Harriston Senior School Land. This development consists of single family dwellings, semi-detached dwellings, and the proposed cluster townhouse development. This 23 unit development across the road is subject to appeal to the OMB being resolved and an arrangement on the sale of Town owned lands being concluded.

Image Caption: 26-44 George Street are currently zoned for semi detached dwellings. 34-44 are completed or currently being built. Lots 26-34 do not have building permits issued as of yet. The property of the Harriston PS is the proposed 23 unit development, consisting of 5 fourplexes and 1 triplex.

Building
The building parcel complies with the frontage, depth requirements in the R2 Zone for a semi-detached dwelling. The lot area for a Semi-Detached dwelling is required to be 550.0 square meters (5920.3 square feet) per dwelling. The subject property only has an area of 1011.7 square meters (10890 square feet) or 505.85 square meters per dwelling. A Site Plan will have to be submitted at the time of Building Permit Application to ensure all other requirements of the by-law are met. Prior to the issuance of a building permit Maitland Valley Conservation Authority will have to approve the project.
The Town is aware that at certain time surface water may impact the site and nearby properties. The Town's engineering consultant believes a suitable grading and drainage plan can be established to deal with these conditions.

Public Works
This site will need a grading and drainage plan to deal with local storm water management. Entrance Permits will be required.
This site is serviced with a 1" waterline and a 5" Sewer. Public works has approved a duplex with a Y connection and separate water shut offs and sewer cleanouts at the property line because of the newly constructed road and sidewalks.

The County of Wellington has no concerns with the application.

The attached report from Brandi Walter at MVCA outlines concerns:

> "The property is located within the "Special Policy Area" of Harriston, which allows for development subject to flood proofing to the 1:100 year storm event. However …intensifying development…would increase the risk to life and property because the existing municipal road would be flooded in a regulatory flood. Vehicles and people would have no way of safely entering and existing the area during a flood emergency."

The applicant is aware of the comments received from MVCA. They are going to make contact with MVCA to discuss the issuance of a permit through the conservation authority. The Town of Minto supports the rezoning of the subject lands. It is however, recommended to defer the passing of the by-law to allow the applicant to work with MVCA on approval.

RECOMMENDATION

THAT Council of the Town of Minto receives the Building Assistants report on the proposed rezoning for McPhail/Thomas, Lot 21 S/S George Street, Harriston.

ATTACHMENTS

Planners Comments, Elizabeth Martelluzzi, Junior Planner, County of Wellington
Planners Comments and Map, Brandi Walter, Environmental Planner, Maitland Valley

Stacey Pennington,
Building Inspector

MEMORANDUM

TO: **Bill White, CAO/Clerk, Town of Minto**
CC: **Mark Van Patter, Planner, County of Wellington**
FROM: **Brandi Walter, Environmental Planner / Regulations Officer**
Maitland Valley Conservation Authority (MVCA)
DATE: **September 26, 2016**
SUBJECT: **Application for Zoning By-law Amendment**
Lot 21, George Street North
Town of Minto, Geographic Town of Harriston

The Maitland Valley Conservation Authority (MVCA) has reviewed the above-noted application for zoning by-law amendment with regard for Provincial and Authority Policies and associated mapping related to Natural Heritage and Natural Hazards features in accordance with our Memorandum of Agreement for plan review with County of Wellington; and in accordance with our delegated responsibility for representing the "Provincial Interest" for natural hazards; and with regard for *Ontario Regulation 164/06.* Based on our review, we offer the following comments.

It is our understanding; the purpose of the proposed amendment is to rezone the subject lands from Low Density Residential (R1C) to Medium Density Residential (R2) to permit a semi-detached dwelling.

Natural Heritage

There are no natural heritage features located within or adjacent to the subject property that would be affected by the development.

Natural Hazards

The subject property and access via George Street is located within regional floodplain. Please see attached map.

This property is located within the "Special Policy Area" of Harriston, which allows for development subject to floodproofing to the 1:100 year storm event. However, permitting a semi-detached dwelling, or intensifying development on the property, would increase

the risk to life and property because the existing municipal road would be flooded in a regulatory flood. Vehicles and people would have no way of safely entering and exiting the area during a flooding emergency.

Provincial Policy Statement (PPS), 2014:

Section 3.1 of the PPS does not support development and site alteration within the flooding hazard where vehicles and people have no way of safely entering and exiting (Section 3.1.7 (b)).

Wellington County Official Plan, 2016:

Section 5.4.3 (d), Hazard Land policy of the Welling County Official Plan only supports development and site alteration in Special Policy Areas where essential emergency services have a way of safely entering and exiting the area during times of flooding, erosion and other emergencies. This policy is in conformance with the PPS.

MVCA; Ontario Regulation 164/06

The MVCA regulates development (construction, reconstruction, filling and grading) in the floodplain plus 15 meters, pursuant to *Ontario Regulation 164/06* made under the *Conservation Authorities Act (R.S.O., 1990, chapter C.27).* Subject to the Regulation, development within Authority regulated lands requires permission from MVCA, prior to undertaking the work.

Drinking Water Source Protection

The subject property is located within a wellhead protection area. The location and size of the wellhead protection area was determined in part by the direction the groundwater moves, the speed/rate it moves, and the volume of water that is pumped from the wells. Within the wellhead protection area, some land use activities, under certain circumstances, pose a threat to municipal drinking water sources. Policies have now been created to address these activities, and protect sources of municipal drinking water. These policies are contained within the Maitland Valley Source Protection Plan which has recently received approval from the Minister of the Environment and Climate Change. The Plan came into full force and effect on April 1st, 2015.

This means that activities on the subject property may be subject to policies contained within the Maitland Valley Source Protection Plan. For more information about the policies contained in the Plan, and how they may impact the subject property, please contact your designated Risk Management Official.

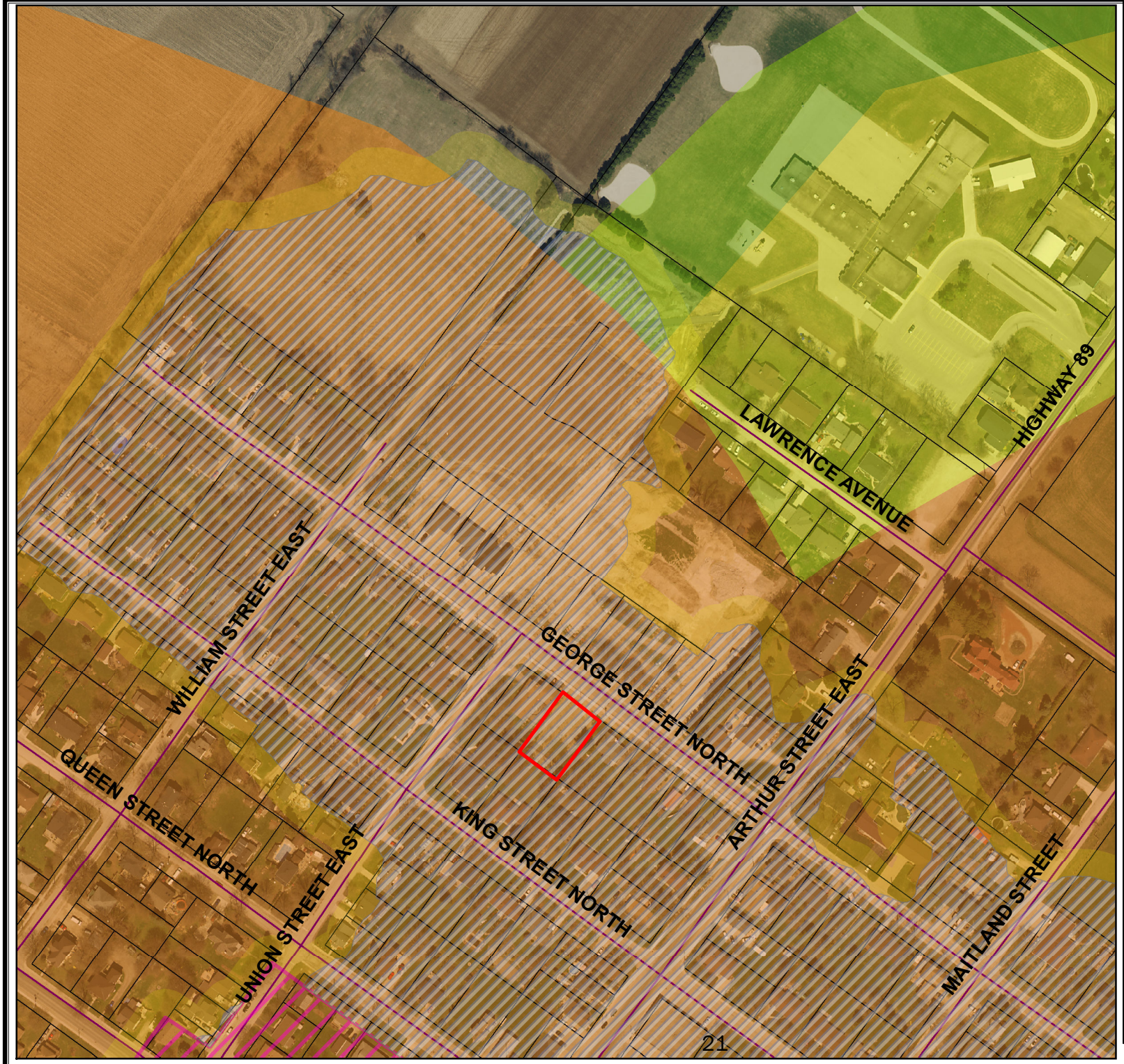
Recommendation

The MVCA does not support this application as it is not in conformance with the Natural Hazard Policies of the PPS or the Wellington County Official Plan. There is an increase to life and property should development be intensified on the property as the property does not have safe ingress or egress for vehicles and people to safely enter and exit to an area outside the floodplain during a flooding emergency.

MVCA Fees

We have not yet received our $225.00 fee for review of this application. We will invoice the applicant directly.

Thank you for the opportunity to comment at this time. Feel free to contact Brandi Walter of this office if you have any questions.



Ontario Regulation 164/06 Regulated Lands

Lot 21, George Street North

Town of Minto

Floodplain

15 metre Floodplain Allowance

abmv_whpa_utm

Well Head Protection Area

Zone A

Zone B

Zone C

Zone D

Zone E

N

1:2,802

0 10 20 30 40 50

Meters

1 cm = 28 meters

Map Projection: UTM NAD83 Zone 17

Aerial Photography taken in 2015 by Fugro Geospatial.

This map is for illustrative purposes only. Information contained hereon is not a substitute for professional review or a site survey and is subject to change without notice. The Maitland Valley Conservation Authority takes no responsibility for, nor guarantees, the accuracy of the information contained on this map. Any interpretations or conclusions drawn from this map are the sole responsibility of the user.

File: S:\Planning and Regulations\Development Planning and Regulations\Planning 2016\Regulation\Inquiries
Date: September 26, 2016
Produced By: Brandi Walter

Maitland CONSERVATION

PLANNING REPORT
for the TOWN OF MINTO

Prepared by the County of Wellington Planning and Development Department

DATE: September 27, 2016
TO: Bill White, C.A.O.
Town of Minto
FROM: Elizabeth Martelluzzi, Junior Planner
County of Wellington
SUBJECT: **Thomas**
Lot 21, George Street North
Zoning By-law Amendment

PLANNING OPINION

The proposed amendment is to rezone the subject lands from Low Density Residential (R1C) to Medium Density Residential (R2) to permit a semi-detached dwelling. Currently, the lot is vacant and the adjacent lots are occupied by single detached dwellings.

The applicants have provided the proposed setbacks, frontage and lot coverage which currently comply with the regulations of the R2 zone. Further relief may be required through minor variance should the applicants not meet the minimum standards of the R2 zone at time of building permit.

The subject lands are also within the Floor Fringe Overlay Zone (FF1). Provided the conservation authority has no objections to the proposal, staff has no concerns with the rezoning application.

LOCATION

The property subject to the proposed amendment is located on Lot 21, with frontage on George Street North. The property is 0.10 ha (0.24 acres) and is currently vacant. Surrounding land uses include single detached houses and the lands across the road are also zoned R2.

PURPOSE

The proposed amendment will rezone the subject lands from Low Density Residential (R1C) zoning to Medium Density Residential (R2). The purpose is to permit a semi-detached dwelling, which is currently not a listed use in the R1C zone.

COUNTY OFFICIAL PLAN

The subject property is designated RESIDENTIAL and is located within the Harriston Urban Centre. The policies of Section 8.3.2 of the Official Plan set out a number of objectives for residential development including, *b) "to provide a variety of dwelling types to satisfy a broad range of residential requirements, e) to ensure that an adequate level of municipal services will be available to all residential area's and "g) to encourage intensification, development proposals provided they maintain the stability and character of existing neighbourhoods."*

Further, Section 8.3.11 of the Official Plan provides direction on compatibility of new development. The Plan attempts to preserve the charm and integrity of neighbourhoods such as Harriston, and will make efforts to ensure that future development is sensitive to and compatible with existing residential development. The official plan encourages development of vacant proprieties for residential uses which are compatible with surrounding uses in terms of dwelling type, building form, site coverage and setbacks.

Intensification within residential land use designations shall be evaluated in accordance with the policies of Section 8.3.12.

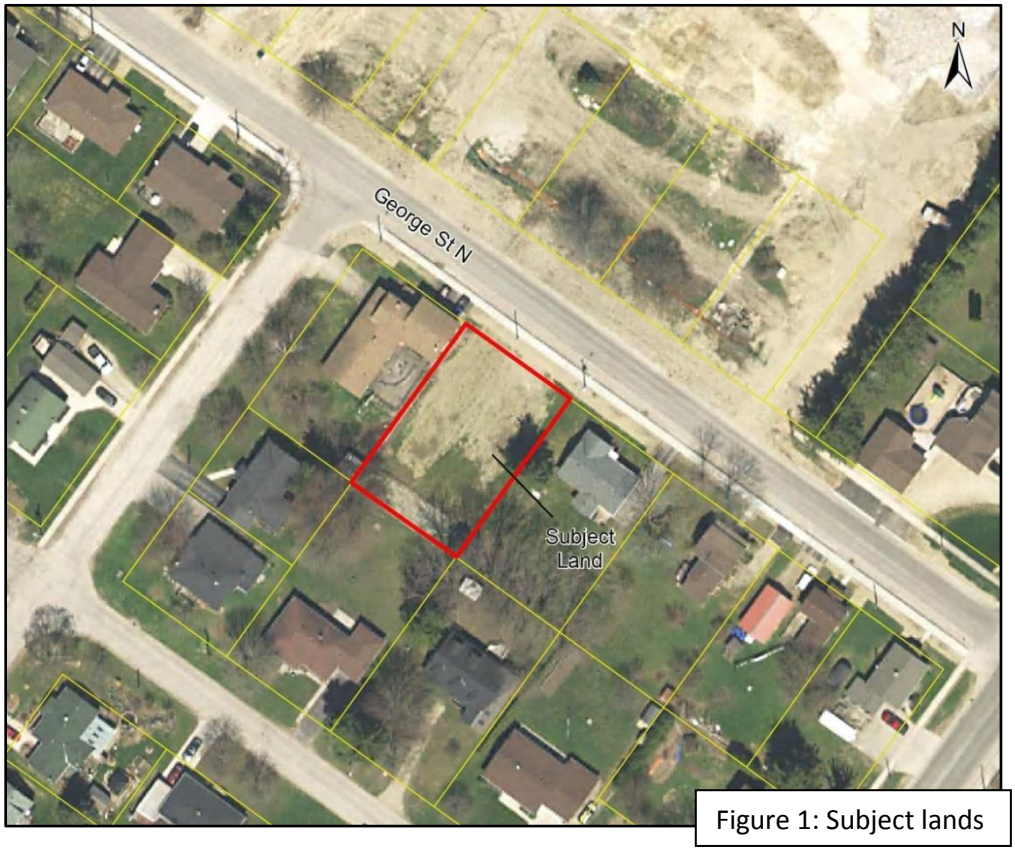


Figure 1: Subject lands

DRAFT ZONING BY-LAW

The subject lands are currently zoned Low Density Residential (R1C) with a Flood Fringe Overlay Zone One. The proposed zone is Medium Density Residential (R2), which permits a semi-detached dwelling, which is stated as the intended use by the applicant. The lot area and frontage meet the requirements of the R2 zone but the lot may require additional relief at time of building permit.

With respect to the Flood Fringe Overlay Zone One (FF1), there is criteria related to the 100 year flood elevation of the lands and the type of development and openings within buildings that can occur. In addition to comments received for this rezoning application, the applicants should consult with the Maitland Valley Conservation Authority to adequately address the existing flood elevation on the lands prior to a building permit application.

PLANNING DISCUSSION

The Official Plan anticipates that more semi-detached, townhouse and apartment dwellings will be developed to respond to the need for a greater variety of residential accommodation, and that these units may eventually account for at least one quarter of all housing units in most urban centres. The Plan further encourages that development is to be compatible with established neighbourhoods.

The proposed zone change would permit a variety of residential dwellings as listed in the current Medium Density Residential zone (R2). The applicants have indicated that a semi-detached residential dwelling would be proposed for the lot and have provided lot area and frontage, of which currently comply with the R2 zone. Additional zoning relief may be applied for at time of building permit stage (such as a Minor Variance).

Respectfully submitted
County of Wellington Planning and Development Department

_____
Elizabeth Martelluzzi, Junior Planner

UPPER GRAND DISTRICT SCHOOL BOARD
500 Victoria Road North, Guelph, Ontario N1E 6K2
Phone: (519) 822-4420 Fax: (519) 822-2134

Martha C. Rogers
Director of Education

September 30, 2016

PLN: 16-65
File Code: R14
Sent by: mail & email

Bill White
CAO/Clerk
Town of Minto
5941 Highway 89
Harriston, Ontario N0G 1Z0

Dear Mr. White;

Re: Proposed Zoning By-law Amendment
Lot 21, George Street North, Harriston

Planning staff at the Upper Grand District School Board has received and reviewed the above noted application for a zoning by-law amendment to permit a semi-detached dwelling on George Street North.

Please be advised that the Planning Department **does not object** to the proposed amendment, subject to the following condition:

- Education Development Charges shall be collected prior to the issuance of a building permit.

Should you require additional information, please feel free to contact me.

Sincerely,

E. Bumbaco

Emily Bumbaco
Planning Technician
emily.bumbaco@ugdsb.on.ca

Ministry of the Environment and Climate Change

Safe Drinking Water Branch
2nd Floor
40 St. Clair Ave W
Toronto ON M4V 1M2

Ministère de l'Environnement et de l'Action en matière de changement climatique

Direction du contrôle de la qualité de l'eau potable
2e étage
40, avenue St. Clair Ouest
Toronto (Ontario) M4V 1M2

Ontario

Oct. Council Correspondence
Sept 2/16
Brian, Terry, Wayne, Todd
Page 2. = reviewed questions
p. 2 of letter; these are
answered by Kyle's letter

August 22, 2016

Bill White
The Corporation Of The Town Of Minto
5941 Highway 89 RR 1
Harriston,Ontario
N0G 1Z0

Dear Bill White:

RE: Harriston Drinking Water System
Municipal Drinking Water Licence # 106-102

As part of the Ministry of the Environment and Climate Change's (MOECC) responsibilities under the Clean Water Act, we are conducting an analysis of the drinking water systems which are located in areas where the handling and storage of fuel at a Municipal Drinking Water System may pose a significant drinking water threat to sources of drinking water. Source water protection policies developed by local Source Protection Committees may apply.

As part of this analysis, the ministry has identified that the Harriston Drinking Water System is located within the Maitland Valley Source Protection Area, in accordance with the *Clean Water Act*.

The handling and storage of fuel is a prescribed drinking water threat to sources of drinking water under the *Clean Water Act*. This activity can be a significant threat when it occurs within a Wellhead Protection Area/Intake Protection Zone around a municipal water source with a high vulnerability score, depending on the volume of fuel and grade at which it is stored. If the handling and storage of fuel at your drinking water system is located in a Wellhead Protection Area/Intake Protection Zone with a high vulnerability score, it is appropriate to address the risk fuel poses to sources of drinking water.

MOECC wants to ensure that the handling and storage of fuel is appropriately managed to protect sources of drinking water, and where applicable, conforms to source protection plan policies.

To assist in determining if fuel handling and storage at your drinking water system is located in a Wellhead Protection Area/Intake Protection Zone with a high vulnerability score, you may wish to view the location using the Ministry's web based interactive source protection mapping tool at http://www.applications.ene.gov.on.ca/swp/en/.

If the storage or handling of fuel is a significant threat activity, we require you to assess the current risk management measures in place to ensure fuel is stored and managed in a way to protect the drinking water source. The risk management measures may include but are not limited to:

- Secondary containment
- Spill/leak detection and spill response procedures as per Condition 16 of the licence
- Collision protection
- Protection of oil lines from physical damage

Please send us the results of your assessment by September 30, 2016.

If your drinking water system is not located within the source protection area/region's wellhead protection area/intake protection zone with a high vulnerability score, OR you do not handle or store fuel, your assessment should provide us with confirmation and documentation to support this conclusion.

If the storage or handling of fuel is a significant threat activity, your assessment should include all the information relied upon to reach this conclusion, the location within the Wellhead Protection Area/Intake Protection Zone where fuel is handled / stored, and the vulnerability score at this location. Please also include in your evaluation the need to undertake alterations or develop operating procedures to ensure that the storage and handling of fuel ceases to be a significant threat.

If your assessment of the current risk management measures concludes that the fuel handling and storage permitted as part of your Drinking Water Works Permit needs to be altered such that an amendment to your Drinking Water Works Permit is required, the Director, Part V of the Safe Drinking Water Act will advise you of the timeframe to submit the amendment application.

Exemption Claimed for an s.58 Risk Management Plan

To minimize the potential for regulatory duplication during plan implementation, O. Reg. 287/07 provides a mechanism for a person to claim an exemption from the requirement for an s.58 risk management plan where the person holds a prescribed instrument related to the handling and storage of fuel.

An individual affected by a risk management plan policy may be relieved of these obligations under Part IV of the Clean Water Act, provided the person has obtained a prescribed instrument which conforms to the desired goal or outcome of the policy that the activity ceases to be, or never becomes, a significant drinking water threat (O. Reg. 287/07, s.61).

An exemption under s. 61 can be applied if:

- a prescribed instrument is already held that adequately regulates a threat activity, or
- a prescribed instrument is amended or obtained to address the threat activity.

The s.61 exemption process is initiated by the person engaged in the activity giving a notice (O. Reg. 287/07, s.61(2)) to the Risk Management Official. The notice must state that the person has a prescribed instrument that regulates the activity, or is intending to obtain one (s.61(7)). Where a person already has such an instrument, in addition to giving a notice, that person must also provide a copy of the regulating instrument – namely a Drinking Water Works Permit. In cases where amendments are required to regulate the activity or where a person does not have a Drinking Water Works Permit but intends to obtain one, that person must provide a notice under s.61(7) to the Risk Management Official indicating the actions they will take to amend or obtain a Permit.

If the storage or handling of fuel is a significant threat activity, we require you to assess the current risk management measures in place to ensure fuel is stored and managed in a way to protect the drinking water source. The risk management measures may include but are not limited to:

- Secondary containment
- Spill/leak detection and spill response procedures as per Condition 16 of the licence
- Collision protection
- Protection of oil lines from physical damage

Please send us the results of your assessment by September 30, 2016.

If your drinking water system is not located within the source protection area/region's wellhead protection area/intake protection zone with a high vulnerability score, OR you do not handle or store fuel, your assessment should provide us with confirmation and documentation to support this conclusion.

If the storage or handling of fuel is a significant threat activity, your assessment should include all the information relied upon to reach this conclusion, the location within the Wellhead Protection Area/Intake Protection Zone where fuel is handled / stored, and the vulnerability score at this location. Please also include in your evaluation the need to undertake alterations or develop operating procedures to ensure that the storage and handling of fuel ceases to be a significant threat.

If your assessment of the current risk management measures concludes that the fuel handling and storage permitted as part of your Drinking Water Works Permit needs to be altered such that an amendment to your Drinking Water Works Permit is required, the Director, Part V of the Safe Drinking Water Act will advise you of the timeframe to submit the amendment application.

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The Risk Management Official will reply with a notice (under s.61(8)) indicating the deadline to provide a copy of the Drinking Water Works Permit.

In addition, the person must also provide a statement of conformity that indicates the Drinking Water Works Permit conforms to the significant drinking water threat policies in the source protection plan. This is provided either as a statement within the Drinking Water Works Permit itself (which may be added within an amended Permit) or as a separate document from MOECC, as the person/body that issued or created the instrument. If a statement of conformity is not identified, the Risk Management Official will give a notice to the applicant (under s.61(6)) in writing specifying the date by which the requirements need to be met and copies need to be provided.

Please contact me at 416-314-4625 if you require any further information.

Aziz S. Ahmed, P.Eng.
Director, Part V SDWA

cc.
Jenna Allain, Project Manager, Ausable Bayfield Maitland Valley Source Protection Region
Heather Malcolmson, Director, Source Programs Protection Branch, MOECC
Cammy Mack, Director, Safe Drinking Water Branch, MOECC

Bill White

From: Kyle Davis <KDavis@centrewellington.ca>
Sent: September-01-16 10:42 AM
To: Bill White; Todd Rogers; Terry Kuipers
Cc: Christine Furlong; Wayne Metzger; Stacey Pennington
Subject: Source Protection Assessment of Fuel Handling - Minto Municipal Drinking water systems
Attachments: Minto Municipal Drinking Water Fuel Assessment Table 1 draft.pdf

Bill, Terry and Todd,

As requested, please find attached an analysis of the Town of Minto fuel handling and storage as associated with the four municipal drinking water systems for the Town of Minto (Palmerston, Harriston, Minto Pines and Clifford). The attached table outlines the emergency generators currently used by the Town as well as the threat classification pursuant to the *Clean Water Act* for the five generators. The row at the bottom of the table outlines the MOECC criteria or circumstances outlined in the Table of Drinking Water Threats. These circumstances are used to determine whether a threat activity is classified as significant, moderate or low pursuant to the *Clean Water Act.* The circumstances are broken out into facility definition, storage location relevant to grade, volume, fuel type and vulnerability score.

Please note that all five generators are moderate drinking water threats. The defining circumstances for the moderate classification are the volume of fuel and the above grade storage and handling. Therefore, as outlined in the MOECC letters dated August 22, 2016, amendments to the Town's drinking water license should not be required. Amendments are only required if the fuel handling and / or storage is classified a significant threat. The MOECC letter also only required an assessment of risk management measures if the fuel handling and / or storage was classified as significant. Based on the moderate classification, this assessment of risk management measures does not appear to be required for submission to the MOECC at this time.

The applicable policies are outlined in the attached table, only one education and outreach policy is applicable for the Maitland Source Protection Plan (C.2.4) and no policies are applicable in the Saugeen Source Protection Plan. This is due to the fact moderate and low threat policies were optional content for the initial Source Protection Plans. The education policy for Maitland was complied with, earlier in 2016 by completing a mail out to property owners. Establishment of fuel handling and / or spill procedures in the Drinking Water Quality Management System would also be considered compliance with the applicable Maitland Source Protection Plan education policy.

Please note that Maitland Source Protection Plan Policies C.2.2 (Risk Management Plans) and C.2.3 (Education and Outreach) and Saugeen Valley Source Protection Policies 15-03 (Risk Management Plans) and G-05 (Education and Outreach) are established for existing threats that meet the Table of Drinking Water Threats circumstances for significant drinking water threats. These do not apply for the Town of Minto generators as none of the existing generators exceed the significant drinking water threat quantity threshold of 2,500 litres above grade. Since a Risk Management Plan is not required, an exemption pursuant to Section 61 of O. Reg 287/07 of the *Clean Water Act* is not needed. This exemption procedure was outlined in the MOECC August 22, 2016 letter.

I trust that the attached table and this email provides you sufficient information for the meeting tomorrow. My apologies for not being able to attend, however, I am on a planned vacation tomorrow. When I return to the office on Tuesday, I will touch base with Terry or Todd and then finalize the attached table based on your feedback. I will also complete a cover memo to go with the table next week.

If you have any questions, please let me know, I will be checking my emails.

Regards,

Kyle

Kyle Davis | Risk Management Official

Wellington Source Water Protection | 7444 Wellington Road 21, Elora, ON, N0B 1S0
519.846.9691 x362 | kdavis@centrewellington.ca | www.wellingtonwater.ca
Toll free: 1-844-383-9800

Wellington Source Water Protection is a municipal partnership between the Townships of Centre Wellington, Guelph / Eramosa, Mapleton, Puslinch, Wellington North, the Towns of Erin and Minto and the County of Wellington created to protect existing and future sources of drinking water.

WELLINGTON Source Water PROTECTION wellingtonwater.ca

Table 1: Review of Handling and Storage of Fuel at Town of Minto Municipal Drinking Water Systems

Generator	Location	Facility Definition	Fuel Storage Location (Above, At or Below Grade)	Volume (Litres)	Fuel Type	Site Location (Vulnerability Score)	Risk Characterization	SPP Policy Number	SPP Policy Requirement
Harriston Well 3 Stationary Generator	Harriston Well 3	Harriston Well 3 meets the definition of a facility as defined in Section 1 of O. Reg. 213/01 (Fuel Oil)	Above grade	908.47	Diesel, therefore, listed components present especially, TEX and PHC F2 and F3	10	**Moderate Drinking Water Threat**	Maitland SPP Policy C.2.4	Education and Outreach on best management practices for existing facilities that are moderate or low threats
Minto Pines Stationary Generator	Minto Pines Well house	Minto Pines well house meets the definition of a facility as defined in Section 1 of O. Reg. 213/01 (Fuel Oil)	Above grade	400	Diesel, therefore, listed components present especially, TEX and PHC F2 and F3	10	**Moderate Drinking Water Threat**	Saugeen SPP - None	No policies are applicable in the Saugeen Source Protection Plan for moderate or low fuel threats, however, general education and otureach is encouraged
Palmerston Portable Generator 1	portable	The portable generator meets the definition of a facility as defined in Section 1 of O. Reg. 213/01 (Fuel Oil)	Above grade	908.47	Diesel, therefore, listed components present especially, TEX and PHC F2 and F3	Varies but 10 is highest	**Moderate Drinking Water Threat**	Maitland SPP Policy C.2.4	Education and Outreach on best management practices for existing facilities that are moderate or low threats
Palmerston Portable Generator 2	portable	The portable generator meets the definition of a facility as defined in Section 1 of O. Reg. 213/01 (Fuel Oil)	Above grade	341	Diesel, therefore, listed components present especially, TEX and PHC F2 and F3	Varies but 10 is highest	**Moderate Drinking Water Threat**	Maitland SPP Policy C.2.4	Education and Outreach on best management practices for existing facilities that are moderate or low threats
Clifford Portable Generator	portable	The portable generator meets the definition of a facility as defined in Section 1 of O. Reg. 213/01 (Fuel Oil)	Above grade	341	Diesel, therefore, listed components present especially, TEX and PHC F2 and F3	Varies but 10 is highest	**Moderate Drinking Water Threat**	Saugeen SPP - None	No policies are applicable in the Saugeen Source Protection Plan for moderate or low fuel threats, however, general education and otureach is encouraged
Table of Drinking Water Threat Circumstances for Fuel Handling and Storage (Reference numbers 157 to 161 (handling) and 1354 to 1358 (storage))		**The storage of liquid fuel in a tank at or above grade at a facility as defined in section 1 of O. Reg. 213/01 (Fuel Oil) made under the Technical Standards and Safety Act, 2000 or a facility as defined in section 1 of O. Reg. 217/01 (Liquid Fuels) made under the Technical Standards and Safety Act, 2000, but not including a bulk plant.**	**Fuel handled or stored above grade**	**Quantity > 250 litres but less than 2,500 litres**	**Presence of benzene, toluene, ethyl benzene, xylenes, Petroleum hydrcarbon fractions 1 through 4 (one or more)**	**8 to 10**	**Moderate drinking water threat in a score 8 to 10 for handling and storage of fuel**	**For full text of policy C.2.4 and discussion of applicable policies, see Notes Section below**	

Reference

Drinking Water Circumstances as defined in Ontario Ministry of the Environment, Table of Drinking Water Threats, 2013

Approved Maitland Valley Source Protection Plan, January 19, 2015

Approved Saugeen Valley Source Protection Plan, October 19, 2015

O. Reg. 213/01 (Fuel Oil) definition: "facility" means an installation where fuel oil or used oil, when such oil is used as a fuel, is handled, but does not include a facility referred to in Ontario Regulation 217/01 (Liquid Fuels);

WELLINGTON Source Water PROTECTION wellingtonwater.ca

Notes

Maitland Source Protection Plan Policies C.2.2 (Risk Management Plans) and C.2.3 (Education and Outreach) and Saugeen Valley Source Protection Policies 15-03 (Risk Management Plans) and G-05 (Education and Outreach) are established for existing threats that meet the Table of Drinking Water Threats circumstances for significant drinking water threats. These do not apply for the Town of Minto generators as none of the existing generators exceed the significant drinking water threat quantity threshold of 2,500 litres above grade.

Policy C.2.4 – Education and Outreach for Existing Fuel Handling and Storage (Moderate and Low Threats)	Within one year of the Plan coming into effect municipalities, in collaboration with the lead Source Protection Authority (SPA), shall implement an outreach and education program, developed by the lead SPA, for delivery to all landowners within their jurisdiction which handle or store fuel where it would be a moderate or low drinking water threat within a wellhead protection area where the vulnerability score is 10. The outreach and education program is intended to help inform affected landowners of risks to sources of local municipal drinking water and help identify means by which such risks can be minimized.

Perth County
Cultivating Opportunity

NOTICE OF A PUBLIC MEETING CONCERNING A PROPOSED OFFICIAL PLAN AMENDMENT

TAKE NOTICE that the Council of the Corporation of the County of Perth will hold a Public Meeting on **September 22, 2016 at 7:30 p.m.** at the Mitchell Community Centre (185 Wellington St, Mitchell) to consider an Amendment to the County of Perth Official Plan, pursuant to the provisions of the Ontario Planning Act.

The proposed Official Plan Amendment (OPA) application has been initiated by the County of Perth for the purpose of considering changes to the current severance policies in the County Official Plan relating to surplus farm dwellings. The current policy prohibits the severance of surplus farm dwellings (i.e. Section 5.6.3). The policy that is being considered by County Council proposes the following:

That the severance of a surplus farm dwelling in the "Agriculture" designation in the County of Perth may be permitted, subject to a number of criteria, including the following:

(i) the land on which the surplus farm dwelling is situated must be operated, or will be operated as part of the consolidated farm operation. For the purposes of this section of the Official Plan, a corporation may be an eligible farming operation to sever a surplus farm dwelling provided the same corporation owns at least two farms, each containing a residence, one of which is surplus to the farm operation that may be severed in accordance with this section; and an unincorporated group of one or more person(s) may be an eligible farming operation to sever a surplus farm dwelling provided a majority of the owners in the group, together or individually own another farm containing a residence, one of which may be severed in accordance with this section of the Official Plan; where owners normally reside in the same household, they may be considered as one individual within the group of owners;
(ii) the land on which the surplus farm dwelling is situated and the land to which the consolidated farm operation to which the farm dwelling has become surplus must be located within the County of Perth;
(iii) the minimum distance separation provisions of MDS I must be satisfied from any livestock facilities on the remnant farm property;
(iv) the surplus farm dwelling must be a minimum of ten (10) years old at the date of the application for consent, and must be habitable, as determined by the local Chief Building Official;
(v) the area of land to be severed for the surplus farm dwelling lot shall be limited to the minimum size required for the residential use and to accommodate the appropriate sewage and water services;
(vi) the farm property on which a surplus farm dwelling is located must be eligible for the Farm Property Class Tax Rate Program or the property owner must have a valid Farm Business Registration Number;
(vii) the proposed lot for the surplus farm dwelling shall not include any barns or structures used for livestock housing purposes; and
(viii) the establishment of a new dwelling on the remnant farm property shall not be permitted and this is to be implemented through an amendment to the local municipal Zoning By-law and through an agreement registered on the title of the remnant farm property.

The proposed Official Plan Amendment will apply to all lands that are designated "Agriculture" in the County of Perth Official Plan, which designation applies to the majority of the lands in the County.

ANY PERSON may attend the Public Meeting and/or make written or verbal representation either in support of, or in opposition to, the proposed Official Plan Amendment.

If you wish to be notified of the decision of County Council regarding the proposed OPA, you must make a written request to the County Clerk either at, or prior to the public meeting.

If a person or public body does not make oral submissions at a Public Meeting or make written submissions to the County of Perth before the proposed OPA is adopted, the person or public body is not entitled to appeal the decision of the County of Perth to the Ontario Municipal Board (OMB).

If a person or public body does not make oral submissions at a Public Meeting or make written submissions to the County of Perth before the proposed OPA is adopted, the person or public body may not be added as a party to the hearing of an appeal before the OMB unless, in the opinion of the Board, there are reasonable grounds to do so.

FOR MORE INFORMATION about this matter, including information about preserving your appeal rights, can be viewed on the County's website (www.perthcounty.ca) under the Public Notices tab and is also available for inspection during office hours at the Perth County Planning and Development Department located at the address noted below, and can be provided in an accessible format upon request.

DATED AT THE CITY OF STRATFORD THIS 31st DAY OF AUGUST, 2016.

Mr. Allan Rothwell, MCIP RPP, Planning Director
County Court House, 1 Huron St. Stratford, ON N5A 5S4
Email: arothwell@perthcounty.ca
Telephone: (519) 271-0531 (ext. 410)

Working for Municipalities

ONTARIO GOOD ROADS ASSOCIATION

1525 CORNWALL ROAD, UNIT 22
OAKVILLE, ONTARIO L6J 0B2
TELEPHONE 289-291-6472
FAX 289-291-6477
www.ogra.org

August 30, 2016

Town of Minto
5941 Hwy. #89
Harriston ON N0G 1Z0

Attention: Mayor & Members of Council

Re: OGRA Conference, February 26 – March 1, 2017, Fairmont Royal York Hotel

OGRA has received numerous letters from municipalities endorsing a resolution from the Township of South-West Oxford regarding ROMA's decision to end the OGRA/ROMA Combined Conference partnership. OGRA would like to take a moment to set the record straight.

The OGRA Board of Directors was surprised and disappointed by ROMA's unilateral decision to revert back to running a separate conference, thus ending a very productive, 17 year partnership that served Ontario municipalities well. The Combined Conference was a major success that strengthened both organizations. OGRA remains open to re-establish the Combined Conference partnership with ROMA because that is the best way for both organizations to serve their municipal members.

That said, we also want to take a moment to assure you that the 2017 OGRA Conference will continue to offer a diverse cutting edge program for our delegates. We can confirm that:

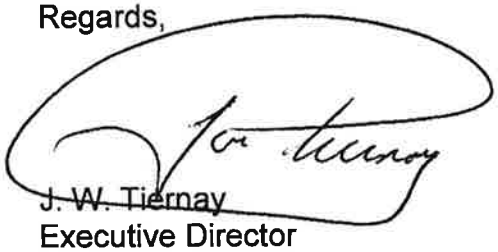
- A number of world class keynote speakers have confirmed their attendance;
- The concurrent sessions will cover the wide spectrum of municipal issues and will continue to be both thought-provoking and applicable to OGRA's municipal members;
- For the third consecutive year, OGRA will convene the Small Town Forum;
- OGRA's Emerging Municipal Leaders Forum will also be held for the third straight year;
- OGRA intends to hold a Ministers' Forum and are in discussions with the Ministry of Municipal Affairs regarding the scheduling of delegations during the

- conference. The fact that the OGRA Conference will be held later in February when the legislature is sitting, will no doubt facilitate Provincial participation;
- The trade show will be substantially enhanced;
- Additional meals will be included in the basic registration fee; and
- Registration fees will be unchanged from 2016 rates.

Should you or any members of your council have any questions, I would encourage to you contact us.

On behalf of the OGRA Board of Directors, we hope to see you at the 2017 OGRA Conference in Toronto, February 26th – March 1st, 2017.

Regards,



J. W. Tiernay
Executive Director

Ministry of Energy

Office of the Minister

4th Floor, Hearst Block
900 Bay Street
Toronto ON M7A 2E1
Tel.: 416-327-6758
Fax: 416-327-6754

Ministère de l'Énergie

Bureau du ministre

4e étage, édifice Hearst
900, rue Bay
Toronto ON M7A 2E1
Tél. : 416 327-6758
Téléc. : 416 327-6754

Ontario

September 1, 2016

His Worship George Bridge
Mayor
Town of Minto
5941 Highway 89
Harriston ON N0G 1Z0

Dear Mayor Bridge:

I wanted to take this opportunity to update you on changes to legislation that will help protect electricity consumers from door-to-door energy contract sales.

Amendments to the *Energy Consumer Protection Act* (ECPA), and the supporting regulation, provide increased protective measures for consumers when entering into energy contracts with electricity retailers and gas marketers. This includes measures aimed at protecting consumers against aggressive sales tactics and providing consumers with the ability to make more informed choices about energy purchases. Some of the key changes include:

- Banning door-to-door sales of retail energy contracts and creating rules to govern permissible marketing activity at the home of a consumer;
- Requiring that all retail energy contracts, including those entered into over the Internet, are subject to a standardized verification process;
- Authorizing the Ontario Energy Board (OEB), through its codes/rules, to require that prices offered by retailers and marketers be determined in accordance with specific requirements;
- Prohibiting sales agents selling energy retail contracts from being remunerated based on commission;
- New cancellation provisions that will also allow consumers to cancel an energy contract 30 days after receiving their second bill, with no cost; and
- Prohibiting auto-renewal for all energy contracts.

Provisions amending the ECPA will be proclaimed into force on January 1, 2017. Additionally, the amendments to O. Reg. 389/10 (General) made under the ECPA were filed with the Registrar of Regulations on June 24, 2016, with an effective date of January 1, 2017.

.../cont'd

The government works with the OEB to protect consumers. The OEB will update its codes of conduct and other regulatory documents to align with the amendments to the ECPA and O. Reg. 389/10.

To view the amendments to O. Reg. 389/10, as filed with the Registrar of Regulations, please visit www.ontario.ca/laws/regulation/r16241.

These measures were enacted to support and protect Ontario's ratepayers in light of an evolving energy sector. The banning of door-to-door energy contracts, together with limiting high-pressure sales tactics, will help ensure that electricity consumers are better protected.

Strengthening consumer protection in the energy sector is part of the government's plan to build Ontario up, and we are committed to improving policies and processes that impact the everyday lives of Ontarians.

I trust that this information is helpful. Please accept my best wishes.

Sincerely,

Glenn Thibeault
Minister

Ontario Provincial Police
Police provinciale de l'Ontario

Municipal Policing Bureau
Bureau des services policiers des municipalités

777 Memorial Ave.
Orillia ON L3V 7V3

777, avenue Memorial
Orillia ON L3V 7V3

Tel: 705 329-6140
Fax: 705 330-4191

Tél. : 705 329-6140
Téléc.: 705 330-4191

File Reference: 612-10

September 08, 2016

Dear Mayor/CAO,

In anticipation of the 2017 Annual Billing Statements, the OPP, Municipal Policing Bureau would like to provide you with the following notice.

Most OPP members are represented by the Ontario Provincial Police Association (OPPA). OPP salaries and benefits are negotiated through the collective bargaining process. The OPPA bargains with The Crown in the Right of Ontario, represented by Treasury Board Secretariat (formerly the Ministry of Government Services) which represents the Employer – the Province of Ontario. The OPPA Uniform and Civilian Collective Agreements expired on December 31, 2014 and as negotiations on a new agreement are still ongoing, salary rates for 2015 and beyond have yet to be established.

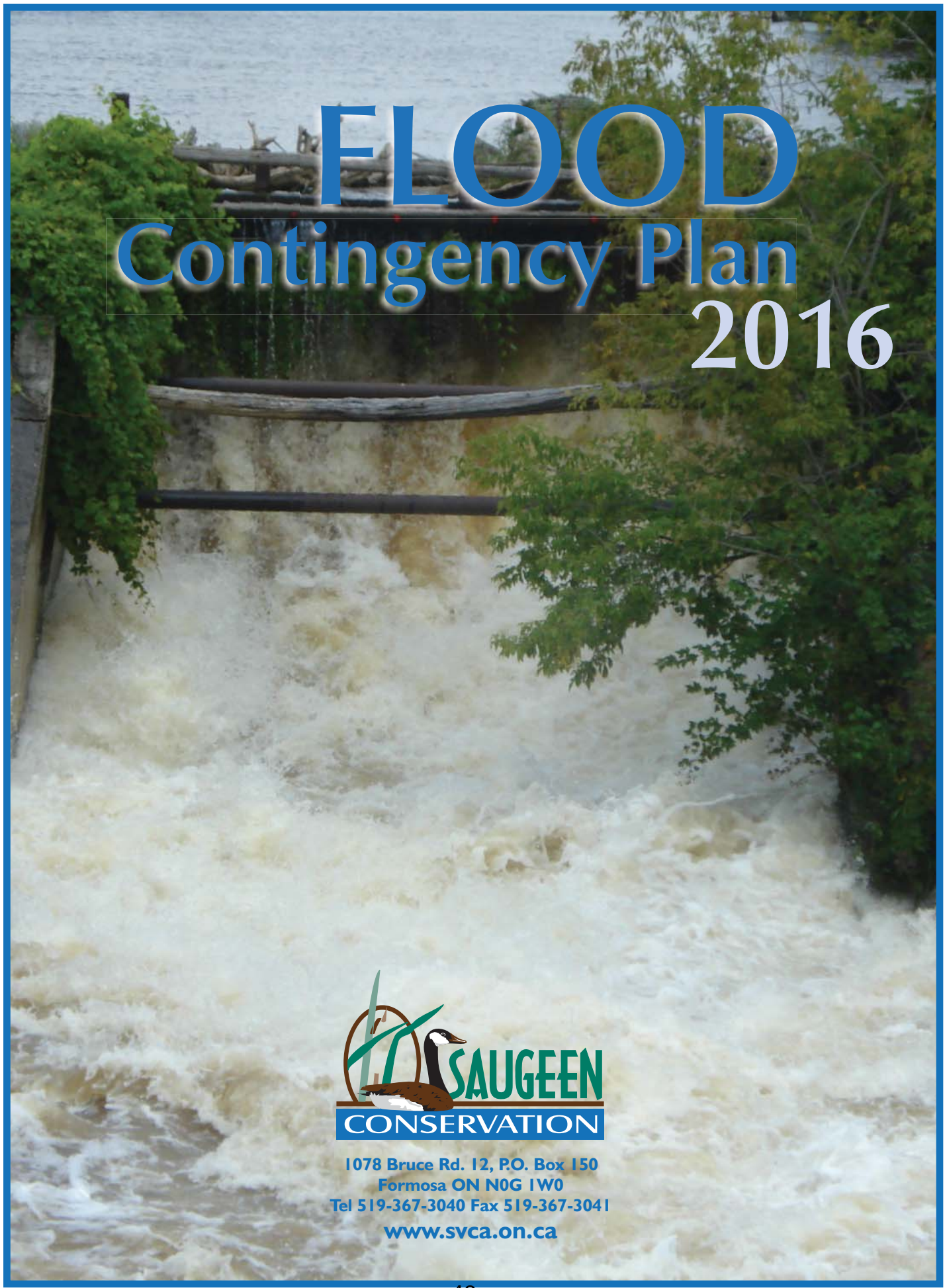
As part of the current billing model, a reconciliation of the 2015 actual costs to the estimate provided in the 2015 Annual Billing Statement would normally be included in the 2017 Annual Billing Statements issued by October 1st of this year. As the reconciliation of municipal policing costs is principally salary related it is not possible to perform this calculation in time for the 2017 Annual Billing Statements. The OPP will therefore include both the 2015 and 2016 reconciliation adjustments in the 2018 Annual Billing Statement, providing municipalities with the opportunity to include these adjustments in their 2018 budget planning.

Please note the estimated salary rates incorporated in the municipal policing annual statements are set to reduce the risk of municipalities potentially incurring significant reconciliation adjustments. The annual estimates of general salary rate increases included in the 2015 through 2017 Annual Billing Statements have been based on current salary rate settlements with other Ontario municipal police services. The rate increases have been estimated for 2015 through 2017 as 1.5%, 2.64% and 2.54% respectively.

The OPP values its relationship with your municipality and will continue working with all of our partners to ensure community safety in Ontario. Should you have any questions, please contact our Financial Services Unit at OPP.MPB.Financial.Services.Unit@opp.ca.

Yours truly,

M.M. (Marc) Bedard
Superintendent
Commander,
Municipal Policing Bureau



FLOOD
Contingency Plan
2016

SAUGEEN CONSERVATION

1078 Bruce Rd. 12, P.O. Box 150
Formosa ON N0G 1W0
Tel 519-367-3040 Fax 519-367-3041
www.svca.on.ca

CONTENTS

MEMBER MUNICIPALITIES

Municipality of Arran-Elderslie
Township of Chatsworth
Town of Hanover
Township of Huron-Kinloss
Town of Minto
Town of Saugeen Shores
Township of Southgate
Municipality of West Grey
Municipality of Brockton
Municipality of Grey Highlands
Township of Howick
Municipality of Kincardine
Municipality of Morris-Turnberry
Municipality of South Bruce
Township of Wellington North

The Saugeen Valley Conservation Authority is a corporate body established under the Conservation Authorities Act of Ontario to manage watershed resources and related conservation projects in partnership with its 15 member municipalities and the Province of Ontario.

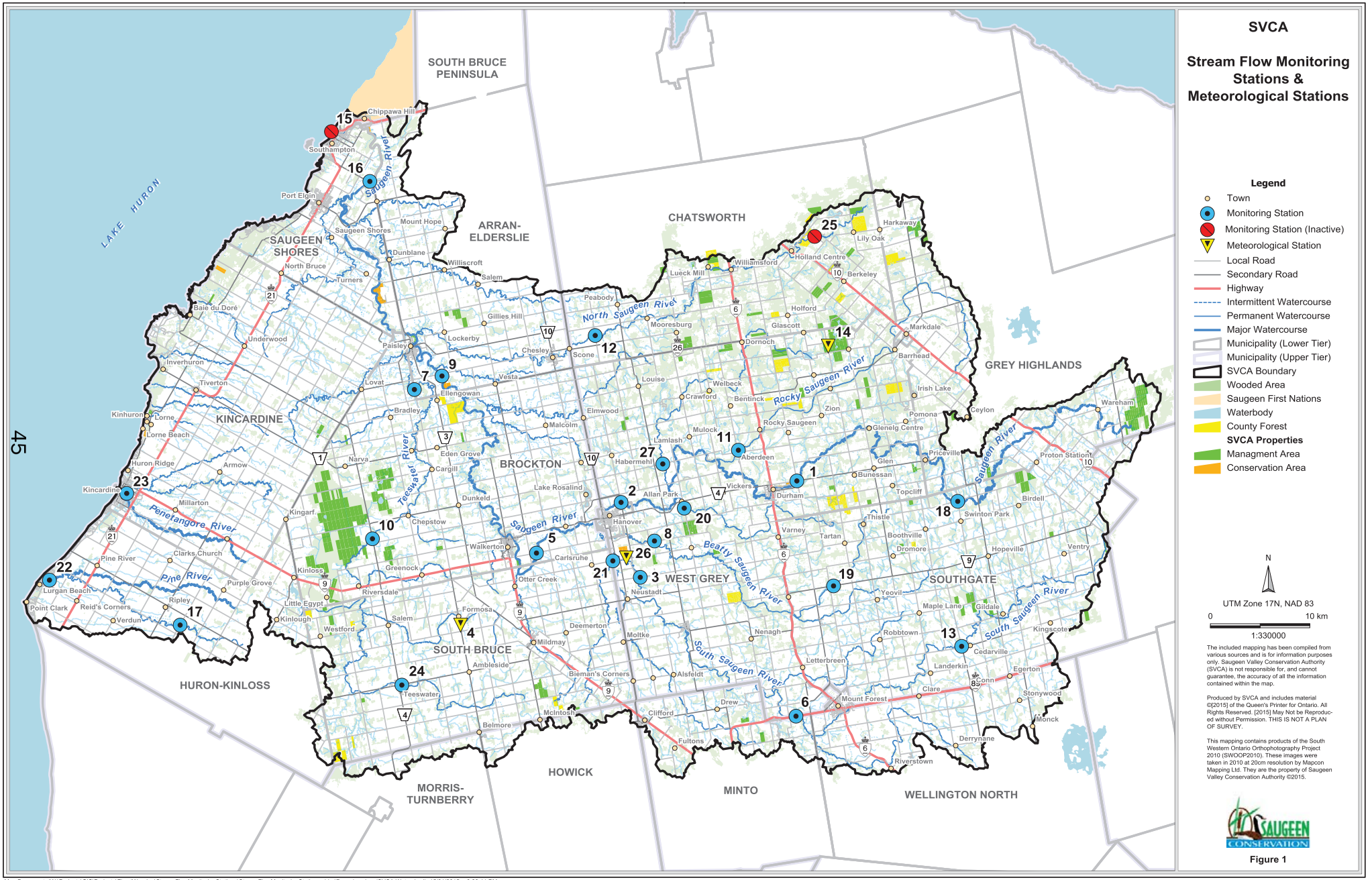


Figure 1

Map Document: (W:\Projects\GIS\Projects\FloodWarning\StreamFlowMonitoringStations\StreamFlowMonitoringStations_11x17.map) -- view (SVCA Watershed); 15/01/2015 -- 3:28:41 PM

PREPARING FOR FLOOD EMERGENCIES

Introduction

Flooding is the leading cause of public emergency in Ontario. Floods can occur at any time of the year and any time of the day or night. High flow events have always been a natural function within the Saugeen Valley Conservation Authority (SVCA) area of jurisdiction. As the global climate changes, flooding may become more frequent and severe in the future.

Flood magnitudes vary with the extent of snow cover, ambient air temperature, amount and duration of rainfall, direction and velocity of wind, pre-event soil conditions, river ice conditions, etc. The SVCA operates snow measuring courses, precipitation stations and automated river level recording gauges that assist in predicting the probability, height and time of arrival of a flood downstream. This Flood Forecast System attempts to minimize the loss of life, property damage and social disruption through effective communication. Selected agencies and officials are sent flood messages when flooding is anticipated. When notified, municipalities should distribute such messages as quickly as possible to residents, institutions, and businesses that may be at risk.

A fundamental component of any emergency response system is relaying the essential information to all potentially affected parties and initiating an effective and coordinated response to the identified emergency. The primary purpose of this Flood Contingency Plan is to address these important elements of public safety.

Under the SVCA's Water Management program, the SVCA has constructed flood control structures to protect many of the high risk populated areas. However, it must be remembered that such structures provide a limited degree of protection and only for specific locations. As long as watershed residents live and work in flood susceptible areas, an effective flood forecast system must be in operation.

The procedures outlined in this document and the accompanying contacts list comprise the information dissemination components of the SVCA's Flood Forecast System. ***Each official associated in any way with this system should be fully aware of his/her responsibilities and be prepared to make every possible effort to ensure its effectiveness.***

Flood Forecast System Communication

The system that is used by the SVCA to communicate flood-related messages to affected residents within its jurisdiction serves two primary purposes:

1. It provides rapid, advance warning and technical support to relevant officials and agencies, and via the media it informs the public.

2. It also enables the Authority to relay routine information concerning watershed river conditions to selected agencies and municipal officials.

The Flood Forecast System – How It Works

The system consists of an extensive network of data collection gauges strategically located throughout the SVCA Watershed, constantly monitoring factors that could potentially affect the amount of water entering the river system and the corresponding water levels. Information concerning the water content of the snow cover, present stream levels, intensity and duration of precipitation, wind speed, temperature and sunlight is recorded either manually or automatically and accessible on demand from the Forecast Centre. In addition, regular field inspections are made of river ice conditions throughout the Watershed during the winter months.

With this data, flood forecast personnel operate a real time computer model that can predict the flood potential within the Watershed. Coupled with analytical comparisons of up-to-date streamflow measurements, long range weather forecasts, and past flood events, forecast staff can estimate potential river levels and peak flow volumes and timing, as well as monitor the progression of a flood as it travels downstream through the river system.

Roles and Responsibilities of Participating Organizations

A number of agencies, municipal departments and individuals bear responsibility, in varying degrees, for the efficiency of the Flood Forecast System. These groups and personnel are identified below. A more detailed outline of the responsibilities and functions of Conservation Authorities and the Ministry of Natural Resources and Forestry (MNRF) are contained within the **Ontario Flood Forecasting and Warning Implementation Guidelines for Conservation Authorities and the Ministry of Natural Resources (2008)**, prepared by the Provincial Flood Forecasting and Warning Committee. Roles and responsibilities for municipalities and for other agencies are described in their own Emergency Response Plans.

SAUGEEN VALLEY CONSERVATION AUTHORITY:

- Monitors Watershed and weather conditions and operates the Flood Forecast System;
- Issues messages to municipalities, other appropriate agencies, and the media to advise of potential, or the occurrence of, flooding;
- Provides advice to municipalities in preventing or reducing the effects of flooding;
- Maintains communications with municipalities and the Ontario Ministry of Natural Resources and Forestry during a flood event.

POLICE:

During a flood emergency, the "police service of jurisdiction" is responsible for carrying out rescue operations, obtaining necessary medical aid and maintaining law and order within affected areas as per that jurisdiction's municipal emergency plan.

RADIO, TELEVISION AND PRINT NEWS MEDIA SERVICES:

Provides the primary means of relaying flood-related information to the public, for those outlets serving the SVCA Watershed.

MUNICIPAL OFFICIALS:

Are initially responsible for the welfare and protection of their residents from floods. Under the Emergency Management & Civil Protection Act municipalities are required to have an Emergency Management program. Emergency response plans are also the municipality's responsibility, which may include specific procedures for floods.

LANDOWNERS AND RESIDENTS:

Have an obligation to be prepared prior to a flood emergency, to evacuate safely when so instructed by the municipality or police service, and to safeguard their belongings to the best of their abilities.

MINISTRY OF NATURAL RESOURCES AND FORESTRY:

Operates the provincial Surface Water Monitoring Centre in Peterborough, which advises the SVCA of weather conditions that may adversely affect Watershed streams. Also, through the local Emergency Response Coordinator (Owen Sound Area Supervisor for the Saugeen Watershed), the ministry directs and delivers the provincial response to a municipal request for assistance, when a flood emergency has escalated beyond the capabilities of local resources.

COMMUNICATING FLOOD MESSAGES

Flood Messages – Terminology

There are three types of flood messages: *Watershed Conditions Statement; Flood Watch; and, Flood Warning*. The preamble for all flood messages will indicate the type of message as described below, and the types follow common terminology approved by the Province for use by all agencies issuing flood-related messages. The numbering of flood messages will be sequential throughout a flood period. Examples of the three types of messages are provided further on in this Flood Contingency Plan.

All flood messages are sent to the primary recipients by fax and email.

Watershed Conditions Statement

A Watershed Conditions Statement is a general notice of potential Watershed conditions that pose a safety risk (high flows, unsafe ice, slippery banks). A Statement may include sub-headings under the categories of "Water Safety Bulletin" and/or "Flood Outlook".

A Watershed Conditions Statement reports on general Watershed conditions and is primarily directed to Municipal Flood Coordinators throughout the Watershed.

Water Safety Bulletins are issued to media sources and are general public information messages in which awareness is encouraged. These bulletins are usually issued before overbank flow occurs, before spring breakup or any other time of year as conditions warrant, as a general reminder of the potential for high flows and unsafe conditions.

High Water Safety Bulletins may be issued when a major storm is pending, when above normal snow pack conditions exist or when general conditions suggest high runoff potential.

Flood Watch

A Flood Watch serves to notify Municipal Flood Coordinators and other primary contacts that the potential for flooding exists and is issued to specified affected municipalities, usually following the onset of over bank flow. A Flood Watch message describes current Watershed conditions, potential flooding effects, and a related weather forecast.

This type of message does not require Municipal Flood Coordinators to take specific emergency action, but having been alerted to the potential for flooding

they should start precautionary measures. Such measures vary according to local municipal requirements but typically include: checking their Emergency Response Plan, monitoring of potential problem areas, and possibly having staff remain on a stand-by alert.

Recipients of a Flood Watch message do not have to confirm receipt by responding to the SVCA, unless the message specifically states it.

Flood Warning

A Flood Warning is issued after a forecast has been made and will apply to specific flood damage centres where flooding appears inevitable. A Flood Warning message is sent only to those Municipal Flood Coordinators and other primary contacts whose municipality is affected by flooding and they will in turn relay the message to other relevant individuals and departments within their organization. Upon receipt of a Flood Warning message for their area, municipal officials should be prepared to issue warnings and/or evacuation instructions to households, businesses and industry that may be threatened by the flood. Municipal officials should also alert and mobilize necessary labour for sandbagging and other flood combating services.

Flood warning messages will be as specific as available information permits, in order that recipients are not faced with problems of interpretation. Where possible, the Warning message will contain time of flood stages and crests in reference to specific locations and shall include the approximate time of the next flood message.

In addition to disseminating the Flood Warning message by fax and email, SVCA staff follow-up by phoning the appropriate municipal staff of the affected flood damage centre. Recipients of a Flood Warning message must confirm receipt by responding to the SVCA.

Normal

No messages are issued while in the Normal status, but it is indicated on the SVCA website.

“Normal” status generally indicates low flow to base flow stream conditions, and area-wide flooding is not anticipated. Nevertheless, during intense rainfall events that can appear quite suddenly, typically in the summer months, there is the potential for very localized flooding. It should be noted as well that during Normal flow conditions the inherent risk to personal safety associated with flowing water still exists.

Flood Status – SVCA Website

The current flood status in the SVCA Watershed is always indicated on the home page of the SVCA's website (http://www.svca.on.ca). The four status levels are also colour-coded as follows: Normal – green; Watershed Conditions Statement – yellow; Flood Watch – orange; and, Flood Warning – red.

The Communication Process

During anticipated or actual flood events, the Saugeen Valley Conservation Authority is responsible for the operation of the Flood Forecast Centre, located within its administrative office in the hamlet of Formosa just west of Walkerton.

When the condition status of a Flood Watch is in effect the centre is staffed during regular business hours (8:30am to 4:30pm). When a more serious Flood Warning level is reached the Flood Forecast Centre operates on a 24 hour basis, until the emergency has expired.

Based on available information, SVCA flood forecast personnel send out Flood Watch messages to relevant officials regarding the latest flood probability assessment and existing or potential flood conditions. Upon receipt of the first such message Municipal Flood Coordinators should initiate a check of internal emergency response plans. The senior official of each organization receiving a message determines whether further internal notification or action is required.

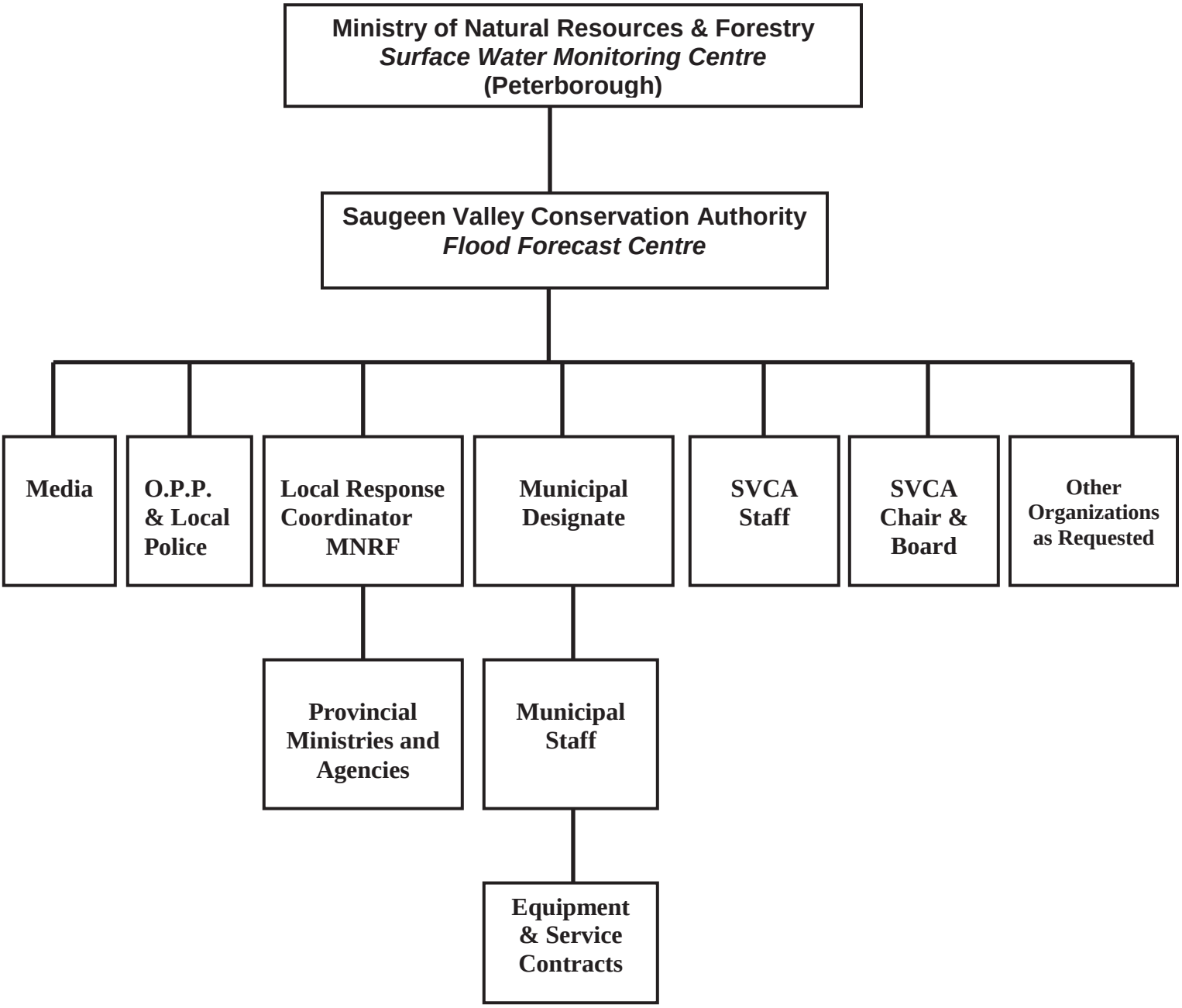
If requested beforehand, flood messages are also sent to other municipal and emergency staff for their information; however, the SVCA's primary responsibility is to only notify the senior official in the affected municipalities.

Flood messages are sent from the SVCA by fax and email. The same messages are also posted on the SVCA's website (http://www.svca.on.ca) and distributed via the SVCA's social media outlets (e.g. Facebook).

In the event that primary telephone communications fail, where no alternative exists, the Authority may contact the South Bruce OPP Detachment who will in turn notify the police service of jurisdiction, the affected municipality in the South Bruce Detachment area, or the affected detachment outside of South Bruce, as required.

The SVCA office in Formosa has a stand-by generator sufficient to operate essential Authority functions should the municipal power grid be unavailable during a flood event.

COMMUNICATION FLOWCHART



WATERSHED CONDITIONS STATEMENT
FLOOD OUTLOOK / WATER SAFETY BULLETIN

SAUGEEN VALLEY CONSERVATION AUTHORITY

Tel: (519) 367-3040 Fax: (519) 367-3041 Website: www.svca.on.ca

Message Number: 2014.1.1

Issued at: Friday, March 28, 2014, 4:00 pm

Issued by: SVCA Flood Forecast Centre

To: Watershed Media
Watershed Municipalities and Counties
SVCA Board of Directors

MESSAGE:

Temperatures slightly above freezing are forecast for the weekend with no significant amount of rain or snowfall likely to occur. Warmer weather is likely for the first half of next week, with daytime temperatures possibly reaching 10 degrees Celsius. Temperatures are projected to be lower later in the week.

No significant flooding is expected over the weekend and into early next week, although localized flooding might occur where flow in smaller watercourses and ditches are impeded by snow or ice. Some melting of the snowpack will occur but the snow conditions aren't likely to be reduced substantially.

The Saugeen, Pine and Penetangore River watersheds have an above average snowpack. The long range forecast is for the spring snowmelt to be extended through much of the month of April. Although early next week will see warmer weather, the rest of the week and through to the third week of April will generally experience cooler than normal temperatures. The snow melt process will likely be slow during this time. On much of the larger rivers the ice still remains in place. Typical spring like weather conditions may be 3 to 4 weeks later than usual.

Streambanks are unstable and slippery at this time and the water is cold, so residents are advised to use caution near all watercourses. Parents are encouraged to keep their children and pets away from streams and off frozen water bodies.

Saugeen Conservation staff will continue to monitor conditions as they evolve, and further statements will be issued as warranted.

This message is in effect until 11:00 am on Wednesday, April 2, 2014.

Contact: Gary Senior, Shannon Wood

Confirmation of receipt of this message: **not required**

- End of Message -

FLOOD WATCH

SAUGEEN VALLEY CONSERVATION AUTHORITY

Tel: (519) 367-3040 Fax: (519) 367-3041 Website: www.svca.on.ca

Message Number: 2014.2.1

Issued at: Wednesday, April 9, 2014, 10:00 am

Issued by: SVCA Flood Forecast Centre

To: Watershed Media
Watershed Municipalities and Counties
OPP and Municipal Police
SVCA Board of Directors

MESSAGE:

The weather forecast for the next several days calls for temperatures well above freezing with some days above 10 degrees C, and night time temperatures generally above zero. Scattered showers are also possible on Thursday. These factors will result in further melting of the snow pack and produce increased runoff into watercourses. The snow pack has been steadily declining over the last two weeks, but in many areas such as forests there still remains an above-average snow depth for this time of year.

Throughout the SVCA Watershed water levels in watercourses are expected to gradually rise through the rest of the week and into the weekend. Significant flooding is not expected at this time, but flooding in the traditional low-lying flood plain areas can be expected.

Most of the ice has already moved off the watercourses and so large ice jamming is not anticipated at this time. Nevertheless, there may be localized blockages at some watercourses and snow or ice could still impede flow in ditches and drainage channels.

As of the beginning of April the average water content in the snow pack was in the range of 13 cm (5 inches). This amount is well above the long term average for the time of year. As such, there is substantial meltwater that will be moving through the system over the next week or so.

Due to the elevated flows in the rivers and streams and unstable streambanks, the public is advised to stay away from area watercourses.

SVCA staff will be monitoring conditions as they evolve, and further statements will be issued as warranted.

This message is in effect until 11:00 am on Monday, April 14, 2014, unless a further statement is issued.

Contact: Gary Senior, Shannon Wood

Confirmation of receipt of this message: **not required**

- End of Message -

FLOOD WARNING

SAUGEEN VALLEY CONSERVATION AUTHORITY

Tel: (519) 367-3040 Fax: (519) 367-3041 Website: www.svca.on.ca

Message Number: 2003.1.2

Issued at: 10 am, April 6, 2003

Issued by: SVCA Flood Forecast Centre

To: Watershed Media
OPP
Southgate, West Grey
SVCA Board of Directors

MESSAGE:

A rapid rise in temperatures and projected rainfalls of 30 -40 mm, will escalate the melting of the heavy snowpack in the upper watersheds. Latest snow course readings indicated in excess of 150mm water content on the ground. Significant flooding is expected to occur within the headwater areas of the South Saugeen, Beatty Saugeen, and main Saugeen above Durham. Existing flood control works in potentially affected urban centres will contain the peak flows expected, but widespread flooding will occur within the floodplains in rural areas. All municipal flood co-ordinators in the affected municipalities are advised to notify those residents of the pending high water and possible evacuation as needed.

Update: will be issued at 4 PM today

Contact: Gary Senior, Shannon Wood

Confirmation of receipt of this message: **Required**

- End of Message -

CONTINGENCY PLAN DISTRIBUTION LIST

This document is issued to:

Municipal and county governments located within the jurisdictional boundaries of the Saugeen Valley Conservation Authority

Directors of the Saugeen Valley Conservation Authority

Saugeen Valley Conservation Authority staff

Police services serving the Watershed

News media services serving the Watershed

Provincial and federal members of Parliament within the jurisdiction of the Saugeen Valley Conservation Authority

Ontario Ministry of Natural Resources and Forestry
- Owen Sound Area Office, Midhurst and Guelph District Offices
- Surface Water Monitoring Centre in Peterborough

Ontario Ministry of Community & Social Services, Owen Sound

Canadian Red Cross (Owen Sound)

Union Gas

Enbridge Gas

Westario Power

Hydro One

Wellington North Power Inc.

Veolia Water Canada

FLOOD EMERGENCY CONTACT LIST

SAUGEEN VALLEY CONSERVATION AUTHORITY

Flood Forecast Centre / Administration / Media Services

Saugeen Valley Conservation Authority – Administration Centre (519) 367-3040

	OFFICE	RESIDENCE
ADMINISTRATION		
Wayne Brohman, General Manager/Secretary- Treasurer (w.brohman@svca.on.ca)	519-367-3040 x 232 Cell 519-369-7206	519-745-2603
FLOOD FORECAST CENTRE		
Gary Senior, Senior Manager, Flood Warning & Land Management (g.senior@svca.on.ca)	519-367-3040 x 234 Cell 519-369-4469	519-364-5432
FLOOD FORECAST CENTRE – ALTERNATE STAFF		
Jo-Anne Harbinson, Manager, Water Resources & Stewardship Services (j.harbinson@svca.on.ca)	519-367-3040 x 235 Cell 519-369-4284	519-364-6548
NEWS MEDIA SERVICES		
Shannon Wood, Manager, Communications (s.wood@svca.on.ca)	519-367-3040 x 229 Cell 519-69-4295	519-367-2602

POLICE SERVICES

	OFFICE	Fax
Ontario Provincial Police, Communications Centre Supervisor	1-888-310-1122	519-680-4697
Opp.pcc.london@opp.ca		
Wingham – (calls are forwarded to Goderich)	519-357-1331	
Huron County (Goderich)	519-524-8314	
Wellington County (Teviotdale)	519-343-5770	519-343-5780
South Bruce Counties (Kincardine)	519-396-3341	
Grey County (Chatsworth)	519-794-7827	519-794-3966
Walkerton	519-881-3130	519-881-3139
Municipal Police		
Hanover Police Services Dispatch	519-364-2411	519-376-6131
West Grey Police Services Dispatch	519-371-6911	519-376-6131
Saugeen Shores Police Services Dispatch: Admin:	519-832-2500 519-832-9200	 519-389-4257

WATERSHED NEWS MEDIA SERVICES

Radio, Television Stations	
CKNX Radio 920 AM & FM 101.7/94.5 The Bull, Wingham	1-800-265-3031 or (519) 357-1310 x 3226
CKNX Radio Newsroom	Fax (519) 357-3860
Email: news.wingham@blackburnradio.com	
CTV - Wingham office (satellite office) - Wingham office - Scott Miller cell: 519-881-6039 Email: scott.miller@bellmedia.ca - London office fax line Email: londonnews@ctv.ca	24 hr (519) 686-8810 Fax (519) 357-4398 Fax (519)-668-3288
98 – The Beach Radio Station – 97.8, Port Elgin	(519) 832-9898 or (519) 832-9800
Email: info@thebeach.ca	Fax (519) 832-9808
CTV, Kitchener Email: news@kitchener.ctv.ca	(519) 741-4401 Fax (519) 743-0730
Channel 6 News (Eastlink), Listowel	1-226-430-1014 or 1-866-286-3484
Email: midwest@eastlinktv.com	Fax (519) 291-5935
Bayshore Broadcasting (Owen Sound)	(519) 376-2030 x 228
Manny Paiva mpaiva@bayshorebroadcasting.ca	Fax (519) 371-9683
- News Room Email: news@bayshorebroadcasting.ca	
B101 FM Radio & CHAY FM, Barrie	(705) 726-1597 (News Room) 4am-6pm
Email: news@chaytoday.ca	or (705) 726-1011
	News Room Fax (705) 722-5631
The Dock 92.3 (CJOS FM)	(519) 470-6397 (news)
Email: news@923thedock.com	Fax (519) 470-7631
Bluewater Radio 91.3 FM, Hanover	Cell 370-9090 or (519) 364-0200
Email: info@bluewaterradio.ca	Fax (519) 364-5175
Newspapers	
Owen Sound Sun Times (News Room)	Fax (519) 376-7190
Email: osst.news@sunmedia.ca doug.edgar@sunmedia.ca	
Kitchener-Waterloo Record	1-800-265-8261 or
Email: newsroom@therecord.com	News Room (519) 895-5602 (direct line)
	News Room Fax (519) 894-3829
London Free Press	(519) 679-1111 or 1-800-265-4100
Email: lfp.newsdesk@sunmedia.ca	Newsroom direct line (519)667-4550
	Fax (519) 667-4528

MINISTRY OF NATURAL RESOURCES AND FORESTRY
FLOOD RESPONSE PERSONNEL
FOR SAUGEEN WATERSHED

	Office	**Residence**
Local Response Coordinator		
MNR, Owen Sound Area Office		
Area Supervisor – Allison Kershaw (acting) Allison.kershaw@ontario.ca	519-371-6751	Cell: 226-668-1072
Grey & Bruce Counties	Fax (519) 372-3305	
Alternate:		
Shawn Carey , District Manager (Acting)	(705) 725-7561	705-734-8128
(Midhurst District)	Fax (705) 725-7584	
Shawn.carey@ontario.ca		

COUNTY & MUNICIPAL EMERGENCY OPERATIONS

	Business	Residence
County of Bruce		
County Engineer – Brian Knox bknox@brucecounty.on.ca	881-2400 x 263	367-5295 Cell 270-6947
Operations Supervisor – Brent Glasier bglasier@brucecounty.on.ca	881-2400 x 264	364-4763 Cell 270-0750
Community Emergency Mgt. Coordinator Fax: 507-2239 Alternate CEMC – David Smith dsmith@brucecounty.on.ca 2nd Alternate CEMC – Ray Lux	519-507-2237 881-1782 x 257 507-2237 x 254	 Cell 901-3245 Cell 270-0731
Bruce County Fire Coordinator - Kent Padfield (Kincardine)	396-2141 x3	Cell 389-7404
Paisley Garage Foreman – Ray Underwood Fax: 353-5135	353-5132	Cell 270-0756
runderwood@brucecounty.on.ca		
Walkerton Garage Foreman –Scott Caslick Fax: 881-2994 scaslick@bucecounty.on.ca	881-0930	Cell 270-0751
County of Grey		
Dir. of Transportation & Public Safety 24 Hr Dispatch:	519-376-7337	Fax: 519-376-0937
Mike Kelly Michael.kelly@grey.ca Fax: 376-7672	376-0936 x 1246	Cell: 374-3049
CEMC - Marlene McLevy Alternate CEMC - Geraldine Cole Alternate CEMC, Grey County – Sharon Melville x 1244 2nd Alternate CEMC, Anne-Marie Shaw x 1305	376-2205 x 1245 376-2205 x 1392 or 372-0219	371-4320 Cell: 378-3101 Cell 378-6325 or Cell 477-1278 Cell 378-4168
County of Huron		
EMS Chief/CEMC – Huron County – 1st contact: David Campbell Alternate CEMC – Huron County – Acting Chief: Jeff Horseman 2nd Alternate CEMC - Erin Schooley	524-8394 524-8394 524-8394 x3314 519-482-8505 x 4217	Cell 519-440-1530 Cell 226-222-0287 Cell 519-440-1463
Wroxeter Patrol		
Area Foreman – Jim Middegall	335-3531	519-523-4287 Cell 519-525-5741
Bridge Foreman – Wayne Higgins	519-335-3186	887-9577 Cell 519-440-2961

	Business	**Residence**
County of Wellington		
County Engineer – Gordon Ough	837-2600 x 2280	Cell 823-3155
CAO – Scott Wilson	837-2600 x 2330	Cell 835-0900
Linda Dickson, Community Emergency Mgt. Coordinator CEMC	846-8058 (Direct Line)	Cell 993-0105 669-0140

County of Dufferin		
Director of Public Works – Scott Burns	941-2816 x 2601	
CEMC/Flood Coordinator – Steven Murphy	941-6991 x 2401 Cell 938-7215	Pager 416-719-6210

Arran-Elderslie, Municipality of	**Business**	**Residence**
Mayor – Paul Eagleson	363-3039	934-2210 Cell 270-9299
Police – OPP South Bruce Detachment - 1-888-310-1122	881-3130 or 396-3341	
Works Manager –Scott McLeod works@arran-elderslie.ca	363-3039 x35	934-2018 Cell 373-9781
Clerk – Peggy Rouse clerk@arran-elderslie.ca	363-3039 x 38	371-3458 Cell 270-4922
Emergency Preparedness Coordinator - Scott McLeod	363-3039 x35	934-2018 Cell 373-9781
Water & Sewer –Position not yet filled	363-3039 x 42	
Union Gas for Tara only	1-877-969-0999	
Hydro One	1-800-434-1235	
Brockton, Municipality of		
Mayor – David Inglis	881-2223 x 29	519-881-1390 Cell 519-377-6578
Police – OPP South Bruce Detachment - 1-888-310-1122	1-888-310-1122 or 881-3130	
Community Emerg Mgt Coordinator-Michael Murphy mmurphy@brockton.ca	519-881-0642	Cell 519-377-2807
Works Superintendent – John Strader jstrader@brockton.ca	881-2223 x 25	881-2429 Cell 519-377-0520
CAO –Debra Roth droth@brockton.ca	519-881-2223 x 26	519-377-5345
Veolia Water Canada	519-881-1474	Pager 519-881-5863
Utilities Manager – Colin Saunders	881-2223 x34	519-363-5078 Cell 519-377-0229
Westario Power	1-866-978-2746	
Hydro One – Brant & Greenock Wards	1-888-664-9376	
Union Gas for Walkerton	1-877-969-0999	
Chatsworth Township		Fax: 519-794-4499
Mayor – Bob Pringle bob.pringle@grey.ca	794-3232	794-2579 Cell 375-1157
Police – OPP Grey County (Chatsworth)- 1-888-310-1122	794-7827	
Road Superintendents – Bev Girdler roads@chatsworth.ca - Brad Thake	794-3040 794-3232 x 828	Cell 373-5008 Cell 226-668-3745
Fire Chief: Mike Givens chattyfd@chatsworth.ca	794-3232 x 829	Cell 270-9995
CAO/Clerk – Will Moore wmoore@chatsworth.ca	794-3232	Cell 226-668-1133
Water Services Coordinator– Carolyn Marx	794-3232	Pager 374-2824
Hydro One	1-800-434-1235	
Union Gas for Chatsworth only	1-877-969-0999	

Grey Highlands, Municipality of Fax: 519-986-3643	**Business**	**Residence**
Mayor – Paul McQueen mayormcqueen@greyhighlands.ca	519-986-2811 x 261	705-445-3064 Cell 519-375-1912
Police – OPP Chatsworth - 1-888-310-1122	519-794-7827	
Director of Public Utilities-Shawn Moyer MoyerS@greyhighlands.ca	519-986-4784	Cell 519-373-9741
Director of Transportation & Environmental Services - Chris Cornfield CornfieldC@greyhighlands.ca	519-986-2811 x 225	Cell 519-372-8448
CAO – Dan Best bestd@greyhighlands.ca	519-986-2811 x 231	Cell 519-270-5572 519-925-2787
Clerk & CEMC – Debbie Robertson RobertsonD@greyhighlands.ca	519-986-2811 x 233	519-986-3511 Cell 519-270-3555
Hydro One	1-800-434-1235	
Union Gas in Markdale & Flesherton	1-877-969-0999	
Water & Sewer – Shawn Moyer	519-986-4784	Cell 519-373-9741
Hanover Town		
Mayor – Sue Paterson spaterson@hanover.ca	519-364-2780 x 230	519-364-4535
Police – Hanover Police Services-Chris Knoll ~~Acting Chief~~ contact via email: cknoll@hanoverps.ca	519-364-4280	
Director of Public Works – Ron Cooper rcooper@hanover.ca	519-364-2780 x 229	519-364-2192 Cell 519-881-7852
CAO/Clerk – Brian Tocheri btocheri@hanover.ca	519-364-2780 x 228	519-364-6791 Cell 519-378-8635
Fire Chief/CEMC - Ken Roseborough	519-364-2780 x 239	519-364-4594 Cell 519-889-1377
Westario Power	1-866-978-2746	
Union Gas	1-877-969-0999	
Howick Township		
Reeve – Art Versteeg	519-335-3208	519-335-3623
Police – OPP Huron County (Goderich)- 1-888-310-1122	519-524-8314 or 1-888-310-1122	
Fire Chief & CEMC – Shawn Edwards howickfiredept@wightman.ca	519-335-3202	Cell 519-369-4293
Public Works Coordinator – Wray Wilson wray@howick.ca	519-335-3838	519-335-6346 Cell 519-357-7531
Clerk – Carol Watson clerk@howick.ca	519-335-3208	519 334-3379 Cell 519 323-7743
Hydro One	1-800-434-1235	

Huron-Kinloss Township	**Business**	**Residence**
Mayor – Mitch Twolan	395-3959	395-0717 Cell 955-0664
Police – OPP South Bruce Detachment 1-888-310-1122	396-3341 or 881-3130	
Director of Public Works – Hugh Nichol hnichol@huronkinloss.com	395-3735 x 130	396-2326 Cell 525-2106
Clerk – Sonya Watson swatson@huronkinloss.com	395-3735 x 123	519-395-3358
Municipal Emergency After Hours	1-866-299-5199	
Fire Chief/CEMC Chris Cleave	395-3735 x 164	Cell 519-441-3743
Water – Veolia Water Canada, Goderich	519-524-6583	After Hrs: 519-525-0043
Westario Power for Ripley & Lucknow	1-866-978-2746	
Hydro One for remainder of municipality	1-800-434-1235	

Kincardine, Municipality of		
Mayor – Anne Eadie mayor@kincardine.net	519-396-3468	519-396-6927
Police – OPP South Bruce Detach 1-888-310-1122	519-396-3341	
Acting Director of Public Works – Murray Clark Emergency After Hours Manager of Operations – Don Huston	519-396-3468 x 109 519-396-1511	Cell 519-389-1819 Cell 519-385-0007
Emergency Planning Coordinator – Frank Merkt	519-396-2141 x4	Cell 519-389-8101
CAO – Murray Clarke cao@kincardine.net	519-396-3018 x 109	396-5387 Cell 389-1819
Clerk – Donna MacDougall	396-3468 x 112	Cell 389-8620
Westario Power (Kincardine & surrounding area only)	396-3471	
Hydro One for remainder of municipality	1-800-434-1235	
Minto Town		
Mayor – George Bridge	338-2511	Cell 261-0093
Police – OPP Wellington County (Teviotdale) 1-888-310-1122	343-5770 or 1-888-310-1122	
Public Works Director – Brian Hansen	338-2511 x 227	Cell 321-9485
Fire Chief – Chris Harrow	343-3735	343-5418 Cell 503-9545
Community Emergency Mgt Coordinato-Linda Dickson	846-8058 x 3322	Cell 993-0105
CAO/Clerk – Bill White bwhite@town.minto.on.ca	338-2511 x 222	Cell 323-7602
Westario Power for Palmerston, Harriston & Clifford Hydro One for remainder of municipality Union Gas for Palmerston, Harriston & Clifford	1-866-978-2746 1-800-434-1235 1-877-969-0999	

Morris-Turnberry Township	**Business**	**Residence**
Mayor – Paul Gowing	Cell 440-2688	887-9248
Police – OPP Huron County (Goderich)- 1-888-310-1122	524-8314	
Director of Public Works – Gary Pipe	887-6137 x 25	Cell 357-6332 Pager 519-525-0792
Administrator/Clerk Treasurer – Nancy Michie	887-6137 x 21	887-6472 Cell 357-6272
Union Gas for Belgrave, Bluevale & Walton & parts of area surrounding Wingham	1-877-969-0999	
Westario Power for Westcast Industries in Wingham only	1-866-978-2746	
Hydro One for remainder of municipality	1-800-434-1235	

Saugeen Shores Town		
Mayor – Mike Smith	519-832-2008 x 142	519-389-9657 Cell 519-386-9657
Police – Saugeen Shores Police Services	519-832-9200	
After Hours	519-832-2500	
Director of Public Works – Len Perdue (Acting)	519-832-2008 x 101	Cell 519-386-2689
Manager of Engineering Services – David Burnside	519-832-2008 x 123	Cell 519-385-2799
Public Works Operations Manager – Peter Knechtel	519-832-2008	Cell 519-386-5419
Fire Chief – Phil Eagleson	519-389-6120	Cell 519-832-7071
Deputy Fire Chief, Port Elgin – Jim Threndyle		Cell 519-386-6426
Deputy Fire Chief, Southampton – Brian Johnston		Cell 519-386-6425
CAO – Lawrence Allison	519-832-2008 x 103	519-395-4941 Cell 519-386-1049
Clerk – Linda White	519-832-2008 x 104	
Municipal Office	1-866-832-2008	
Westario Power	1-866-978-2746	
Union Gas	1-877-969-0999	
South Bruce, Municipality of		
Mayor – Robert Buckle	519-392-6623	519-392-8733
Police – OPP South Bruce Detachment- 1-888-310-1122	519-396-3341 or 519-881-3130	
Manager of Operations – Adam Weishar	519-392-6623	Cell 519-881-8799
Administrator/Treasurer Kendra Reinhart kreinhart@town.southbruce.on.ca	519-392-6623 x 222	Cell 226-230-1565
Westario Power for Mildmay & Teeswater	1-866-978-2746	
Hydro One for remainder of municipality	1-800-434-1235	
Union Gas for Mildmay & Teeswater	1-877-969-0999	

Southgate Township	**Business**	**Residence**
Mayor – Anna-Marie Fosbrooke Anna-marie.fosbrooke@southgate.ca	923-2110 x 240 Fax: 923-9262	923-9119 Cell 519-379-5530
Police – OPP Grey County (Chatsworth/Markdale) 1-888-310-1122	323-3130 or 986-2211	
Public Works Administration Office Public Works Manager – Jim Ellis jellis@southgate.ca Roads Foreman & Fleet Manager– Phil Wilson pwilson@southgate.ca	1-888-560-6607 or 923-2110 x 224 923-2110 x 232	 Cell 378-3777 Cell 378-8202
CAO – David Milliner dmilner@southgate.ca	923-2110 x 223	Cell 375-0122
Wellington North Power Inc. for Holstein only	323-1710	
Hydro One for remainder of municipality	1-800-434-1235	
Enbridge Gas Dist. Inc. for Dundalk only	1-866-763-5427 (Toronto)	

Wellington North Township		
Mayor – Andy Lennox alennox@wellingtonnorth.ca	Cell: 519-831-9612	519-848-9948
Roads Superintendent – Dale Clark dclark@wellington-north.com	519-848-2790	Cell 519-323-8129
CAO – Michael Givens mgivens@wellington-north.com	519-848-3620 x 25	Cell: 519-321-9935
Police – OPP Wellington County 1-888-310-1122	519-881-3130	
Community Emergency Mgt Coordinator-Linda Dickson lindad@wellington.ca	519-846-8058 x 3322	Cell 519-993-0105
Director of Public Works – Matthew Aston maston@wellington-north.com Wellington North Power Inc. for Mount Forest & Arthur Hydro One for remainder of municipality	519-848-6320 x 31 519-323-1710 1-800-434-1235	Cell 519-321-9793
Union Gas for Mount Forest, Arthur	1-877-969-0999	

West Grey, Municipality of	Fax 369-5962	
Mayor – Kevin Eccles kevin.eccles@grey.ca	519-369-2200 x 323 Cell 519-372-6229	519-799-5476
Police – West Grey Police Services-Rene Berger, Chief rberger@westgreyps.ca	519-369-3046 (police)	Cell 519-369-4449
Fire – West Grey Fire Chief/CEMC, Philip Schwartz pschwartz@westgrey.com	519-369-2505 (fire)	Cell 519-369-8767
Public Works Manager – Ken Gould kgould@westgrey.com	519-369-2200 x 227	519-986-3706 Cell 519-372-5500
Public Works Utilities Foreman – Steve Ayerhart sayerhart@westgrey.com	519-369-3243	Cell 519-369-4343
Roads Supervisor – Tim Cook tcook@westgreycom	519-369-2200 x 238	Cell 519-375-0516
CAO – Larry Adams ladams@westgrey.com	519-369-2200 x 222	
Westario Power for Neustadt & Elmwood	1-866-978-2746	
Hydro One for remainder of municipality	1-800-434-1235	
Union Gas for Durham & surrounding area	1-877-969-0999	

Vivian Bloom
Mayor

Pat Pilgrim
Chief Administrative Officer

Municipality of
HASTINGS HIGHLANDS

#33011 Hwy 62, P.O Box 130
Maynooth, Ontario, K0L 2S0

Tel: 613-338-2811 or
Toll Free 877-338-2818
Extension 277
Fax: 613-338-3292

Email:
deputyclerk@hastingshighlands.ca

September 12, 2016

The Honourable Steven Del Duca
Minister of Transportation
77 Wellesley Street West
Ferguson Block, 3rd Floor
Toronto, ON M7A 1Z8
minister.mto@ontario.ca

Dear Minister Del Duca:

Please be advised that the Council of the Municipality of Hastings Highlands passed the following motion at the Regular Meeting of Council on September 7, 2016 regarding:

Bill 171, Highway Traffic Amendment Act (Waste Collection and Snow Plows) 2016

Resolution #466-2016

Motion Details
Moved by: Councillor Matheson
Seconded by: Councillor Robinson
CARRIED

THAT Council receives this report “Bill 171, Highway Traffic Amendment Act” provided by the Clerk/Manager of Corporate Services and;

THAT the Council of Hastings Highlands supports the Township of Carlow/Mayo in their request of support for Bill 171 Amendment and;

WHEREAS the Council of Hastings Highlands recognizes the importance of service vehicles as Waste Collection and Snowplows to be acknowledged the same as O.P.P, EMS and Fire vehicles when in operation for the health and safety of the operators of these vehicles in reducing injury or harm and;

THEREFORE BE IT RESOLVED that the Municipality of Hastings Highlands supports the amendments to Bill 171 extending the restrictions on approaching stopped emergency vehicles or tow trucks to approaching a stopped road service vehicle, this including vehicles for an entity such as a municipality in the course of collecting garbage or material for disposal or recycling from the side of a highway and road service vehicles for the purpose of plowing, salting or de-icing a highway or to apply chemicals or abrasives to a highway for snow or ice control and;

FURTHERMORE THAT a copy of this resolution be forwarded to the Township of Carlow/Mayo, the Hon. Del Duca, Minister of Transportation, Premier of Ontario, and all Ontario Municipalities.

Thank you for receiving our correspondence and considering the request.

Sincerely,

Suzanne Huschilt

Suzanne Huschilt,
Acting Deputy Clerk

cc: The Township of Carlow/Mayo clerk@carlowmayo.ca
cc: The Premier of Ontario premiere@ontario.ca
cc: All Ontario Municipalities –will be sent in a separate email

It's YOUR Community ... MAKE THE CALL!

CRIME STOPPERS
GUELPH WELLINGTON
1-800-222-TIPS (8477)

THE INFORMANT

FALL 2016

WANTED! FUNDRAISING CHAIR

We are presently in need of a Fundraising Chair to join our voluntary Board of Directors. To qualify you must have fundraising experience and leadership in this role. Previous experience working with a Board of Directors is an asset. Please request an application by email at **info@csgw.tips** or contact us by phone at **519-846-5371.**

>>We say goodbye to Storm Graff and wish her well in her new employment opportunity!

IN THE NEWS

101 The Grand radio features Crime Stoppers 'live' each month at 7pm-Tuesdays on the segment entitled "**Swap Talk**".

CJOY radio station is airing our public service announcements and Crime of the Week.

Rogers TV "Inside Guelph" edition, has returned. CSGW is a featured guest on this program. First episode can be viewed on September 26th.

Erin Radio 97.1 fm. CSGW is involved in a monthly 'live' interview which airs the beginning of each month.

The River 88.7 radio station runs our Crime of the Week — sponsored by *Young's Home Hardware of Mount Forest*. At the beginning of each month, a live broadcast with CSGW Program Coordinator airs during the morning show.

Wightman's TV Crime Stoppers' segments are running on their community Channel #6 .

Eastlink TV is running our Crime of the Week.

Cogeco TV is running our Crime of the Week during their daily news segments.

The Wellington Advertiser newspaper publishes our Crime of the Week each Friday. Wellington County supports CSGW by promoting our events on their dedicated page in the Advertiser.

PROGRAM STATISTICS

Guelph and Wellington County stats since 1988 through August 2016:

Arrests	1,512
Charges Laid	4,185
Narcotics Seized	$27,165,197
Property Recovered	$10,158,075
Authorized Rewards	$161,160

The numbers speak for themselves...Crime Stoppers works!

YouTube **www.csgw.tips**

FUNDRAISING AND AWARENESS

PLOWING MATCH

This year's International Plowing Match (IPM) will be held in Wellington County on **September 20th-24th**, in the Town of Minto.

CSGW will be have a table in the Wellington County Showcase. Drop by and learn more about our program and how you can play a part.

We will have comic books to give away, sunglasses for a donation, as well as t-shirts for sale!!

SHREDDING EVENTS

We apologize to those of you we could not reach regarding the postponement of our shredding event in Guelph.

We have a **NEW** rescheduled date of **Saturday September 24th—Stone Road Mall parking lot near Sears, off Edinburgh**. Event starts at **9 am and runs until 12 noon**.

Bring your unwanted personal paper documents to be shredded and help prevent identity theft! Cost is a donation of $5 per banker's box size.

Filebank has graciously donated their services by being on site with their mobile truck in support of our program!

FILEBANK
MEMBER OF THE INNOVATIVE RECORD SYSTEMS GROUP

A SECOND EVENT is scheduled for **Saturday October 29th** at the **Fire Hall** on Main Street north in **Mount Forest—10am-1pm**.

COUNTY PROPERTY AUCTION & CSGW BBQ

Thank you to everyone who attended the event held on June 16th at Parr Auctions, Hwy 6 north of Fergus. We raised $700.45 in donations at our BBQ and $1,245.67 from the proceeds of the OPP property auction!

Thank you to **Piller's** for their donation of food and the support of their staff at the event.

Thank you to the **County of Wellington** for their ongoing partnership.

CSGW TRUCK REBRANDING

Crime Stoppers Guelph Wellington (CSGW) has a new look! Our program vehicle was looking very tired and so it was time for a refresh.

This has been accomplished through a program called "Helping Hands in Action", offered by Union Gas - A Spectra Company. It involves volunteer man hours from their employees and a grant worth $1,000.

We are thankful to **UNION GAS** for their support and to **Keltech Signs** who designed and decaled the truck.

The new look incorporates puzzle pieces to emphasize that no matter how small you think your information about a crime is ...Your TIP could be the missing piece of the puzzle that investigators need to solve a crime.

It's YOUR Community...MAKE THE CALL!

If not for the efforts of the Crime Stoppers program and our reward incentives, some crimes would go unsolved.

Hydro One Networks Inc.
Public Affairs
483 Bay Street
South Tower, 6th Floor
Toronto, ON M5G 2P5

Tel: 1-877-345-6799
Email: Community.Relations@HydroOne.com

www.HydroOne.com

September 22, 2016

Mayor George Bridge and Council
Town of Minto
5941 Highway 89
Harriston, ON N0G 1Z0

Re: Planned Palmerston Transformer Station Upgrade Near Your Community

Dear Mayor Bridge and Council:

I am writing to inform you that Hydro One Networks Inc. (Hydro One) has initiated a Class Environmental Assessment (EA) to upgrade Palmerston Transformer Station (TS). While the TS is located near Palmerston, it is within the Municipality of North Perth and adjacent to the Town of Minto. The project area is illustrated in the attached map.

Palmerston TS, built in the 1950's, has reached its end-of-life and key station components require upgrading to ensure the continued reliability of electricity supply to the area. The project will include replacing the existing transformers with new, modern transformers and installing telecommunication equipment to safely monitor and protect the station.

A small, permanent expansion of the station footprint of approximately 25 m x 100 m will be required to accommodate the upgraded equipment. In addition, a temporary lay-down area is required to store equipment during construction. Some vegetation currently along the site perimeter will need to be removed to complete this project.

This project falls within the Class EA Screening Process as described under the *Class Environmental Assessment (Class EA) for Minor Transmission Facilities* (Ontario Hydro, 1992), an approval process under the provincial *Environmental Assessment Act*. The Class EA was developed as a streamlined process to ensure that minor transmission projects that have a predictable range of effects are planned and carried out in an environmentally acceptable manner.

Contingent on the outcome of the Class EA Screening Process, construction may begin as early as November 2016, and is scheduled for completion by the end of 2018.

Hydro One has notified First Nations and Métis communities and will be notifying property owners adjacent to the work areas to advise them of the proposed project and the Class EA Screening Process.

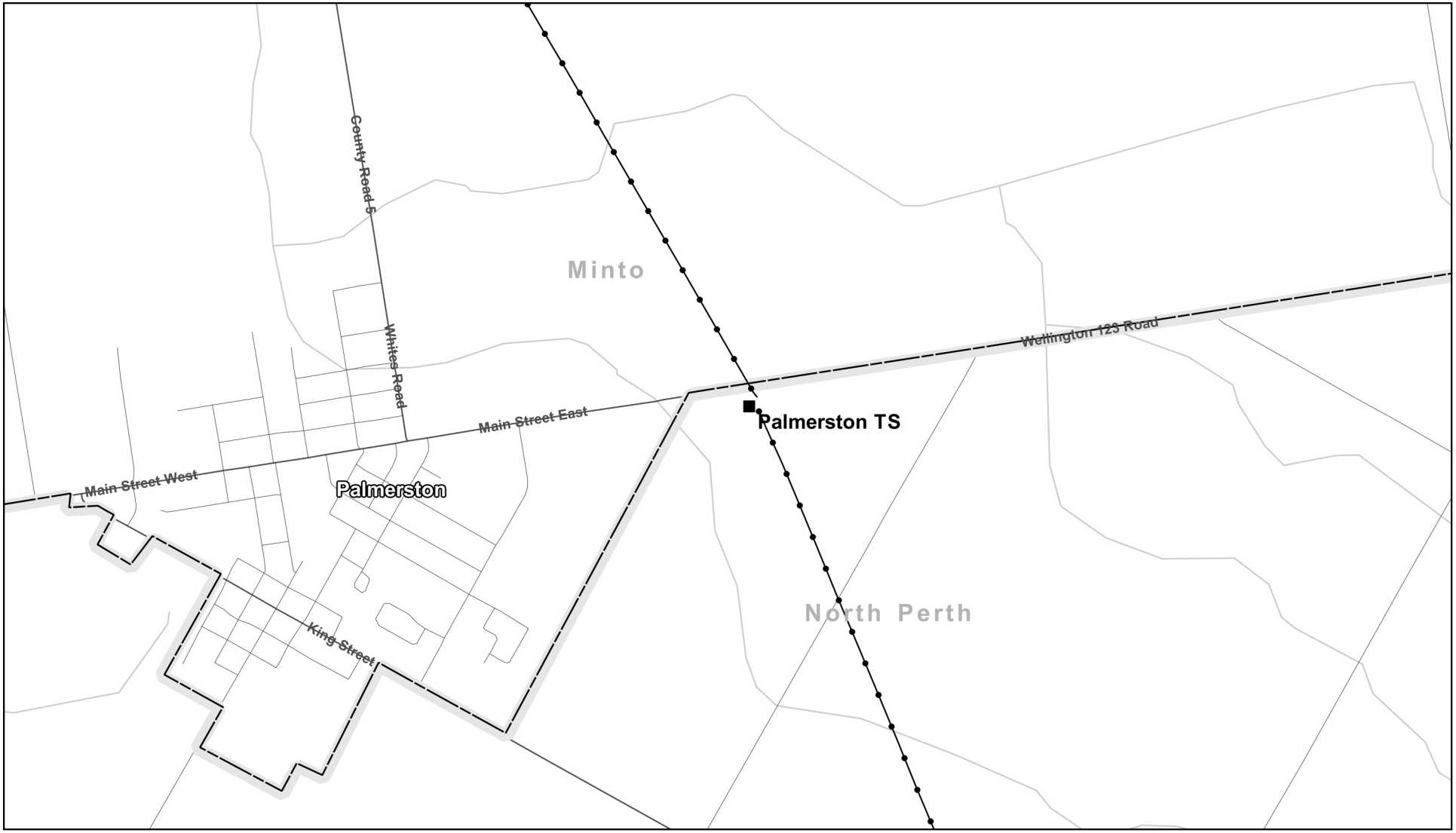
We welcome your comments and feedback on this project. If you have any questions or would like to meet to discuss the proposed work, please contact Jeff Hankin, Environmental Planner, at (416) 434-4849 or Jeff.Hankin@HydroOne.com.

Sincerely,

Stephanie Hodsoll
Public Affairs Officer

Enclosure: Project Location Map

cc: Bill White, CAO and Clerk, Town of Minto
Jeff Hankin, Environmental Planner, Hydro One



hydro one

Legend

- Palmerston TS
- 115 kV Transmission Line
- Muncipal Boundary
- Water

Roads

- Arterial
- Highway
- Local

Palmerston TS Upgrade Project
General Area Map

0 500 1000 1500 2000 m

Legislative Services
Lisa Lyons
905-726-4771
townclerk@aurora.ca

Town of Aurora
100 John West Way, Box 1000
Aurora, ON L4G 6J1

September 23, 2016

DELIVERED BY E-MAIL TO:
kwynne.mpp.co@liberal.ola.org

The Honourable Kathleen Wynne
Premier of Ontario
Legislative Building, Queen's Park
Toronto, ON M7A 1A1

Dear Premier:

Re: Town of Aurora Council Resolution of September 13, 2016
Report No. CS16-020 – Ontario Municipal Board (OMB) Reform Update

Please be advised that this matter was considered by Council at its Council meeting held on September 13, 2016, and in this regard Council adopted the following resolution:

1. **That Report No. CS16-020, and the attached Municipal Summit OMB Reform: Process & Powers Recommendations, be received; and**
2. **That Council endorse the recommendation contained in Attachment 1 to Report No. CS16-020, being:**
   a) **That the jurisdiction of the Ontario Municipal Board (OMB) be limited to questions of law or process and, specifically, when considering appeals, that the OMB be required to uphold any planning decision(s) of municipal councils unless said decision(s) is contrary to the processes and rules set out in legislation; and**
3. **That a copy of the recommendation be sent to the Honourable Kathleen Wynne, Premier of Ontario, the Honourable Bill Mauro, Minister of Municipal Affairs, Mr. Patrick Brown, Leader of the Progressive Conservative Party, Ms. Andrea Horwath, Leader of the New Democratic Party, and all Members of Provincial Parliament in the Province of Ontario; and**
4. **That a copy of the recommendation be sent to the Association of Municipalities of Ontario (AMO), all Ontario municipalities, and the York Regional Chair for consideration.**

The above is for your consideration and any attention deemed necessary.

Yours sincerely,

Lisa Lyons
Town Clerk
The Corporation of the Town of Aurora

LL/lb

Attachment (Municipal Summit OMB Reform: Process & Powers Recommendations)

Copy: The Honourable Bill Mauro, Minister of Municipal Affairs
Mr. Patrick Brown, Leader of the Progressive Conservative Party
Ms. Andrea Horwath, Leader of the New Democratic Party
All Members of Provincial Parliament in Ontario
Association of Municipalities of Ontario
All Ontario Municipalities
Mr. Wayne Emmerson, York Region Chairman and CEO

MUNICIPAL SUMMIT

OMB REFORM: PROCESS & POWERS

RECOMMENDATIONS

MUNICIPAL SUMMIT ON OMB REFORM: PROCESS AND POWERS

While each community is indeed unique, when it comes to planning matters, many of our communities encounter the same issues. When considering development proposals within the context of approved Official Plans – there is on-going pressure to alter their Official Plans to approve project-specific amendment requests. Repeated appeals to the OMB of Municipal councils' planning decisions to uphold their Official Plans and deny project-specific amendment requests, results in multiple communities fighting the same fight - wasting untold taxpayer dollars in the process. It is a lengthy, costly, and frustrating process and one that is clearly not working.

Discussions around the need for OMB reform are not new. As an issue it has jumped from the back burner to the front burner and back again many times over the past two decades. However, despite the many years of discussion, there has been little material change to the scope of powers, procedures or predictability of decision making of the OMB. This had led to frustration for the key stakeholders in the process – Municipal leaders, the development community and - most important - the residents and communities affected by planning decisions and OMB rulings regarding same.

OMB processes and scope of power have not kept pace with the changes in municipal planning necessitated by the explosion of growth in our communities. Effective planning requires certainty and predictability in the processes that govern it. What is needed, therefore, is clarity of the role and scope of power of all those with the authority for decision making.

In light of the pending Provincial review of the OMB, this is an opportune time for elected representatives – those decision-makers on the front lines of municipal planning - to work together and advocate for appropriate and effective reform(s) of the OMB.

Elected officials from across the Province have been asking for change for a long time and now, as a result of the **Summit on OMB Reform – Process and Powers** have come together to identify common goals and common solutions and to advocate for those changes in planning legislation. With reform, it is hoped that Municipalities will have more authority and predictability in local planning decisions.

Background

The impetus for the Municipal Summit on OMB Reform came from a motion brought forward by Councillor Tom Mrakas to Aurora Town Council in January of 2016 that spoke to the need to address the scope and powers of the OMB. Subsequent to that, and within the context of the need for OMB reform, an additional motion was put forward jointly by Councillor Michael Thompson and Councillor Tom Mrakas that spoke to the specific planning issue of development of open space/parkland and the need for criteria against which both municipalities and the OMB can consider when reviewing said development requests.

It was in the context of these two unanimously supported motions that the idea for a Municipal Summit on OMB reform was born. Following quickly on the heels of the passing of both motions, a Municipal Summit Planning Working Group was created to begin the work of creating the Summit. The event, held in the Markham Civic Centre on May 14th, was the result of months of hard work by this dedicated group of 17 elected officials from 12 municipalities across the GTA.

The Municipal Summit was a unique event; a grass roots gathering of elected officials from every corner of our Province, working together towards the common goal of affecting real change in the decision-making processes that affect how our communities are planned.

The daylong event featured a number of important speakers including Ms. Helen Cooper, Former Mayor of Kingston, Chair of the Ontario Municipal Board, AMO President; Mr. John Chipman, Author "Law Unto Itself", former editor of the Ontario Municipal Board Reports; Ms. Valerie Shuttleworth Chief Planner for York Region; Mr. Leo Longo, Senior Partner Aird & Berlis LLP and Mr. Joe Vaccaro, CEO of the Ontario Home Builders Association. The panelists engaged attendees and solicited their input directly through breakout groups. Our guest Moderator, Mr. Bill Hogg, brought together the outcome of both the broader discussions as well as the break out groups so as to identify common themes that would inform the proposed recommendation(s)

Recommendations

At the outset, the purpose of the Summit was to identify common themes and common principles of reform that would modernize the process and procedures of the OMB. The purpose of which is to ensure that decisions of the Board reflect and respect the uniqueness of every community. In reviewing the comments of the attendees and the panelists as well as the municipal leaders that have weighed in through emails and other communication, and taking into consideration the over 100 municipalities that have endorsed the motion(s) advocating reform, the consensus view spoke to a clear need to review the scope of powers of the OMB.

Thus, the recommendations of the Summit can be boiled down to one overarching recommendation:

> **Limit the jurisdiction of the OMB to questions of law or process. Specifically, when considering appeals, require the OMB to uphold any planning decision(s) of Municipal Councils unless said decision(s) is contrary to the processes and rules set out in legislation.**

A decision by a Municipal Council to uphold their Official Plan – a Plan that conforms to provincial legislation and is approved by the Province through the delegated authority of the relevant Regional government - should not be subject to appeal unless that decision is contrary to the processes and rules set out in legislation. Further, OMB decision-making processes/procedures should be predicated on the principle that planning

decisions of a local Municipal Council as they relate to their Official Plan will be upheld unless they are contrary to the processes and rules set out in legislation.

The recent changes to the Planning Act (Bill 73) as they speak to limits on appeals – namely that Official Plans cannot be appealed within the first two years of adoption - are a good first step, but they don't go far enough. The consensus of attendees was that appeals should be strictly limited. Some felt that amendment requests should not be allowed to be put forward at all unless proponents can demonstrate that the proposed changes to the Official Plan or zoning by-law fulfill a changing community need or in some way better the community. The onus should be on the applicant to demonstrate to the local Municipal Council that the changes to the Official Plan necessitated by a proposed project or development benefit the community and/or enhance it. If a Council sees that there is a clear benefit to the community then it is within the Councils authority to grant the amendments. However, if a Council feels that the application does not somehow better the community, then Council has full authority to deny the application without it being subject to appeal.

There should be consistency in the scope of authority of Municipal Councils. Any other decision by a Municipal Council is only subject to appeal through a judicial review the scope of which is errors in process or law. The question then is - why are planning decisions different? The answer is they should not.

As it stands now, Municipalities are required to review application after application, requesting amendment after amendment; considering each in isolation as opposed to the integrated whole. Piecemeal planning negates the utility and functionality of Official Plans. Multiple changes to a Municipal Plan required by multiple project-specific amendment requests compromises the integrity of the Official Plan and indeed the planning process as a whole.

Municipal planning is a complex process. But the current legislation does not recognize or reflect that complexity. The legislation does not adequately address what can be appealed, who can put forward an appeal, and the relative weight that Municipal Council decisions will be given in the adjudication of appeals. Similarly, vague terminology – such as "…due consideration" – significantly impacts the predictability of decision making processes of the Board. Even timelines for decision-making are unworkable. Despite the fact that even mildly contentious development proposals require considerable amount of time to compile the information necessary for informed Council decisions, a decision must be rendered within 180 days or face appeal. This is not good planning. This is ineffective and inefficient public planning.

Clearly there does still need to be a degree of flexibility in the decision making processes. It is not the expectation that Official Plans are carved in stone. However, the drivers of community change should be the community itself. Planning legislation – including the OMB Act - should outline in very specific and very limited terms the basis upon which a Municipal Council decision to refuse an amendment to its Official Plan or zoning bylaw can be appealed. Concomitantly, decisions by the OMB when considering appeals of local Council planning decisions should reflect and respect the vision of the communities as defined in their Official Plans.

In closing, we recognize that our communities are dynamic. They continue to grow and evolve over time. But with that evolution comes a very real pressure to manage that growth in a way that is respectful of the unique character of the affected communities.

Through necessary legislative reform and the clarification of the scope of power and authority of all decision making bodies – both elected and appointed - predictable, appropriate decision-making processes can be achieved.

We thank the panelists, our moderator, our sponsors and most of all everyone who participated in this process, for the incredible input and hard work that has been undertaken.

Sincerely,

The Members of the OMB Reform Summit Working Group:

Councillor Tom Mrakas, Chair (Aurora)
Councillor Michael Thompson (Aurora).
Councillor Marianne Meed Ward (Burlington)
Councillor Nicholas Ermeta (Cambridge)
Councillor Frank Sebo (Georgina)
Councillor Cathy Downer (Guelph)
Councillor Yvonne Fernandes (Kitchener)
Councillor Karen Rea (Markham)
Regional Councillor Nirmala Armstrong (Markham)
Councillor Don Hamilton (Markham)
Councillor Christina Bisanz (Newmarket)
Councillor Karen Cilevitz (Richmond Hill)
Councillor David West (Richmond Hill)
Councillor & Deputy Mayor Pat Molloy (Uxbridge)
Councillor Marilyn Iafrate (Vaughan)
Councillor Alan Shefman (Vaughan)
Councillor Mary Ann Grimaldi (Welland)
Councillor Steve Yamada (Whitby)

PERTH-WELLINGTON

RANDY PETTAPIECE, MPP

NEWS RELEASE

FOR IMMEDIATE RELEASE
September 26, 2016

Pettapiece recognizes IPM organizers and volunteers

(Queen's Park) – Following the successful 2016 International Plowing Match and Rural Expo (IPM) in Wellington County, Perth-Wellington MPP Randy Pettapiece today delivered a statement in the Ontario legislature. He thanked the event organizers and volunteers and spoke about some of the event's highlights.

The following is the text of his remarks:

"I am pleased to recognize the success of IPM 2016 – the International Plowing Match and Rural Expo.

"The Town of Minto, in the County of Wellington, was home to this year's Plowing Match. Tens of thousands of people – including MPPs of all parties – saw the importance of agriculture and our rural communities.

"This year's theme was 'A Fresh Taste of Farming.' There were many highlights: the parade; the plowing competitions; the Queen of the Furrow competition; and the zip line, to name just a few.

"There was also plenty of food, including a Farmers' Market, food demonstrations and samples.

"The Tented City covered over 100 acres and 500 exhibitors.

"For pulling off such a successful event, many people deserve our thanks: Chairman Ron Faulkner and the IPM Executive for their tireless dedication—and years of planning and preparation; the Ontario Plowmen's Association; Anne and Earl Schneider, for welcoming us to their farm and hosting the IPM; other land owners who donated 1,200 acres to be used for the match; and finally, the countless volunteers, whose work make this event possible.

"Dave Adsett, Publisher of the Wellington Advertiser, put it this way:

"'Although agriculture remains a vital facet of Ontario's economy, most residents are far enough removed from farm life that such an exhibition helps re-establish the connection between rural and urban residents.'

"I totally agree. It's what makes the IPM such an important event for all of us."

- 30 -

***Video of Statement*: http://pettapiece.ca/?p=4033**

Randy Pettapiece, MPP | 416-325-3400 | www.pettapiece.ca

Stage II Engagement Sessions Summary Report

Prepared by Lura Consulting and Planning Solutions Inc. for:
The Ministry of Natural Resources and Forestry
August 2016

This report was prepared by Lura Consulting and Planning Solutions Inc., the independent facilitators and consultation specialists for the Conservation Authorities Act Review Stage II engagement sessions conducted in June 2016. If you have any questions or comments regarding this report, please contact:

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416-886-8205
shall@lura.ca

Table of Contents

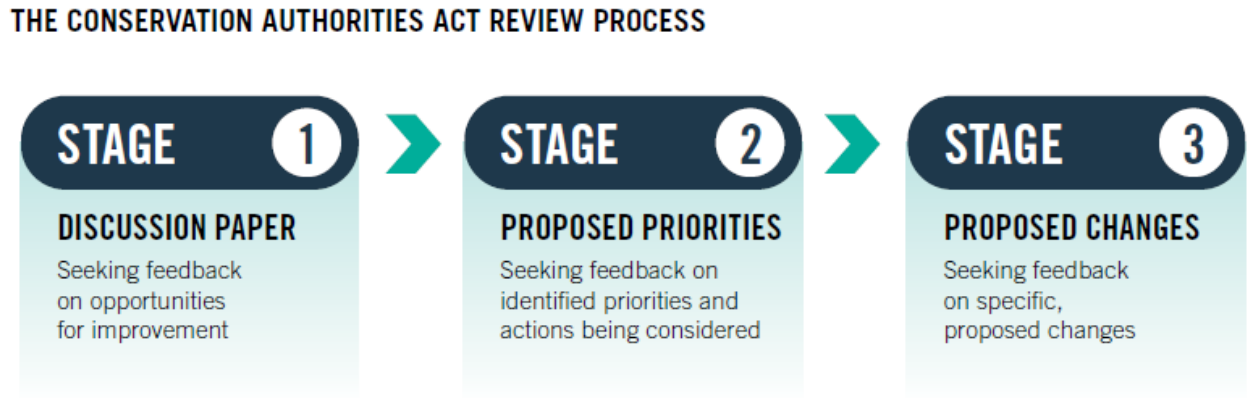
1. Introduction

Background

The *Conservation Authorities Act*, enacted in 1946, allows municipalities in a common watershed to establish a conservation authority in conjunction with the province to deliver a local resource management program at the watershed scale for both provincial and municipal interests.

In November 2014, the Parliamentary Assistant to the Minister of Natural Resources and Forestry (MNRF) was given a mandate to engage with ministries, municipalities, Indigenous Peoples and stakeholders to initiate a review of the *Conservation Authorities Act*. The review was launched the following summer, with the objective to identify opportunities to improve the legislative, regulatory and policy framework that currently governs the creation, operation and activities of conservation authorities, including addressing roles and responsibilities, governance and funding of conservation authorities in resource management and environmental protection.

Overall Conservation Authorities Act Review Process



There are several stages in the *Conservation Authorities (CA) Act* Review process, with opportunities for public input at each stage. The first stage began in July 2015 and sought feedback on opportunities to improve the *CA Act*. A discussion paper was posted on the Environmental Registry (EBR Registry Number 012-4509) for a 91-day public review and comment period. Stage2 began in May 2016 and focused on seeking feedback on proposed priorities identified from feedback during the first stage, as well as the development of specific actions for implementation over the short, medium and long term. A consultation document outlining proposed priorities for updating the Act was posted on the Environmental Registry (EBR Registry Number 012-7583) for a 120 day public review and comment period. During the third stage specific changes to the CA Act will be proposed and further consulted on.

Overview of Stage I

Stage I consultations included over 20 stakeholder and Indigenous engagement sessions in addition to targeted meetings across the province to obtain feedback on three areas:

- **Governance**: The processes, structures, and accountability frameworks within the Act which direct conservation authority decision-making and operations;
- **Funding mechanisms**: The mechanisms put in place by the Act to fund conservation authorities; and
- **Roles and responsibilities:** The roles and associated responsibilities that the Act enables conservation authorities to undertake.

The Stage I review process resulted in extensive feedback. Over 270 submissions were provided to the Ministry during the public commenting period from individuals and groups representing 10 different sectors. Analysis of this feedback helped to identify a number of priority areas for improvement.

Objectives for Stage II

In response to feedback obtained through the initial stage of the Ministry's review, the government established five priorities for updating the Act's legislative, regulatory and policy framework:

1. Strengthening oversight and accountability in decision-making.
2. Increasing clarity and consistency in roles and responsibilities, processes and requirements.
3. Improving collaboration and engagement among all parties involved in resource management.
4. Modernizing funding mechanisms to support conservation authority operations.
5. Enhancing flexibility for the province to update the *Conservation Authorities Act* framework in the future.

These priority areas as well as a series of potential actions were outlined in the discussion paper – *Conserving Our Future: Proposed Priorities for Renewal*. In May and June 2016, MNRF led a second round of public and stakeholder consultations through 5 regional multi-stakeholder engagement sessions. The sessions provided an opportunity for participants to learn about and provide input to the five priority areas. Lura Consulting and Planning Solutions Inc. were retained to facilitate the engagement sessions and report on the feedback provided by participants.

This report provides a summary of the consultation program and key consultation activities undertaken as part of the regional multi-stakeholder engagement sessions, as well as the feedback received through those sessions. It does not include feedback submitted to the Environmental Registry, or input from Indigenous engagement sessions which took place and will be reported on separately.
Feedback obtained through Stage II consultations will be used by MNRF staff to develop specific changes to *the Conservation Authorities Act* and associated policy and regulatory framework. Any specific

proposed changes will be subject to further public consultation as appropriate, for example through subsequent Environmental Registry postings.

2. Methodology for Stage II Multi-Stakeholder Consultation Program

Throughout June 2016, MNRF hosted full-day workshops in five locations across Ontario as part of the Stage II consultation program. The dates, locations and number of participants at each workshop are listed in the table below. The purpose of the workshops was to provide an overview of and receive feedback on the five priority areas for improving the *CA Act*. The workshops consisted of an overview plenary presentation with time for questions of clarification, followed by facilitated discussion. The facilitated discussions were designed to encourage dialogue and obtain feedback on the five priority areas for improving the *CA Act*. A discussion guide was provided to participants during the workshops as well as form to rank the proposed actions.

Date	Location	Number of Participants
June 3, 2016	Ottawa	23
June 7, 2016	Thunder Bay	7
June 9, 2016	London	57
June 13, 2016	Newmarket	59
June 15, 2016	Sudbury	12
Total		**158**

A summary of the comments and suggestions provided by participants during the workshops is presented in the next section.

3. Summary of Participant Feedback

This section presents the overarching key themes that emerged from the feedback obtained at the regional sessions, and is followed by a summary of participant feedback organized according to the five priority areas: (1) Strengthening Oversight and Accountability, (2) Increasing Clarity and Consistency, (3) Improving Collaboration and Engagement, (4) Modernizing Funding Mechanisms, and (5) Enhancing Flexibility for the Province. Each section contains highlights and common themes that emerged throughout the sessions. Sector-specific perspectives are also noted. Individual workshop summary reports are provided in Appendix A.

Overarching Key Themes

The following points highlight the recurring comments, concerns and/or advice which emerged from the five sessions.

- Include integrated watershed management (IWM) in the Act as the overarching approach to conservation.
- Recognize that each CA is inherently unique. Local conditions and circumstances influence programs and services (particularly in Northern and rural communities); legislative changes must recognize the need for continued local autonomy (i.e., flexibility).
- Reinstate the provincial/municipal partnership as the collaborative model that was envisioned for CAs.
- Establish a multi-ministerial body to promote dialogue and collaborative decision-making regarding CA roles and responsibilities.
- Increase and diversify provincial funding to CAs to support the implementation of conservation programs and services.
- Ensure that any new or additional programs and services are delegated with adequate resources (particularly funding).
- Update provincial policies and technical guidelines to ensure they reflect the current suite of issues facing CAs.
- Ensure the interests of all stakeholders (e.g., OFAH members, agricultural sector, landowners, Indigenous Peoples) are considered during decision-making processes.
- Establish a provincial "one-window" to streamline planning processes and approvals, with clear expectations for provincial, municipal and CA roles and responsibilities.
- Concerns, as expressed by CAs, that the potential actions do not reflect the fundamental issues affecting CAs (e.g., reinstating the pre-1995 relationship between the province and CAs, provincial support in terms of funding, etc.).
- Concerns, as expressed by CAs, that the review focuses on CA Act processes and procedures instead of protecting and enhancing the natural environment through the CA Act.

Priority #1: Strengthening Oversight and Accountability

A. Updating the Act to reflect modern legislative structures and accountabilities

Participants consistently expressed support for including a purpose statement in the CA Act that includes integrated watershed management (IWM) as the overarching approach to conservation. There was also support from participants at the Newmarket session for including a vision, mission, and values for CAs that can be updated on a regular basis.

There was consistent feedback that the province needs to ensure there is flexibility within the legislation as priorities vary across different watersheds and will change over time (e.g., climate change considerations). Local autonomy is very important to CAs.

Feedback from participants at the Ottawa, Thunder Bay, and London sessions indicated support for defining the roles and responsibilities of various parties involved in providing oversight. It was noted that there is a misunderstanding among the public, municipalities, and other ministries about what CA responsibilities entail.

It was suggested by participants at the London session that the CA Act be modernized so that it is easier to update in the future (i.e., include certain aspects as regulation and policy rather than legislation so they can be updated more frequently). There was also support from participants at the Thunder Bay and Newmarket sessions to update provincial policies and technical guidelines to ensure they reflect the current suite of issues facing CAs.

Feedback from participants at the Ottawa, Thunder Bay, London, and Newmarket sessions suggested that updates to the CA Act should include an improved appeal process for planning and permitting.

B. Adopting and/or aligning with governance best management practices

Feedback from the Newmarket session indicated that the existing governance model is working well; it was also noted that many CAs comply with codes of conduct and/or currently provide board member orientation. On the other hand, participants from the Ottawa, Thunder Bay and London sessions indicated a need for more training and guidance to improve consistency in governance. It was also noted that there is a need to clarify how conflicts of interest among board members should be addressed.

It was suggested that the MNRF should provide some minimum guidance for governance best management practices which CAs can then adapt at the local level. Some participants (London) suggested that operational audits of CAs should be reinstated.

Feedback from participants at the Ottawa, Thunder Bay and London sessions suggested following the governance model used by Public Health Units as an example of best practices, particularly with respect to determining an avenue for appeals regarding codes of conduct or conflict of interest.

C. Enhancing provincial oversight

Participants from all the sessions raised the concern that if the province is going to delegate additional CA programs and services, or increase direction and oversight of programs, additional funding should be provided to CAs. Participants also cautioned that local flexibility for CAs should not be reduced through increased provincial oversight.

Feedback from the Newmarket session suggested establishing a third-party process or mechanism to address public concerns and ensure CAs are accountable to their legislated roles and responsibilities (e.g., Ontario Municipal Board, appeal mechanism, penalties); while there is currently a process for CA permit applicants to appeal permit decisions to the Mining and Lands Commissioner, there are no formal mechanisms to appeal other matters (e.g., disclosure of information).

Feedback from the Ottawa session suggested establishing meaningful key performance indicators to measure the impact of CA programs and services for larger, strategic and regional initiatives. Examples of key performance indicators suggested by participants focused on ecological services provided

through CA, regional and provincial initiatives, and climate change and carbon sequestration results associated with CA programs and initiatives. Participants from the Thunder Bay and Sudbury sessions highlighted the need to achieve a balance of provincial and municipal oversight to allow local flexibility based on watershed needs.

D. Enhancing municipal oversight

Participants from the Ottawa and Thunder Bay sessions expressed support to enhance municipal oversight, but indicated there is a need to clearly articulate what the enhancement entails. Participants from the Ottawa and Sudbury sessions noted that there is already accountability and oversight at the municipal level through the CA board.

Feedback from the Sudbury session indicated concern that enhancing municipal oversight may impact the ability of CAs to make critical decisions objectively (e.g., review permits, perform advisory function). It was suggested that the roles and responsibilities of municipalities in relation to CAs should be clarified, including fiduciary duties.

There was a suggestion from participants at the Newmarket session that mandatory review periods for municipality/CA Memoranda of Understanding (MOUs) and Service Level Agreements be considered (e.g., every five years); this would ensure that MOUs and service agreements remain current.

E. Developing or updating criteria for establishing, enlarging, amalgamating or dissolving a CA

Participants expressed support for developing criteria for establishing, enlarging, amalgamating or dissolving a CA. It was noted by participants from the Thunder Bay session that regional differences should be reflected in the criteria (e.g., if the CA were to be enlarged in Northern Ontario there is no mechanism to levy unorganized townships).

Participants from the London session suggested implementing a process to achieve minor CA boundary adjustments as some municipalities are located in two or more CAs.

Several participants raised concerns about municipalities within a watershed having the opportunity to opt out of a CA as there needs to be holistic management of natural resources on a watershed scale.

Priority #2: Increasing Clarity and Consistency

A. Clearly delineating between mandatory and optional programs and services

Participants generally expressed support for this potential action, specifically as a means to enhance the clarity and consistency of CA regulatory roles and responsibilities. Participant feedback from the Newmarket session cautioned that there are trade-offs to delineating between mandatory and optional programs and services, including the concern that doing so will reduce CA flexibility and autonomy.

Feedback from the Ottawa session also highlighted the need to consider different watershed needs across the province and the ability of different CAs to deliver mandated programs and services (i.e., different capabilities in terms of resources). There was some feedback from the London session which suggested that programs and services pertaining to flood and hazard management, in particular, should be mandatory, however IWM was iterated as the preferred approach to conservation at all the sessions (and as a means to provide flexibility).

It was also repeatedly noted that appropriate tools (e.g., sustainable funding from the province, provincial guidance/collaboration) are needed to ensure the delivery of CA programs and services.

B. Establishing a Provincial Policy Directive

Participant feedback consistently voiced support to establish a Provincial Policy Directive. The benefits associated with this potential action include:

- Clarifying CA roles and responsibilities;
- Developing an integrated policy framework (that aligns with other provincial legislation and identifies the hierarchy between them); and
- Establishing a policy framework that has a purpose and is tied to outcomes.

Participants from the Ottawa session iterated the concern that specifying CA roles and responsibilities will limit CA flexibility and autonomy, as the Act is currently written to allow CAs to adapt to the needs of their watershed. Feedback from the Newmarket and London sessions echoed the need to retain flexibility, but noted that enough direction should be provided to facilitate compliance. IWM was suggested by CAs as the basis of the policy directive as it recognizes the multiples roles and responsibilities CAs undertake.

C. Providing clarity and consistency in CA's regulatory roles and responsibilities

Participant feedback indicated broad support for this potential action and its intended outcomes. It was noted that consolidating and codifying regulatory requirements will help reduce the potential for misinterpretation, and associated legal disputes. Several key terms were also identified that are used inconsistently and need to be clarified: conservation land, wetland, watercourse, natural heritage, natural resources and integrated watershed management.

It was suggested at the Sudbury session that clarifying key terms can be addressed through the Act or supporting regulations, while most of the objectives of this potential action could be implemented through responsive policies or enabling provisions. Feedback from participants in Ottawa suggested the use of legislative mechanisms, such as the statute's preamble, to clarify CA roles and responsibilities.

Concerns were raised at the Newmarket session, particularly by landowners, regarding the inconsistent delivery of CA programs and services. It was noted by CA staff that this is a separate issue from clarifying CA roles and responsibilities, and is primarily due to resource constraints facing CAs (e.g., qualified staff, mapping tools, funding, etc.); the need for more funding, as well as coordinating and sharing resources between provincial, municipal and CA partners were suggested to help address this issue. A few participants also advised that promoting consistency in the delivery of CA programs and services is well defined in the Conservation Authority Liaison Committee (CALC) Report.

Participant feedback also highlighted the following considerations with regard to this potential action:

- Recognize the multiple roles and responsibilities CAs currently undertake in the Act (e.g., hazard management, watershed management, commenting on environmental assessments, service provider, regulator, and land owner).
- Update policy and procedure documents to clarify areas of jurisdiction, roles and responsibilities.
- Note that communication and public education are important "soft tools" that can help improve clarity, consistency and transparency (in terms of CA roles and responsibilities).

The need to ensure a balance between clarifying CA roles and responsibilities while retaining flexibility to respond to individual watershed needs, as well as using IWM as an overarching framework for CAs was also iterated in the feedback to this potential action.

D. Enhancing compliance and enforcement of regulatory requirements

Support for this potential action varied among participants. Feedback from the Ottawa, Newmarket, and London consultations expressed support to update regulatory compliance tools and mechanisms (e.g., stop work orders, increasing fines, etc.), while feedback from Thunder Bay participants expressed concerns about the cost of implementing this action, and suggested that it should be less of a priority. There was no feedback specific to this potential action from the Sudbury session.

Participant feedback from the Ottawa, Newmarket, London and Thunder Bay consultations all indicated that current regulatory compliance tools are insufficient, and that legal proceedings are costly and time consuming, negatively impacting limited CA resources. More provincial support for legal proceedings (e.g., funding, guidance, creating a mechanism to recover costs from appeals and fines) was suggested.

Feedback from landowners at the Newmarket session identified the need for a process to address conflicts of interests to ensure CAs (and their boards) are accountable and transparent. Feedback from both the Newmarket and London sessions suggested that education and collaboration should be promoted to improve CA's relationships with landowners regarding the enforcement of regulations.

E. Streamlining planning and permitting requirements and processes

Feedback obtained from all the regional sessions consistently expressed support for this potential action. It was noted that it is important to make planning and permitting processes more user-friendly as this will result in more buy-in and positive relationships between CAs and their watershed communities.

Several suggestions to streamline planning and permitting requirements and processes were raised by participants, including but not limited to: pre- consultation meetings and/or checklists; establishing universal review timelines; updating guidance documents; using different classes of approvals (e.g., Class Environmental Assessment (EA) approach), establishing a "one-window" permit approval approach, updating administrative processes and procedures; and increasing collaboration and partnerships between the province, municipalities and CAs, with input from stakeholders and the public.

Priority #3: Improving Collaboration and Engagement

A. Establishing a provincial "one-window"

Participants generally expressed support for the establishment of a provincial "one-window" to act as a single point of contact for CAs at the Ministry level. This approach would be beneficial to enhance communication and exchange information between the province and CAs, and provide support/advice to CAs. It was noted by participants at the Thunder Bay session that this approach could also provide efficiencies for CAs with respect to gaining access to funding opportunities.

Participants at the Newmarket session suggested that MOUs should be required to ensure the "one-window" approach is clear to all parties involved and that a provincial "one-window" should also address challenges facing the development community regarding permitting issues.

B. Establishing a business relationship with Conservation Ontario

Regarding the role of Conservation Ontario (CO) and its relationship with CAs, participants from the Ottawa and London sessions suggested that MNRF should consider the model used by the Association of Municipalities of Ontario (AMO) as a best practice.

There was concern expressed by CAs at most of the sessions that CO should not take on a governing or oversight role. It was noted that CO's current role is working well. With dedicated provincial funding, CO could provide strategic guidance and coordinate resources (e.g., training, best practices, templates) more consistently. There was also support for CO's ongoing role in public education, communication and advocacy for CAs.

C. Enhancing Indigenous Peoples' participation

Participants consistently noted that enhancing Indigenous Peoples' participation in CA processes is important; however resources and guidance are needed as there are many challenges in conducting meaningful engagement. CAs would like to see the province provide templates and best practices for engaging with Indigenous Peoples.

It was also noted by participants at the London session that Indigenous Peoples' participation should be at a watershed and strategic planning level rather a project by project level; however there is a need for more support in achieving this. In some areas, First Nations advisory committees are working well.

It was suggested that the Federal government should also provide funding to CAs for facilitating Indigenous Peoples' participation.

D. Enhancing public and stakeholder participation

There was general support for enhancing public and stakeholder participation in CA processes to ensure a broad range of interests are considered (e.g. landowners, farmers) and increase transparency. From the perspective of some landowners, stakeholder engagement is not occurring consistently across CAs. A guidance document for CAs could help improve consistency.

It was noted that some CAs have more capacity and experience than others in engaging the public and stakeholders. Additional staff and financial resources are needed by smaller CAs to manage stakeholder engagement.

Feedback from the Ottawa, London and Sudbury sessions noted that advisory or ad hoc committees have worked well to enhance stakeholder participation.

Some participants feel that there is a lack of understanding amongst community members regarding the mandate and role of CAs. Enhancing education and awareness of the various roles of CAs, municipalities and the province would be beneficial. Similarly, it is important to employ a culture of collaboration with landowners. There needs to be more transparency, two-way communication and sharing of information between CAs and landowners.

E. Supporting CAs in sharing and coordinating resources

There was support for encouraging CAs to share data, science and information as well as achieve administrative efficiencies; however this should not be prescribed in the CA Act. It was noted that sharing and coordinating resources and best practices between CAs is already happening at the local level.

Concerns were expressed that it may be challenging to share information and resources in an equitable manner. The province should provide resources to CAs. Questions were raised regarding who would be financially responsible for coordinating resources.

Priority #4: Modernizing Funding Mechanisms

There was consensus across the regional sessions that long-term sustainable funding must be prioritized for CAs to be able to deliver programs and services effectively. A multi-ministry approach to funding was emphasized because CAs deliver locally on priorities for many ministries (e.g., MOECC).

A. Enhancing clarity, consistency and accountability around municipal levies

Participant feedback consistently indicated that there is a need to simplify and clarify the funding formula for municipal levies and clarify the intent of the levy.

There was concern raised by participants at the Ottawa, Thunder Bay, London and Newmarket sessions that smaller municipalities do not have the capacity (e.g., tax base) to support CAs. It was suggested that a funding formula should be considered to equalize funding between CAs (based on population, programming, species at risk, watershed characteristics, etc.) paid by the province.

Participants at the Newmarket and Sudbury sessions expressed concerns that the present funding model creates a conflict of interest between CAs and municipalities and limits CA autonomy from municipalities.

There was a suggestion from participants at the Newmarket and London sessions for municipal levies for CA programs and services to be included as a separate line item on municipal tax bills (e.g., comparable to water rates) to increase public awareness.

B. Promoting clarity, consistency and accountability around fees and generated revenue

Participants noted that clarity around fees and how they can be used by a CA would be beneficial. It was suggested that MNRF should provide clear guidance on acceptable revenue streams. Similarly, there was support from participants at the Ottawa session for establishing a framework to calculate fees to improve transparency as it is undertaken differently by all CAs.

Participants suggested that other mechanisms to generate revenue be included in the CA Act (e.g., development charges). There was support from participants at the Newmarket session for establishing a mechanism for CAs to capture funds from compliance and enforcement activities (e.g., penalties, legal processes). It was also suggested that the opportunity for CAs to release conservation land with marginal natural heritage benefits for other uses be considered; the resources spent to maintain these lands could be re-deployed elsewhere. Participants from the Thunder Bay session were also supportive

of innovative opportunities for municipal funding arrangements (e.g., new tax classification for CA owned hazard-related lands, tax rates reflective of the land use and benefit provided).

Participants at the Ottawa and London sessions noted that some CAs need support to justify user fees as the public does not understand how they are established. Participants at the Newmarket session also suggested encouraging regular communication and collaboration on fees (e.g., liaison committee, bi-annual meetings with stakeholders).

Participants from the Newmarket and Thunder Bay session stated that there is also a need to establish a mechanism to mediate disputes regarding fees (e.g., appeal to a third-party such as the OMB).

C. Improving fiscal oversight and transparency

Many participants expressed that municipal oversight and transparency is already strong.

Participants from the Ottawa and Sudbury sessions expressed the need to ensure board members understand the fiduciary responsibility of their role to the CA and watershed (e.g., provide training).

Feedback from the Ottawa, London, and Sudbury sessions indicated that there is a desire for standardized and consistent budgeting practices; however, participants from the Newmarket session expressed that standardizing budget templates may add complexity and an administrative burden. It was noted that some municipalities currently ask for compliance with their own budget formats.

D. Improving clarity in the use of provincial funding processes

Participants at all the session continually indicated that more provincial funding and resourcing is needed and that this should be a prioritized action. Diversifying the funding mechanisms available to CAs was broadly supported (e.g., development charges, utility fees, external funding).

There was concern raised by participants at the Newmarket session about the requirement to reapply for certain grants annually as it is an administrative burden for many CAs. Feedback from the Thunder Bay and London sessions indicated that CAs should be able to apply directly for Trillium funding to streamline the process.

Participants at the London session noted that the timing of the release of transfer payments creates challenges for CAs (i.e. fiscal years are not aligned). A multi-year funding model would create greater efficiencies in administering programs. It was also noted that the transfer payment should be indexed to the rate of inflation. Municipalities are currently making up the difference for inflation increases.

Priority #5: Enhancing Flexibility for the Province

A. Giving the Minister the authority to use the Act to develop additional natural resource conservation and management programs and services in the future

Participant feedback expressed general support regarding this potential action if the purpose is to enable the Minister to be more responsive to contemporary issues (e.g., climate change), and recognize the multiple roles and responsibilities CAs currently undertake. It was suggested by participants at the Newmarket session that more information about this potential action is needed to clarify its intent (and what types of programs and services could be delegated), as it could be misinterpreted as a movement toward a more "command and control" approach by the province.

There was some concern raised that specifying too many details in the Act will reduce flexibility for CAs and municipalities, and that other mechanisms or tools should be considered to delegate responsibilities (e.g., MOUs, Ministerial Mandates, Provincial Policy Statement, regulations).

Feedback from most of the regional sessions also stressed that if new or additional programs and services are delegated, they should be accompanied by appropriate tools and resources, particularly funding, to ensure they are implemented.

B. Giving the Minister the authority to formally delegate the delivery of current and additional natural resource conservation and management programs and services to conservation authorities in the future

Participant feedback regarding this potential action was similar to that received for the preceding action; as such, participants from the Sudbury session suggested combining the first two potential actions under this priority area.

Feedback iterated the need to clarify the intent of the potential action and provide examples of what may be delegated to provide CAs with more certainty. Comments also emphasized that the province should provide appropriate tools and resources, especially funding, with any new delegated programs and services.

Participant feedback from the Newmarket session also suggested establishing a multi-ministerial body to delegate additional programs and services through a collaborative decision-making process, while feedback from the London session indicated that there is a general feeling that this kind of delegation already can and does take place.

C. Giving the Minister the authority to formally delegate the delivery of current and additional natural resource conservation and management programs and services to other public bodies, not-for-profit organizations, municipalities and other Ministries

Participant feedback regarding this potential action varied. On one hand, feedback from the Newmarket and London sessions expressed support for this potential action, as it would potentially increase or free CA capacity for other programs and services. There was some support to delegate education and outreach activities to other bodies, but not regulatory CA functions.

On the other hand, feedback from the Ottawa session raised a broad range of concerns that this potential action: will lead to the privatization of programs and services, delegate responsibilities away from CAs; impact the ability of CAs to negotiate funding; and that CA programs and services will be duplicated by other organizations leading to inefficiency and increased confusion regarding CA roles. Participants at the London session also conveyed concerns that focused on the need to consider CAs before external partners, and ensuring appropriate oversight and accountability of external partners if programs and services are delegated to them.

Feedback also iterated the idea that it may be more appropriate for a multi-ministerial body to delegate programs and services to other organizations, and that the province should provide appropriate tools and resources, especially funding, with any new delegated programs and services.

D. Giving the Minister the authority to deliver additional natural resource conservation and management programs and services throughout the province

Participant response to this potential action varied by region. Participants at the Sudbury session expressed support for this potential action as it would enable the consistent delivery of CA programs and services outside CA boundaries by MNRF or another organization. They suggested delegating programs and services to other bodies through other legislation. Feedback from Thunder Bay participants highlighted the need to communicate and consult on any proposed changes to the regulations of the Act. Feedback from the remaining sessions is consistent with the comments reported for the preceding potential action.

Other Actions Being Considered

A. Reducing administrative burdens associated with appointing and replacing board members and obtaining approval of board per diems

Participant feedback indicated support for this potential action. Comments regarding per diems revealed a range of concerns that need to be addressed, including reducing the administrative burden associated with obtaining approval of board per diems, particularly if they are appealed to the Ontario Municipal Board (OMB). Participants from London and Ottawa suggested the need to explore existing best practices for approving per diems to avoid OMB approval, or letting the CA board decide. There is

also some concern that per diems are not equitable across CAs, and that some municipalities permit them while others do not.

Feedback also highlighted the need to clarify the process to appoint and remove CA board members. Concerns were expressed at the Newmarket session that some CA boards are not reflective of watershed stakeholders (e.g., farmers, landowners, etc.) and that there is a need to balance CA board composition to reduce political influence. Participants highlighted the need for more provincial guidance and collaboration with CAs, and suggested establishing an accreditation process to appoint members (e.g., university accreditation panels) or a code of conduct to address these concerns.

B. Aligning board terms with the municipal elections cycle

Participants at the London, Newmarket and Ottawa sessions generally support aligning board terms with the municipal elections cycle. They also highlighted: the need to maintain flexibility for CAs; consider term limits for board members (e.g., 8 years), and consider appointing members as outlined in the Municipal Act (i.e., eliminate the three-year maximum term). There were no comments specific to this potential action from participants at the Thunder Bay and Sudbury sessions.

C. Developing and orientation and training program for board members

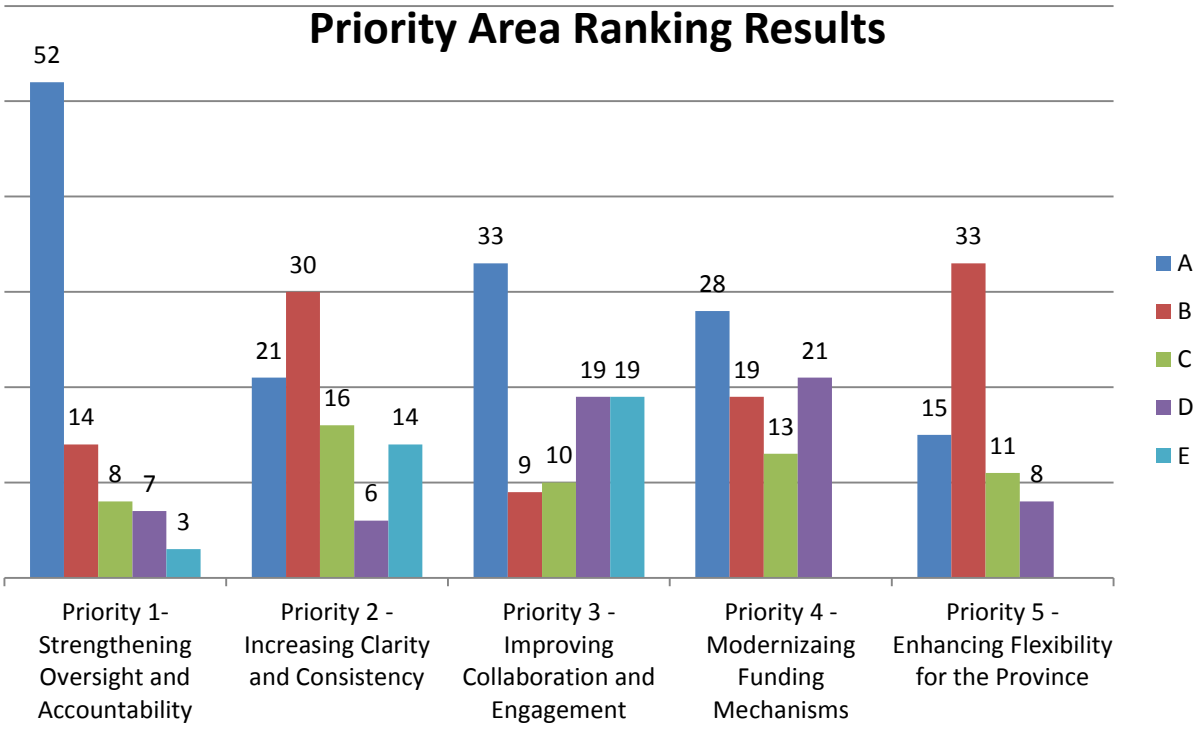
There was agreement among participants regarding the need to develop a provincially mandated orientation and training program for board members to ensure that they are informed of their role and function, particularly their fiduciary obligations. Feedback indicated that many CAs already provide training for board members; it was suggested that training tools and best practices should be shared via CO. Some participants also feel that the provision of board member training should be led by CO, with provincial support.

D. Developing a coordinated communications plan outlining any changes to conservation authority operations, programs and services resulting from the review in partnership with municipalities and conservation authorities

Feedback in response to this potential action varied. Participants in London expressed support for a coordinated communications plan, while participants in Newmarket suggested that the province should provide more guidance on communications related to specific issues (e.g., outreach, consultation and managing controversial matters). It was noted in Ottawa that some CAs already coordinate communications, however there is support to align them with CO communications. Participant feedback in Thunder Bay acknowledged the importance of consultation and communication between CAs and the MNRF regarding changes to the regulations of the *CA Act*, and iterated the need to maintain flexibility for CAs. Comments specific to this potential action were not conveyed in Sudbury.

4. Action Ranking Exercise

At the end of each of the engagement sessions, participants were asked to choose the most important potential action under each priority area. The combined results of this optional exercise are presented in the graph below. Note that some attendees did not participate in the ranking because they felt the potential actions do not reflect the fundamental issues affecting CAs. The results in the graph represent the number of attendees that chose to respond and do not represent a statistically significant sample. A total of 90 completed forms were received. The potential actions under each priority area are represented by the letters A to E in the graph below.



Appendix A – Workshop Summary Reports

This summary of participant feedback has been prepared by Lura Consulting and Planning Solutions Inc. to provide the Ministry of Natural Resources and Forestry with the recurring themes and priorities raised by participants during the Ottawa session of the Conservation Authorities Act Review, Phase II. The feedback from each individual session will be used to compile a final engagement session report.

Introduction

The Ministry of Natural Resources and Forestry (MNRF) is undertaking a phased review of the Conservation Authorities Act. The intent of the review is to identify opportunities to improve the legislative, regulatory and policy framework that currently governs the creation, operation and activities of conservation authorities (CAs). In Phase I of the review, completed in 2015, MNRF led an extensive consultation process to engage stakeholders in a discussion about opportunities to improve the Conservation Authorities Act, which resulted in extensive feedback.

Based on the input received in Phase I of the review, MNRF has released the document, *Conserving Our Future: Proposed Priorities for Renewal*, that outlines a series of actions that could be taken under five proposed priority areas for improvement: (1) Strengthening Oversight and Accountability, (2) Increasing Clarity and Consistency, (3) Improving Collaboration and Engagement, (4) Modernizing Funding Mechanisms, and (5) Enhancing Flexibility for the Province. In June 2016, MNRF led a second round of consultations with a diversity of stakeholders to obtain input on the potential actions outlined within the five priority areas.

On June 3, 2016, the MNRF hosted a full-day workshop in Ottawa, at the Holiday Inn Express Hotel & Suites Ottawa West - Napean as part of the Phase II consultation program. The purpose of the workshop was to provide an overview of the five priority areas for improving the Conservation Authorities Act. The workshop consisted of an overview plenary presentation with time for questions of clarification, followed by three rounds of facilitated small group discussions. The facilitated discussions were designed to encourage dialogue and obtain feedback on the five (5) priority areas for improving the Conservation Authorities Act.

A total of 23 individuals participated in the workshop, including participants from the following organizations:

- Cataraqui Region CA
- City of Ottawa
- Greenspace Alliance of Canada's Capital
- Minto Communities
- Mississippi Valley CA
- Ontario Federation of Agriculture
- Ontario Federation of Anglers and Hunters
- Rideau Valley CA
- Robinson Consultants / DSAO
- South Nation River CA

- Township of Leeds and the Thousand Islands
- Township of Montague

This report presents a summary of the comments and suggestions provided by participants during the workshop.

Summary of Participant Feedback

The summary of participant feedback is organized according to the five priority areas: (1) Strengthening Oversight and Accountability, (2) Increasing Clarify and Consistency, (3) Improving Collaboration and Engagement, (4) Modernizing Funding Mechanisms and (5) Enhancing Flexibility for the Province. Each priority area contains a synopsis of the overall key themes and issues as well as specific feedback received through plenary discussions (see Appendix A) and completed discussion guides relating to each discussion question.

The following points highlight the recurring comments, concerns and/or advice which emerged from the Ottawa session.

- Ensure additional programs and services are delegated with adequate resources (particularly funding).
- Ensure CAs have the resources (e.g., funding, skilled staff, etc.) and tools (e.g., updated mapping) to deliver the variety of mandated programs and services they are responsible for, including tools to enforce regulatory compliance (e.g., stop work orders).
- Consider legislative (e.g., an appeal mechanism) and non-legislative mechanisms (e.g., add a purpose statement to the act, update the policies and procedures manual, identify key performance indicators, develop a communications strategy, etc.) to update the act.
- Ensure the proposed changes maintain flexibility and local autonomy (for municipalities and CAs).
- Move forward with the establishment of a provincial “one-window” approach and ensure it is adequately resourced.
- Establish a multi-ministry body to coordinate CA programs and services.
- Prioritize efforts to enhance First Nations, public and stakeholder engagement; suggested mechanisms include (e.g., ad hoc committees, advisory committees, staffing policies).
- Establish a strategy to improve the sharing and coordination of resources among CAs (e.g., who, what, where, how, etc.).
- Diversify the funding mechanisms available to CAs (e.g., development charges, utility fees, external funding).
- Ensure fees are established in a transparent manner and correspond to the services provided by CAs.

- Ensure funding mechanisms are flexible to meet the diverse needs of CAs across the province (i.e., flexible fee structure).
- Provide board members with training to ensure they understand their fiduciary responsibilities to the authority and watershed (e.g., budgeting, reporting, etc.).
- Consider other mechanisms or tools to delegate programs and services to other bodies or organizations (e.g., MOUs, Ministerial Mandates, Provincial Policy Statement, regulations, other statutes, etc.)

Priority #1: Strengthening Oversight and Accountability

Overall key themes/issues:

- Consider legislative (e.g., add a purpose statement to the act, add an appeal mechanism) and non-legislative opportunities (e.g., update the policies and procedures manual, identify key performance indicators, develop a communications strategy, etc.) to strengthen oversight and accountability.
- Ensure delegated programs and services are accompanied by adequate resources (particularly funding).
- Clarify the intent of enhancing provincial and municipal oversight and how it will be applied in practice; there were comments both in support of and against increasing oversight.

A. Updating the Act to reflect modern legislative structures and accountabilities

Participant feedback expressed support to:

- Update the Act to reflect modern legislative structures and accountabilities (e.g., purpose statement).
- Clarify the roles of parties that provide oversight (e.g., municipalities, CA board).

Participant feedback highlighted the following considerations:

- Ensure there is an opportunity for stakeholders (e.g., the province, municipalities and CAs) to comment and agree on the purpose statement before it is added to the Act and regulations.
- Clarify the process to appoint CA board members.
- Consider appointing non-municipal representatives to CA boards to ensure broad representation of stakeholder perspectives (e.g. agricultural representatives).
- Update the policies and procedures manual (which has not been undertaken since 1985).

B. Adopting and/or aligning with governance best management practices

Participant feedback expressed support to:

- Update best management practices to enhance governance (and transparency); integrated watershed management was noted as the most important approach.

Participants highlighted the need to consider the model used by health units (as an example of a governance best practice).

C. Enhancing provincial oversight

Participants expressed support to enhance provincial oversight (as long as resources are sufficient to implement delegated programs and services).

Participant feedback raised the following concerns and/or issues:

- Concerns about enhancing provincial oversight – clarify how enhanced oversight will operate in practice;
- Concerns about introducing new acts or regulations that would "limit" decision-making by municipalities – ensure flexibility at the local level;
- Concern that there is no simple or streamlined alternative dispute resolution process for CA decisions (e.g., bottleneck of issues pending before the mining commissioner); and
- Clarify the role of CAs in terms of provincial oversight (i.e., what are CAs providing?).

Participant feedback highlighted the following considerations:

- Ensure new programs or services are delegated to CAs with appropriate resources and support (particularly funding);
- Establish meaningful key performance indicators to measure the impact of CA programs and services (for larger, strategic and regional initiatives);
- Consider an appeal mechanism/alternative dispute resolution process for CA decisions – look to other agencies for models or best practices of appeal mechanisms.
- Consider the need for a communications strategy that can be used by all CAs to increase awareness of the purpose of CAs; promote accountability and transparency, etc.

D. Enhancing municipal oversight

Participants expressed support to enhance municipal oversight, but indicated there is a need to clearly articulate what the enhancement would be.

The CA board (which is comprised of municipal representatives) already provides municipal oversight.

E. Developing or updating criteria for establishing, amalgamating or dissolving a CA

Participant feedback highlighted the following considerations:

- Consider opportunities for CAs to share administrative roles and responsibilities (e.g., two boards, one administration in Quinte).
- Consider the model used to provide additional resources for prescribed tasks to implement Source Water Protection (SWP) initiatives.
- Consider amalgamating some CAs to overcome issues related to limited resources.

Priority #2: Increasing Clarity and Consistency

Overall key themes/issues:

- Ensure delegated programs and services are accompanied by adequate resources (particularly funding).
- Ensure the potential actions maintain flexibility and local autonomy (for municipalities and conservation authorities).
- Move forward with the development of an integrated legislative and policy framework.
- Ensure conservation authorities have the tools needed to deliver the variety of programs and services delegated to them, including tools to enforce compliance with regulatory requirements.
- Consider a suite of mechanisms to increase clarity and consistency (e.g., a preamble, Provincial Policy Statement).

A. Clearly delineating between mandatory and optional programs and services

Participant feedback raised the following concerns and/or issues:

- Concern about changing processes abruptly; there needs to be a transition plan.
- Concern about reducing local autonomy (both municipal and CA).

Participant feedback highlighted the following considerations:

- Ensure mandated programs and services are accompanied by supporting tools (e.g., funding, provincial guidance/assistance).
- Clarify what will be *mandatory* and what will be *optional*, if the terms are retained.
- Consider the ability of different CAs to deliver mandated programs and services (i.e., different capabilities in terms of resources) and different watershed needs.

B. Establishing a Provincial Policy Directive

Participant feedback expressed support to:

- Address the overlap and/or misalignment between different statutes that delegate programs and services to CAs; this may require updating other legislation.
- Develop an integrated policy framework.
- Specify CA roles and responsibilities through a Provincial Policy Directive (e.g., Provincial Policy Statement)

Participants raised the concern that specifying CA roles and responsibilities will limit flexibility; the Act is currently written to allow CAs to adapt to the needs of their watershed.

C. *Providing clarity and consistency in conservation authorities' regulatory roles and responsibilities*

Participant feedback expressed support to:

- Consolidate CA roles and responsibilities outlined in other statutes.
- Define undefined terms.
- Align terminology used in different statutes (e.g., wetland).

Participants raised the concern that policies and regulations are not applied consistently by CAs.

Participant feedback highlighted the following considerations:

- Clarify the purpose of the act, its objectives and the tools available to implement them.
- Recognize the multiple roles and responsibilities CAs currently undertake in the Act (e.g., hazard management, watershed management, commenting on environmental assessments, service provider, regulator, and land owner).
- Consider the unintended consequences of clarifying CA roles and responsibilities (e.g., limiting the scope of CA activities).
- Consider legislative mechanisms to clarify roles and responsibilities (e.g., the statute's preamble).

D. *Enhancing compliance and enforcement of regulatory requirements*

Participants expressed support to update regulatory compliance tools and mechanisms. Some participants noted that the Ontario Building Code could be used as a model for implementing stop work orders.

Participant feedback raised the following concerns and/or issues:

- Concern that regulatory compliance tools are insufficient.
- Concern that legal proceedings are costly and time consuming, negatively impacting limited CA resources.

E. *Streamlining planning and permitting requirements and processes*

Participant feedback expressed support to:

- Streamline planning and permitting requirements and processes (e.g., simplify the process).
- Ensure the right tools are available to streamline planning and permitting processes.
- Adopt a risk-based approach to approvals; it was noted that more information is need to articulate how this will be applied in practice.

Participants raised concerns about a one-window approach as the "big picture" impact of iterative decisions is not clear.

Participants highlighted the need to define the value of watersheds/natural resources in the act.

Priority #3: Improving Collaboration and Engagement

Overall key themes/issues:

- Move forward with the establishment of a provincial "one-window" approach and ensure it is adequately resourced.
- Establish a multi-ministry body to coordinate CA programs and services.
- Prioritize efforts to enhance First Nations, public and stakeholder engagement, suggested mechanisms include (e.g., ad hoc committees, advisory committees, staffing policies).
- Establish a strategy to improve the sharing and coordination of resources among CAs (e.g., who, what, where, how, etc.).

A. Establishing a provincial "one-window" approach

Participants were supportive of prioritizing the establishment of a provincial "one-window" approach; it was noted that this potential action is closely linked to sharing and coordinating resources among CAs.

Participant feedback highlighted the following considerations:

- Establish a "one-window" approach to streamline the approval process for site plan assessments; CAs could serve as the primary point of contact.
- Ensure the "one-window" approach is appropriately resourced.
- Establish a multi-ministry body (instead of promoting multi-ministry coordination) to coordinate CA programs and services.

B. Establishing a business relationship with Conservation Ontario

Participant feedback raised the following concerns and/or issues:

- Recognize that Conservation Ontario is already undertaking this potential action.
- Concern about Conservation Ontario being a governing body.

Participants suggested that MNRF consider the model used by the Association of Municipalities of Ontario (AMO) as a best practice.

C. Enhancing Indigenous People's participation

Participant feedback expressed support to:

- Enhance the capacity of First Nations to participate in CA processes.
- Provide resources to enhance First Nation participation in CA processes.

D. Enhancing public and stakeholder participation

Participant feedback expressed support to:

- Enhance public and stakeholder participation to ensure a broad range of interests is considered; this should be prioritized. It was noted that some CAs have more capacity and experience engaging the public and stakeholders than others.

Participant feedback highlighted the following considerations:

- Consider the use of advisory committees or ad hoc committees to enhance stakeholder participation;
- Ensure a broad representation of stakeholder interests on CA boards (e.g., farmers);
- Consider the need for a communications strategy that can be used by all CAs to broaden awareness and engage stakeholders and the public; and
- Consider developing a CA staffing policy to employ more First Nations and/or newcomers.

E. Supporting conservation authorities in sharing and coordinating resources

Participant feedback expressed support to:

- Promote sharing and coordinating resources among CAs (e.g., GIS, data, etc.); it was noted that this is already happening between some CAs (e.g., program level staff sharing data, issuing joint publications; meetings involving CA board members).

Participant feedback raised the following concerns and/or issues:

- Concern that current efforts to share and coordinate resources are ineffective; it was suggested that the province should establish a strategy to improve data sharing.
- Clarify who will be financially responsible for coordinating resources.
- Consider other mechanisms to encourage collaboration between CAs (e.g., Source Water Protection model).

Participant feedback highlighted the following considerations:

- Consider cost-sharing or equalization payments across CAs.
- Consider the need for mechanisms to enable collaboration between CAs and CAs and their government partners.

Priority #4: Modernizing Funding Mechanisms

Overall key themes/issues:

- Prioritize the need for additional funding to implement the delivery of CA programs and services.
- Diversify the funding mechanisms available to conservation authorities (e.g., development charges, utility fees, external funding).
- Ensure fees are established in a transparent manner and correspond to the services provided by conservation authorities.
- Ensure funding mechanisms are flexible to meet the diverse needs of conservation authorities across the province (i.e., flexible fee structure).
- Provide board members with training to ensure they understand their fiduciary responsibilities to the board and watershed (e.g., budgeting, reporting, etc.).

A. Enhancing clarity, consistency and accountability around municipal levies

Participant feedback raised the following concerns and/or issues:

- Recognize that the apportionment process is fair, but too complicated.
- Concern about changing the process by which CAs work with participating municipalities; the current process works well.
- Concern that smaller municipalities do not have the capacity (e.g., tax base) to support CAs; some of the financial responsibility should be "uploaded" to the province.

Participant feedback highlighted the following considerations:

- Consider simplifying the funding process (instead of clarifying it).
- Clarify the process regarding municipal levies for the public.
- Consider a minimum value for levies (e.g., $10,000 to $15,000).
- Ensure proper representation and/or transparency in the process to determine levies; it should reflect the ability of municipalities to pay.
- Consider a charge on the water rate as a mechanism to generate revenue.
- Eliminate geo-referencing – maintaining the current system is not equitable.
- Ensure efforts to standardize processes are also flexible to recognize the needs/diversity of CAs.
- Advocate for more provincial funding; there is a need to diversify funding sources.

B. Promoting clarity, consistency and accountability around fees and generated revenue

Participants raised the concern that more transparency is needed in how fees are established; consistency is an issue across the province, but may not be practical/achievable.

Participant feedback highlighted the following considerations:

- Include the purpose of fees and what they include in the act.

- Consider a fee structure that recognizes the variation of CA needs and resources across the province.
- Establish a framework to calculate fees (that will improve transparency as it is undertaken differently by all CAs).
- Recognize that provincial direction should focus on cost recovery.
- Consider an appeal mechanism instead of a fee structure.
- Consider the model used in the Municipal Act.
- Consult stakeholders and the public about the fee structure, if one is proposed.
- Consider the need for fees to correlate to the service provided.
- Ensure fees are relevant for farmers (it could be too costly for some/not relevant).
- Include other mechanism to generate revenue in the Act (e.g., development charges).
- Clarify the status of CAs (e.g., non-profit vs. government agency) as this impedes access to funding.
- Need to invest in water protection and define mechanisms to fund water protection (not infrastructure) and plan for natural asset management, ecological goods and services).

C. Improving fiscal oversight and transparency

Participant feedback highlighted the following considerations:

- Look at governance in a collective way (e.g., working relationship between the board and municipalities should be governance-based).
- Ensure board members understand the fiduciary responsibility of their role to the authority and watershed (e.g., provide training).
- Provide guidance in terms of a standard budgeting process for operations (e.g., group budgeting items such as land management, water management, etc.).
- Consider requiring the Chair of CAs to report to councils.
- Consider the need for consistency in terms of reporting to municipalities how funding is spent.
- Make information regarding fees and revenue generated accessible to the public.
- Consider opportunities to strengthen reporting to Councils.

D. Improving clarity in the use of provincial funding processes

Participants raised the following concerns and/or issues:

- Recognize that some CAs are limited in their ability to raise funds.
- Recognize that CAs cannot apply for external funding (e.g., Ontario Trillium grants).

Participant feedback highlighted the following considerations:

- Consider the need for more provincial funding; this should be a prioritized action.
- Ensure the information required to meet eligibility criteria is useful to both the province and municipalities (i.e., avoid creating an administrative burden).
- Recognize that third-party audits already ensure accountability.
- Clarify the eligibility criteria for all groups, not just CAs.

Priority #5: Enhancing Flexibility for the Province

Overall key themes/issues:

- Ensure delegated programs and services receive the appropriate resources (particularly funding) to facilitate implementation.
- Clarify the intent of the potential actions to ensure they are interpreted consistently and correctly.
- Consider other mechanisms or tools to delegate programs and services to other bodies or organizations (e.g., MOUs, Ministerial Directives, Provincial Policy Statement, regulations, other statutes, etc.)

A. Giving the Minister the authority to use the Act to develop additional natural resource conservation and management programs and services in the future

Participants were supportive of this potential action in principle if the intent is to consolidate roles and responsibilities from different statutes, not "download" more responsibilities without resources (e.g., funding).

Participant feedback raised the following concerns and/or issues:

- Concerns that specifying too many details in the Act will reduce flexibility for CAs and municipalities.
- Concern that CAs will be required to undertake the delivery of more programs and services without the required funding.

Participant feedback highlighted the following considerations:

- Clarify the purpose of the Conservation Authorities Act (operations vs. programming).
- Consider other mechanisms or tools to delegate responsibilities (e.g., MOUs, Ministerial Mandates, Provincial Policy Statement, regulations).
- Ensure collaboration between CAs to encourage consistency in the delivery of programming and services.
- Recognize the unique capabilities and needs of each CA and the need for flexibility.

B. Giving the Minister the authority to formally delegate the delivery of current and additional natural resource conservation and management programs and services to conservation authorities in the future

Participant feedback expressed support to:

- Support this potential action if the intent is to consolidate roles and responsibilities from different statutes, not "download" more responsibilities.

Participant feedback raised the following concerns and/or issues:

- Concern about the "heavy handed" approach and language of the potential actions; the concern is that the province is moving toward a "command and control" approach.
- Concern about the capacity of different CAs to implement additional programs and services (particularly without additional funding).
- Clarify what will be delegated to provide more certainty.
- Concern that municipalities will be financially responsible for the additional programs and services if funding is not provided.

Participant feedback highlighted the following considerations:

- Clarify the intent of the potential actions to ensure they are interpreted consistently and correctly.
- Clarify the types of programs and services that could be delegated.

C. Giving the Minister the authority to formally delegate the delivery of current and additional natural resource conservation and management programs and services to other public bodies, not-for-profit organizations, municipalities and other Ministries

Participant feedback raised the following concerns and/or issues:

- Concern that delegating programs and services to other bodies will lead to the privatization of these programs and services (i.e., flexibility without accountability).
- Concern that this potential action will delegate responsibilities away from CAs.
- Concern about losing the ability to negotiate funding if programs and services are delegated to other bodies or organizations.
- Concern about the delivery of programs and services through other organizations or bodies given the retrenchment of MNRF resources.
- Concern that delegating programs and services to other bodies or organizations will duplicate the services and programs provided by CAs.

D. Giving the Minister the authority to deliver additional natural resource conservation and management programs and services throughout the province

Participant feedback highlighted the following considerations:

- Note that in some cases, there is already wording in the Act that addresses the intent of this potential action (e.g., where there is no CA).

Other Actions to Consider

Overall key themes/issues:

- Continue exploring opportunities to improve the role and function of board members (e.g., fiduciary duties, decision-making authority, compensation, terms, etc.).
- Build on existing communication efforts utilized by conservation authorities.

A. Reducing administrative burdens associated with appointing and replacing board members and obtaining approval of board per diems.

Participant feedback raised the following concerns and/or issues:

- Concern regarding the approval of per diems as they are appealed to the Ontario Municipal Board (OMB); it was suggested that the CA board should decide, not the OMB.
- Concern that compensation is not equitable across CAs.

Participant noted that appointing and replacing board members is not a problem for all CAs.

B. Aligning board terms with the municipal elections cycle.

Participants support the action to align board terms with the municipal elections cycle.

Participants suggested the need to consider term limits for board members (e.g., 8 years).

C. Developing and orientation and training program for board members.

Participants were supportive of developing a training program for board members; specifically fiduciary training (functional responsibility for reporting to municipalities and responsibility of municipality to select board members).

D. Developing a coordinated communications plan outlining any changes to conservation authority operations, programs and services resulting from the review in partnership with municipalities and conservation authorities

Participant feedback highlighted the following considerations:

- Note that some CAs already coordinate communications.
- Align CA communications with communications at Conservation Ontario.
- Foster effective exchange of programs needed to support collaboration.

Additional Comments

Additional comments provided by participants include:

- Ensure the interests of all stakeholders (e.g., OFAH members, agricultural sector) are considered during decision-making processes; this can be achieved in part through more outreach and education.
- Suggest that CAs fill the gap in forest management and protection in Southern Ontario; forests play an important role in the hydrological cycle. Conservation authorities may be better positioned to undertake on the ground initiatives that MNRF does not have capacity for.
- Consider monitoring landscape management at multiple scales (e.g., provincial, watershed, etc.).

Appendix A – Questions of Clarification

The following topics and themes were discussed after the overview presentation:

Presentation

- Ensure the presentation includes a balanced summary of the feedback received during the first phase of consultations (e.g., positive feedback, opportunities for improvement, feedback by sector, etc.).
- Highlight the range of comments received regarding the CAs' Mandate (presented as an area of general disagreement).
- Concern that a focus on a "core hazards role" will limit the scope of CA roles and responsibilities; there is a need to recognize the diversity of programs and services CAs provide.
- Clarify whether the amalgamation of CAs is being considered by the province.

Priority Areas

- Ensure the potential actions proposed to improve the coordination of CA services (e.g., one-window approach) are carefully considered and will be adequately resourced.
- Note that the potential actions do not reflect the fundamental issues affecting CAs (i.e., they miss the mark).
- Include integrated watershed management as an overarching approach in the Act.
- Recognize the multiple roles and responsibilities CAs currently undertake under the Act.
- Recognize that each CA is different; while consistency is an important objective it may lead to structural issues.
    - Each CA provides services that reflect the needs of its respective watershed.
    - Some CAs do not have the capacity (e.g., staff, financial resources, tools, etc.) to undertake integrated watershed management.
- Explain the rationale to include policies formally requiring CAs to undertake "other duties as assigned" given that they do not have the ability to say "no".
    - Concern was expressed that municipalities will be financially responsible for "other duties as assigned" if funding is not provided with the assigned duties.
    - Concern was expressed that this potential action is a "command and control" approach and that other mechanisms could be used to delineate roles and responsibilities (e.g., MOUs, Ministerial Mandates).
- Include the six primary roles and responsibilities CAs currently undertake in the Act (e.g., hazard management, watershed management, commenting on environmental assessments, service provider, regulator, and land owner).
    - Conservation authorities can coordinate processes requiring collaboration among multiple stakeholders (e.g., integrated watershed management).
    - Ensure watershed management is integrated (i.e., someone need to be the "stick").

- Consider the unintended consequences of clarifying CA roles and responsibilities (e.g., limiting the scope of CA activities).
- Consider clarifying certain issues (e.g., roles and responsibilities, climate change) in the statute's preamble.

Participation and Feedback during Consultations

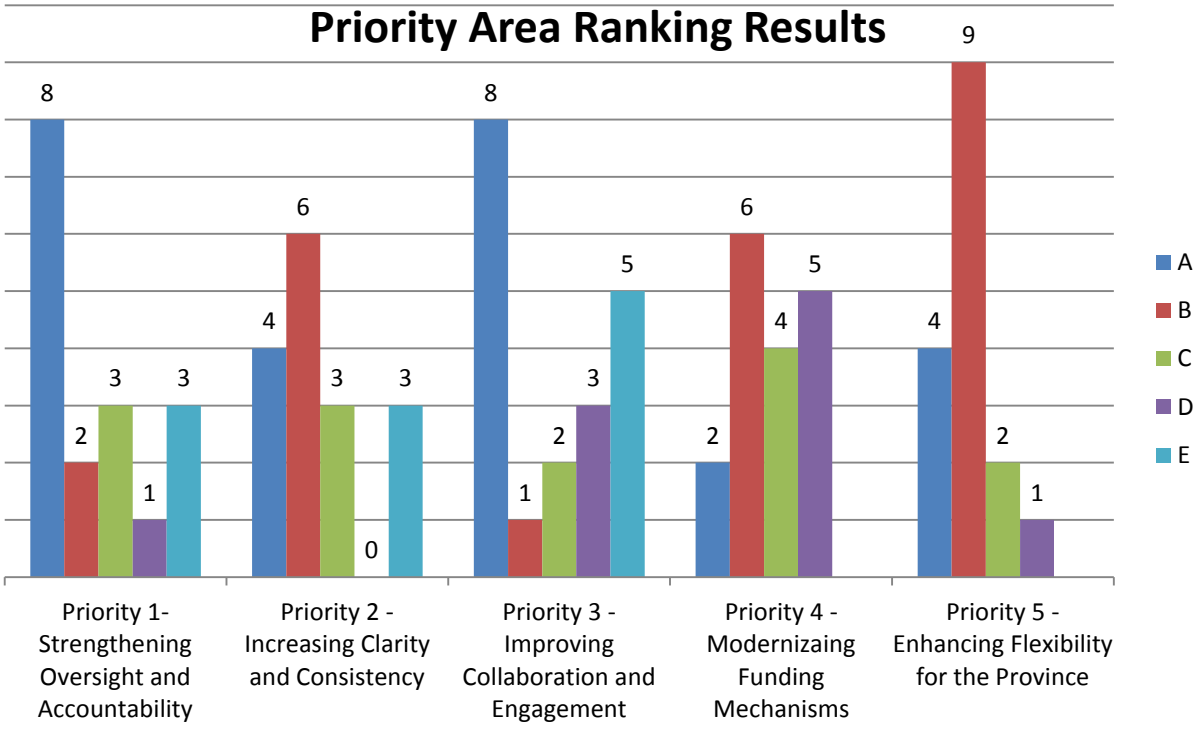
- Ensure stakeholders who participated in the first phase of consultations receive notification of consultation sessions going forward.

Other

- Recognize that there is no CA that oversees the Ottawa River.

Appendix B – Ranking Results

At the end of the session participants were asked to choose the most important potential action under each priority area. The results of this optional exercise are presented in the graph below. Note that some attendees did not participate in the ranking because they felt the potential actions do not reflect the fundamental issues affecting CAs. The results represent the number of attendees that chose to respond and do not represent a statistically significant sample. Eighteen (18) completed forms were received. The potential actions under each priority area are represented by the letters A to E in the graph below.



Additional comments

- Reduce red tape! Streamline permit application process.
- Clarify the intent of the potential actions under Priority #5.
- Develop opportunities to distribute funds across regions/province more effectively (e.g., cost sharing).
- Align the Conservation Authorities Act with other provincial legislation (e.g., Drainage Act, Ontario Water Resources Act).
- Make as many changes by updating the policies and procedures manual instead of revising the act.
- Include integrated watershed management in the purpose statement of the act.

- Concern about the need for the potential actions under Priority #5 in the act.
- Align board member appointments with the municipal election cycle.
- Concern about the need for Ontario Municipal Board (OMB) approval for board per diems.
- “Upload” funding of CAs to the province.

This summary of participant feedback has been prepared by Lura Consulting and Planning Solutions Inc. to provide the Ministry of Natural Resources and Forestry with the recurring themes and priorities raised by participants during the Thunder Bay session of the Conservation Authorities Act Review, Phase II. The feedback from each individual session will be used to compile a final engagement session report.

Introduction

The Ministry of Natural Resources and Forestry (MNRF) is undertaking a phased review of the Conservation Authorities Act. The intent of the review is to identify opportunities to improve the legislative, regulatory and policy framework that currently governs the creation, operation and activities of conservation authorities. In Phase I of the review, completed in 2015, MNRF led an extensive consultation process to engage stakeholders in a discussion about opportunities to improve the Conservation Authorities Act, which resulted in extensive feedback.

Based on the input received in Phase I of the review, MNRF has released the document, *Conserving Our Future: Proposed Priorities for Renewal*, that outlines a series of actions that could be taken under five proposed priority areas for improvement: (1) Strengthening Oversight and Accountability, (2) Increasing Clarity and Consistency, (3) Improving Collaboration and Engagement, (4) Modernizing Funding Mechanisms, and (5) Enhancing Flexibility for the Province. In June 2015, MNRF led a second round of consultations with a diversity of stakeholders to obtain input on the potential actions outlined within the five priority areas.

On June 7, 2016, the MNRF hosted a full-day workshop in Thunder Bay at the West Thunder Community Centre as part of the Phase II consultation program. The purpose of the workshop was to provide an overview of the five priority areas for improving the Conservation Authorities Act. The workshop consisted of an overview plenary presentation with time for questions of clarification, followed by three rounds of facilitated small group discussions. The facilitated discussions were designed to encourage dialogue and obtain feedback on the five (5) priority areas for improving the Conservation Authorities Act.

A total of 7 individuals participated in the workshop, including participants from the following organizations:

- Lakehead Region Conservation Authority (LRCA)
- Ministry of Environment and Climate Change
- Township of Gillies

This report presents a summary of the comments and suggestions provided by participants during the workshop.

Summary of Participant Feedback

The summary of participant feedback is organized according to the five priority areas: (i) Overview Summary (1) Strengthening Oversight and Accountability, (2) Increasing Clarify and Consistency, (3) Improving Collaboration and Engagement, (4) Modernizing Funding Mechanisms and (5) Enhancing Flexibility for the Province. Each priority area contains a synopsis of the overall key themes and issues as well as specific feedback received through plenary discussions (see Appendix A) and completed discussion guides relating to each discussion question.

The following points highlight the recurring comments, concerns and/or advice which emerged from the Thunder Bay session.

- Northern Ontario in general and northwestern Ontario specifically exhibits a number of unique conditions, circumstances and challenges, not the least of which include unorganized territory, a large geography/spatial extent and frequently, an inaccessible land base.
- Local autonomy is critical; flexibility is essential to long term success.
- Education is imperative to improved understanding and awareness of the role and responsibilities of conservation authorities (CAs).
- Collaboration and cooperation are important fundamental principles. There are many examples where fees are set collaboratively and instances where CAs advance win/win solutions that promote mutually beneficial results. This latitude and flexibility is necessary and CAs must be given the opportunity to continue to develop workable solutions on a project-specific basis.
- Recognize that legislative changes need to be supported by long term sustainable funding. A long term financial commitment is essential.
- There are a number of legislative changes that should be considered as priorities by the province including:
    - Defining a clear purpose and meaning in the Act regarding the role and mandate of CAs;
    - Coordination and collection of scientific data and information – potential role for Conservation Ontario;
    - The need to enhancing the dialogue with First Nations but also with other stakeholders.
- There are a number of supporting actions that can realize significant change including training for CA Board Members, and province-wide initiatives led by Conservation Ontario to improve communication, education and awareness of the role of CAs.
- Need to ensure that municipalities are not handicapped by new statutory provisions.
- Recognize that these actions are not mutually exclusive and that some may be associated with increased funding requirements.
- Any ministerial changes to the regulation must be done in consultation with CAs.
- Legislative changes need to reflect the diversity that exists in conditions, circumstances and situations across the province (e.g. use of, access to and management strategies associated with conservation areas – very different in northern Ontario than in southern Ontario.)
- Keep it flexible. “Max flex” needs to be the operative principle moving forward regarding legislative change. Stay true to the role and mandate of CAs. Be realistic and be innovative.

Priority #1: Strengthening Oversight and Accountability

Overall key themes/issues:

- Maintaining local autonomy for CAs and flexibility in the CA Act is important for long term success.
- Enhancing communication and dialogue is important for improving understanding and awareness of a CAs role and mandate.
- The unique set of circumstances and challenges in northern Ontario should be considered in changes to the Act.

A. Updating the act to reflect modern legislative structures and accountabilities

Participant feedback expressed support to modernize the Act to define a clear statement of purpose and the roles and responsibilities of various parties in providing oversight. It was noted that there is a misunderstanding among the public, municipalities, and other ministries about what a CA is responsible for.

Participants highlighted that communication between CA board members and with participating municipalities across a CA is important to establish a clear understanding of which programs are managed by CAs and why.

B. Adopting and/or aligning with governance best management practices

Participant feedback highlighted the following considerations:

- CAs should already be following governance best management practices and this is less of a priority than other actions.
- The MNRF should provide some minimum guidance for best management practices which CAs can then adapt at the local level.
- The model followed by Health Units should be examined when determining an avenue for appeals regarding codes of conduct or conflict of interest.

C. Enhancing provincial oversight

Participants raised the concern that CAs may lose local flexibility through actions that increase provincial oversight.

D. Enhancing municipal oversight

Participant feedback expressed support to:

- Enhance municipal oversight regarding the scope and focus of CA programs and services.
- Achieve a balance of provincial and municipal oversight to allow local flexibility.

E. Developing or updating criteria for establishing, amalgamating or dissolving a CA

Participant feedback highlighted the following considerations:

- Regional differences should be reflected in the criteria for establishing, enlarging, amalgamating or dissolving a CA.
- Enlargement of CAs in northern Ontario to follow the scientific watershed would require additional provincial funding. There is no mechanism to levy unorganized townships and there would be a large financial burden on member municipalities of the LRCA.

Priority #2: Increasing Clarity and Consistency

Overall key themes/issues:

- There is support for providing clarity and consistency in a CAs regulatory roles and responsibilities. Consolidating and codifying regulations would reduce the potential for misinterpretation of the regulations.
- There are challenges in negotiating with landowners and enforcing regulatory requirements. Education and enhancement of the CAs relationship with landowners is important to address this.

A. Clearly delineating between mandatory and optional programs and services

Participant feedback expressed support to:

- Clearly delineate between mandatory and optional programs and services.
- Provide clarity and consistency in a CAs regulatory roles and responsibilities.

B. Establishing a Provincial Policy Directive

No specific feedback on this topic.

C. Providing clarity and consistency in conservation authorities' regulatory roles and responsibilities

Participants were supportive of providing clarity and consistency in a CAs regulatory roles and responsibilities. Participants noted that consolidating and codifying regulations would reduce the potential for misinterpretation of the regulations and the associated legal disputes. Defining undefined terms in the Act was also supported.

D. Enhancing compliance and enforcement of regulatory requirements

Participant feedback highlighted the following considerations:

- Enhancing compliance and enforcement of regulatory requirements was identified as an expensive action and therefore less important.

- There are challenges in negotiating with landowners and enforcing regulatory requirements. The appeal process is expensive for CAs.
- CAs want to be viewed as an approachable body that works with landowners rather than an enforcement authority. Education is important to enhance this relationship.
- Technical guidelines need to be updated (e.g., guidelines with respect to bedrock) to improve enforcement of regulations. It is easier for staff to administer regulations when they are provided with clear definitions.

E. Streamlining planning and permitting requirements and processes

Participant feedback highlighted the following considerations:

- CAs will get more buy in from the community when they have positive relationships through planning and permitting processes.
- It is important to make planning and permitting processes user-friendly to the public.

Priority #3: Improving Collaboration and Engagement

Overall key themes/issues:

- The establishment of a provincial "one-window" should be prioritized.
- There is support for Conservation Ontario to remain an advocate of CAs rather than provide specific direction on CA programs.
- Actions relating to enhancing Indigenous Peoples', public, and stakeholder participation would require additional financial and staff resources for CAs to manage.
- Enhancing education and awareness in the community of the various roles of CAs, municipalities and the province would be beneficial.

A. Establishing a provincial "one-window" approach

Participants expressed support to prioritize the establishment of a provincial "one-window". It was noted that this approach could also provide efficiencies with respect to gaining access to funding opportunities.

Participants expressed that coordinating the collection and sharing of science and information should be done by one body for cost and operational efficiencies as opposed to coordinated by both Conservation Ontario and a provincial "one-window".

B. Establishing a business relationship with Conservation Ontario

Participants raised the following concerns and/or issues:

- There was a preference for Conservation Ontario to remain an advocate of CAs rather than a body that directs how programs should be run or what programs should be delivered.

- Providing education and raising awareness on the role of CAs was a suggested role for Conservation Ontario.

C. Enhancing Indigenous People's participation

Participants raised the following concerns and/or issues:

- There are challenges with engaging Indigenous Peoples'. It requires a more fulsome consultation process.
- It was suggested that the federal government should provide funding for Indigenous People's participation in CAs. Given the ability for the province to effect change in this area, it is less of a priority action.

D. Enhancing public and stakeholder participation

Participants raised the following concerns and/or issues:

- Actions relating to enhancing Indigenous Peoples', public, and stakeholder participation are important; however they would require additional financial and staff resources for CAs to manage.
- A lot of resources are required to engage the public with a small amount of feedback received in return. Education may be more effective in terms of use of CA resources.

Participants highlighted that there is a lack of understanding amongst the community regarding a CAs mandate and role. Enhancing education and awareness of the various roles of CAs, municipalities and the province would be beneficial.

E. Supporting conservation authorities in sharing and coordinating resources

Participants noted that supporting CAs in sharing and coordinating resources is less of a priority. Sharing of resources is already happening at the local level where it makes sense.

Priority #4: Modernizing Funding Mechanisms

Overall key themes/issues:

- Sustainable long term funding is required to deliver CA programs and services and support provincial direction. A multi-ministry approach to funding should be considered.
- Regional differences should be taken into account when determining funding levels (e.g., lower population base and greater distances in northern Ontario).
- Consider innovative opportunities for municipal funding arrangements, e.g., new tax classification for CA owned hazard-related lands, tax rates reflective of the land use and benefit provided.

A. Enhancing clarity, consistency and accountability around municipal levies

Participant feedback highlighted the following considerations:

- It is important to avoid downloading provincial costs to municipalities through CA levies.
- Regional differences should be taken into account when determining funding levels (e.g., lower population base, greater distances in northern Ontario). It was noted that population data being used is inaccurate; Stats Canada data is preferred.

B. Promoting clarity, consistency and accountability around fees and generated revenue

Participant feedback highlighted the following considerations:

- CAs in northern Ontario experience challenges in generating funds through the operation of conservation areas. Member municipalities must be levied for the maintenance of conservation lands.
- Delivering consistent permitting fees across northern Ontario is a challenge when travel distances vary greatly.

C. Improving fiscal oversight and transparency

Participant feedback highlighted the following considerations:

- Improving fiscal oversight and transparency was indicated as less important. There is a sense that municipal oversight and transparency is already strong.
- Standardizing budgeting requirements may not be suitable for all CAs. Adjusting existing processes will require additional resources.
- A clarification was made that municipalities have a role in CA budget approval as opposed to oversight.

D. Improving clarity in the use of provincial funding processes

Participants highlighted that if a CA could apply directly for Trillium funding the process would be more streamlined.

E. Other Feedback on Priority #4

Additional participant feedback on priority #4 included:

- Sustainable long term funding is required to deliver CA programs and services and support provincial direction.
- CAs provide a range of environmental and health benefits. A multi-ministry approach to funding should be explored, e.g., funding from the Ministry of Health.
- Consider innovative opportunities for municipal funding arrangements, e.g., new tax classification for CA owned hazard-related lands, tax rates reflective of the land use and benefit provided.

Priority #5: Enhancing Flexibility for the Province

Overall key themes/issues:

- It was emphasized that the CA Act should be written broadly to allow for flexibility and consideration of future emerging issues.
- There is a preference for consultation and communication between CAs and the MNRF regarding changes to the regulations of the CA Act.

A. ***Giving the Minister the authority to use the act to develop additional natural resource conservation and management programs and services in the future***

B. ***Giving the Minister the authority to formally delegate the delivery of current and additional natural resource conservation and management programs and services to conservation authorities in the future***

C. ***Giving the Minister the authority to formally delegate the delivery of current and additional natural resource conservation and management programs and services to other public bodies, not-for-profit organizations, municipalities and other Ministries***

D. ***Giving the Minister the authority to deliver additional natural resource conservation and management programs and services throughout the province***

Participant feedback highlighted the following considerations related to Priority #5:

- Consultation and communication between CAs and the MNRF is important regarding changes to the regulations of the CA Act.
- Ensuring flexibility is maintained in the CA Act is important to allow for consideration of future emerging issues such as climate change impacts.

Other Actions to Consider

Overall key themes/issues:

- All potential actions should be considered in conjunction with fiscal realities.
- A low cost form of alternative dispute resolution for permitting appeals should be made mandatory prior to matters being handled through the court system.
- There is concern that judges do not have the same knowledge as the Ontario Mining and Lands Commissioner. Education should be provided to the judiciary on conservation so that informed decisions can be made.
- The CA Act should be written broadly to allow for flexibility. Control is better applied through directives and regulations.
- Actions should reflect the diversity of conditions and circumstances of the CAs across the province.

A. Additional actions for the Ministry to take

Participant feedback highlighted the following actions for the Ministry to take:

- A regular review of the regulations and directives of the CA Act should be undertaken; however the legislation itself does not need to be reviewed as frequently.
- Regarding the enforcement of regulations, it was suggested that all appeals should go to the Ontario Mining and Lands Commissioner (OMLC) or another form of dispute resolution where the costs are lower before going through the court system.
    - There was concern that judges do not have the same knowledge as the OMLC. Education should be provided to the judiciary on the role of conservation and the CA Act to allow them to make informed decisions.

B. Considerations when developing any additional actions

Participants highlighted the following considerations when developing additional actions:

- It was emphasized that the CA Act should be written broadly to allow for flexibility. Control is better applied through directives and regulations.
- Northern Ontario faces unique challenges with an expansive geography and an absence of infrastructure and transportation modes. There should also be recognition that there is a large geographical area outside of CA jurisdiction in northern Ontario and what happens within the greater watershed affects other CA municipalities.

C. Feedback on additional potential actions proposed by the Ministry

Participants highlighted that reducing the administrative burden associated with appointing or replacing board members is less of a priority. With respect to aligning board terms with the municipal election cycle, there is a preference for ensuring some continuity and knowledge transfer of board members between terms.

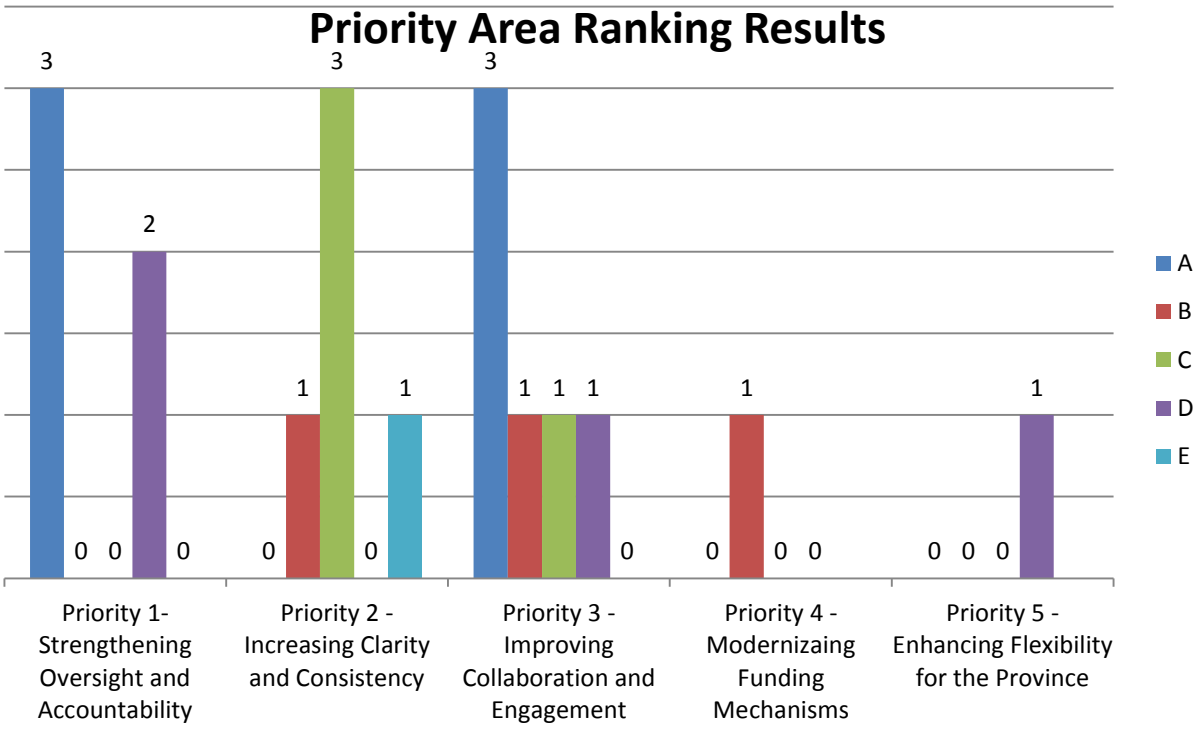
Appendix A – Questions of Clarification

The following topics and themes were discussed after the overview presentation:

Q. Prior to 1995 there was a formal CA branch within MNR. Is there any consideration for reinstating that branch? LRCA is the only CA in northwestern Ontario and we are delivering the mandated programs. How does MNRF engage with those other municipalities about things like flood plain mapping? We also have unorganized townships adjacent to us where people are building without permits in the flood plain. Where could those municipalities go? The CA branch concept may still have some validity. Lots of northern Ontario is not covered by a CA.
A. We have heard from other stakeholders that the MNRF needs to be right-sized to reflect the CA program. With respect to your point about unorganized townships, outside of CA territory the natural hazard program is delivered by the MNRF.

Appendix B – Ranking Results

At the end of the session participants were asked to choose the most important potential action under each priority area. The results of this optional exercise are presented in the graph below. Note that some attendees did not participate in the ranking because they felt the potential actions do not reflect the fundamental issues affecting CAs. The results represent the number of attendees that chose to respond and do not represent a statistically significant sample. Five (5) completed forms were received. The potential actions under each priority area are represented by the letters A to E in the graph below. At the end of the session, participants were asked to choose the most important potential action under each priority area. The results of this exercise are presented below.



This summary of participant feedback has been prepared by Lura Consulting and Planning Solutions Inc. to provide the Ministry of Natural Resources and Forestry with the recurring themes and priorities raised by participants during the London session of the Conservation Authorities Act Review, Phase II. The feedback from each individual session will be used to compile a final engagement session report.

Introduction

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Based on the input received in Phase I of the review, MNRF has released the document, *Conserving Our Future: Proposed Priorities for Renewal*, that outlines a series of actions that could be taken under five proposed priority areas for improvement: (1) Strengthening Oversight and Accountability, (2) Increasing Clarity and Consistency, (3) Improving Collaboration and Engagement, (4) Modernizing Funding Mechanisms, and (5) Enhancing Flexibility for the Province. In June 2016, MNRF led a second round of consultations with a diversity of stakeholders to obtain input on the potential actions outlined within the five priority areas.

On June 9, 2016, the MNRF hosted a full-day workshop in London at the Double Tree by Hilton as part of the Phase II consultation program. The purpose of the workshop was to provide an overview of the five priority areas for improving the Conservation Authorities Act. The workshop consisted of an overview plenary presentation with time for questions of clarification, followed by three rounds of facilitated small group discussions. The facilitated discussions were designed to encourage dialogue and obtain feedback on the five (5) priority areas for improving the Conservation Authorities Act.

A total of 57 individuals participated in the workshop, including participants from the following organizations:

- Ausable Bayfield Conservation Authority
- Bruce County Federation of Agriculture
- Canadian Environmental Law Association
- Catfish Creek Conservation Authority
- Chippewas of the Thames First Nation
- City of Cambridge
- City of Hamilton
- Conservation Ontario
- County of Oxford
- Ducks Unlimited
- EnPointe Development
- Essex Region Conservation Authority
- Grand River Conservation Authority
- Halton Region Conservation Authority

- Hamilton Region Conservation Authority
- Kettle Creek Conservation Authority
- Lake Erie North Shore Landowners Association
- London Development Institute
- Long Point Region Conservation Authority
- Lower Thames Valley Conservation Authority
- Maitland Valley Conservation Authority
- Municipality of Brockton
- Niagara Peninsula Conservation Authority
- Niagara Region
- Ontario Farm Environment Coalition
- Ontario Federation of Agriculture
- Saugeen Conservation Authority
- Six Nations Lands and Resources
- St. Clair Region Conservation Authority
- Stantec
- Town of Hanover
- Upper Thames River CA
- Watterworth Farms

This report presents a summary of the comments and suggestions provided by participants during the workshop.

Summary of Participant Feedback

The summary of participant feedback is organized according to the five priority areas: (1) Strengthening Oversight and Accountability, (2) Increasing Clarify and Consistency, (3) Improving Collaboration and Engagement, (4) Modernizing Funding Mechanisms and (5) Enhancing Flexibility for the Province. Each priority area contains a synopsis of the overall key themes and issues as well as specific feedback received through plenary discussions (see Appendix A) and completed discussion guides relating to each discussion question.

The following points highlight the recurring comments, concerns and/or advice which emerged from the London session.

- There is support for updating the CA Act to reflect modern legislative structures, specifically by adding a clear purpose statement and principles/objectives that the legislation is trying to achieve.
- The core mandate of CAs can fluctuate so it must be flexible with a focus on Integrated Watershed Management (IWM).
- There needs to be more training across all CAs to improve consistency in governance.
- Establishing a provincial “one-window” approach is a top priority.
- CAs need more provincial assistance to undertake precise mapping; it is challenging to make good decisions with inaccurate and inconsistent data.
- Indigenous Peoples’ participation should be at a watershed and strategic planning level rather than a project by project level, however there is not a clear path to achieve this.

- It is important to foster a culture of CAs working together with landowners with regard to planning and permitting. There needs to be more transparency, communication and sharing of information between CAs and landowners to enhance this relationship and achieve solutions.
- Increasing access to funding should be a top priority; funding should be aligned with a CAs mandate. A multi-ministry approach to funding should be undertaken.
- There is support for clarifying municipal levies. Apportionment of levies and the funding formula need to be enhanced, better defined and made consistent.
- Clarity around fees and how they can be used by a CA would be beneficial. It was suggested that the Ministry should provide clear guidance on acceptable revenue streams.
- There is a desire for standardized and consistent budgeting practices; however, standardizing budget templates may add complexity and an administrative burden.
- There is support from some participants for the Minister to have authority and flexibility to expand natural resource conservation and management programs and services.
- Appropriate support and funding is required for any additional programs or services delegated to CAs.

Priority #1: Strengthening Oversight and Accountability

Overall key themes/issues:

- There is support for updating the CA Act to reflect modern legislative structures, specifically by adding a clear purpose statement and principles/objectives that the legislation is trying to achieve.
- When adding a purpose statement to the CA Act, it is important to find a balance and provide enough flexibility to accommodate the context-specific circumstances of each CA.
- There needs to be more training across all CAs to improve consistency in governance.
- If the province is going to direct additional CA programs and services, the necessary funding should be provided.
- Municipalities should not be able to remove themselves from a CA as this would have a large financial impact on a CA.
- Developing or updating criteria for establishing, amalgamating or dissolving a CA is necessary, however it might not have a place within the CA Act.

A. Updating the Act to reflect modern legislative structures and accountabilities

Participant feedback expressed support to:

- Update the CA Act to reflect modern legislative structures, specifically by adding a clear purpose statement and principles/objectives that the legislation is trying to achieve.
- Clearly define and communicate to the public the purpose of CAs.
- Define the roles and responsibilities of various parties.

Participant feedback highlighted the following considerations:

- It is important to find a balance and provide enough flexibility to accommodate the context-specific circumstances of each CA.
- Focus on articulating desired outcomes, rather than how to achieve them. This will provide guidance while also allowing some flexibility.
- Look to the model of Public Health Units for structuring the CA Act and regulations.
- Changes to the CA Act should be aligned with the Municipal Act.
- Modernize the CA Act so it is easier to update in the future (i.e., include certain aspects as regulation and policy rather than legislation so they can be adapted more frequently).
- Updates to the CA Act should include an improved appeal process for planning and permitting.

B. Adopting and/or aligning with governance best management practices

Participants expressed that there needs to be more training across all CAs to improve consistency in governance. It was noted that there needs to be clarity on how conflicts of interest among board members are addressed. Participants suggested that operational audits should be reinstated.

C. Enhancing provincial oversight

Participants expressed support to enhance provincial oversight if it results in more standardized operating practices for all CAs.

Participants raised the concern that if the province is going to direct additional CA programs and services, the necessary funding should be provided.

D. Enhancing municipal oversight

Participants emphasized that municipalities do not want to be the regulatory body for flooding and hazards; the CA model is best for this.

E. Developing or updating criteria for establishing, amalgamating or dissolving a CA

Participants expressed concern that municipalities should not be able to remove themselves from a CA as this would have a large financial impact on a CA and its ability to fulfill its roles. If a municipality were to be removed it would continue to receive benefits provided by a CA without having to provide funding.

Participant feedback highlighted the following considerations:

- Developing or updating criteria for establishing, amalgamating or dissolving a CA is less important. Having criteria is necessary, but this might not have a place within the CA Act.
- Consider a process to achieve minor CA boundary adjustments as some municipalities are located in two or more CAs.

Priority #2: Increasing Clarity and Consistency

Overall key themes/issues:

- There is support for clearly delineating between required programs and services (with appropriate funding sources) and those that are discretionary.
- Appropriate funding mechanisms are needed to support the required CA programs and services.
- The core mandate of CAs can fluctuate so it must be flexible with a focus on IWM.
- Clarify the hierarchy of various legislation, regulations, policies, and plans.
- It is important to update regulatory requirements and keep them current rather than create additional requirements.
- A solutions-based approach rather than a fine-based approach should be established to address compliance and enforcement issues.
- More collaborative decision-making should be implemented to improve the relationship with landowners regarding enforcement of regulations.
- There is support for establishing and encouraging streamlined and consistent planning and permitting processes among the different CAs.

A. Clearly delineating between mandatory and optional programs and services

Participants expressed support for clearly delineating between required programs and services (with appropriate funding sources) and those that are discretionary.

Participants raised the concern that appropriate funding mechanisms are needed to support the required programs and services.

Participant feedback highlighted the following considerations:

- Flood and hazard issues should be mandatory and everything else should be discretionary.
- Stronger collaboration needs to happen to support integrated watershed planning.

B. Establishing a Provincial Policy Directive

Participant feedback expressed support for providing some level of provincial policy direction.

Participant feedback raised the following concerns and/or issues:

- The position of the policy directive needs to be clear in terms of how it falls in the hierarchy of other provincial policy directives.

Participant feedback highlighted the following considerations:

- Consider developing agreements between CAs and the provincial government (similar to agreements with universities) to outline roles and responsibilities specific to each CA.

- The core mandate of CAs can fluctuate so it must be flexible with a focus on IWM.
- Policy directives should be outcome-based rather than prescriptive.

C. Providing clarity and consistency in conservation authorities' regulatory roles and responsibilities

Participant feedback expressed support to:

- Clarify the hierarchy of various legislation, regulations, policies, and plans.
- Clarify the roles and responsibilities of the various provincial ministries and stakeholders (e.g. municipalities, agencies, etc.).

Participant feedback raised the following concerns and/or issues:

- There is a need for watershed plans to have a formal status/authority and fit within the hierarchy of policy documents and link to municipal plans.
- Public perceptions of a CA's role are often unclear; CAs are seen as regulators more than conservation champions.

Participant feedback highlighted the following considerations:

- It is important to update regulatory requirements and keep them current rather than create additional requirements.
- Many CAs are not aware of the provincial resources and guidance tools available to them.
- Policy and procedure documents should be updated to clarify areas of jurisdiction, roles and responsibilities.
- There is support for creating consistency across CAs but if this cannot be achieved the rationale for inconsistency should be communicated.
- There is a need for greater clarity on who is responsible for the regulation of wetlands and natural heritage among municipalities, provincial agencies and CAs.

D. Enhancing compliance and enforcement of regulatory requirements

Participant feedback expressed support to:

- Modernize the regulatory compliance and enforcement approach.
- Increase clarity and transparency in compliance and enforcement processes.
- Provide CAs with the ability to issue stop work orders.

Participant feedback raised the following concerns and/or issues:

- CAs do not have the same abilities as municipalities to issue stop work orders.
- Fines are not high enough to deter some landowners from noncompliance with regulations.
- The cost of legal action against landowners is prohibitively expensive for CAs.
- Money collected from fines does not go directly back to CAs.

- There are sometimes perceived conflicts of interest between CA board members and landowners.
- There is a need to provide clarity on where the authority lies for planning and permitting.

Participant feedback highlighted the following considerations:

- Enforcement is currently complaint-based; there is a need for more proactive enforcement of regulations.
- A solution-based approach rather than a fine-based approach should be established to address compliance and enforcement issues.
- More collaborative decision-making should be implemented to improve the relationship with landowners regarding enforcement of regulations.
- Establish a mechanism for CAs to receive the money collected from fines.

E. Streamlining planning and permitting requirements and processes

Participant feedback expressed support to:

- Establish and encourage streamlined and consistent planning and permitting processes among the different CAs.
- Expedite the permitting process and reduce duplication in the review of applications.

Participant feedback highlighted the following considerations:

- Explore the use of different classes of approvals to expedite the permitting process (similar to the Class Environmental Assessment (EA) approach).
- Use collaborative multi-departmental/agency committees to review permits (similar to some drainage committees) rather than a linear process.
- Landowners see five levels of government regulation for their land (federal, provincial, regional, municipal and CA). There needs to be coordinated and streamlined “one-window” permit approval approach.
- The permitting process is currently set up for “getting to no”; it needs to be rethought as a process for “getting to yes”.
- Liaison committees should be considered as an effective tool for sharing knowledge with the public on completing permit applications.

Priority #3: Improving Collaboration and Engagement

Overall key themes/issues:

- Establishing a provincial "one-window" approach should be a top priority.
- CAs need more provincial assistance to undertake precise mapping; it is challenging to make good decisions with inaccurate and inconsistent data.
- Some CAs do not want Conservation Ontario to be an oversight body or have an oversight role. Conservation Ontario's current role is working well.
- Indigenous Peoples' participation should be at a watershed and strategic planning level rather than a project by project level, however there is not a clear path to achieve this.
- Develop a guidance document on public and stakeholder participation. Engagement should be considered as a guideline, rather than a regulation.
- It is important to employ a culture of collaboration with landowners. There needs to be more transparency, communication and sharing of information between CAs and landowners. In some areas landowners are not sure who to contact when they have questions/concerns.

A. Establishing a provincial "one-window" approach

Participant feedback expressed support to:

- Establish a provincial "one-window" approach as a top priority.
- Develop a single point of contact at the ministry level to exchange information and provide support/advice.
- Develop a "multi-ministry body" where inquiries are filtered through a group rather than one person. The committee should have representation from different ministries and CAs.

Participant feedback highlighted the following considerations:

- CAs need more provincial assistance to undertake precise mapping; it is challenging to make good decisions with inaccurate and inconsistent data.
- A "one-window" approach will facilitate more interaction between CAs and ministries.

B. Establishing a business relationship with Conservation Ontario

Participant feedback raised the following concerns and/or issues:

- Some CAs do not want Conservation Ontario to be an oversight body or have an oversight role. Conservation Ontario's current role is working well.
- No regulation role for Conservation Ontario is required.

Participant feedback highlighted the following considerations:

- Define 'business relationship' and consult with CAs on this.
- Look at the Association of Municipalities of Ontario (AMO) model for ideas on enhancing the relationship between CAs and Conservation Ontario.

C. Enhancing Indigenous Peoples' participation

Participant feedback raised the following concerns and/or issues:

- Indigenous Peoples' participation should be at a watershed and strategic planning level rather than a project by project level, however there is not a clear path to achieve this.

Participant feedback highlighted the following considerations:

- Indigenous Peoples' participation requires more discussion and direction from the province.
- CAs would like to see the province provide templates/best practices for agreements for engaging with Indigenous Peoples.

D. Enhancing public and stakeholder participation

Participant feedback expressed support to:

- Develop a guidance document on public and stakeholder participation. Engagement should be considered as a guideline, rather than a regulation.

Participant feedback highlighted the following considerations:

- Some CAs are already incorporating multiple opportunities for public and stakeholder participation, however funding and resources are limited.
- It is important to employ a culture of collaboration with landowners. There needs to be more transparency, communication and sharing of information between CAs and landowners. In some areas landowners are not sure who to contact when they have questions/concerns.
- There needs to be a standardized process in place that CAs must follow when entering a landowners' property including providing adequate notification.
- Ad hoc and advisory committees for CAs have been successful for enhancing stakeholder engagement.
- The Planning Act outlines mandatory public consultation policies, but they do not foster authentic and genuine engagement opportunities. This should not be repeated in the CA Act. The aim should be on leading genuine engagement that is reflective of modern engagement and communication mechanisms.

E. Supporting conservation authorities in sharing and coordinating resources

Participant feedback expressed support to:

- Encourage CAs to share data, science, and information.
- Explore the opportunity for certain CAs to be 'centers of excellence' for specific topic areas to reduce duplication of resources.
- Encourage CAs to work together to achieve administrative efficiencies, but do not prescribe it.

Participant feedback raised the following concerns and/or issues:

- Supporting CAs in sharing and coordinating resources is important, but language and liability need to be considered (e.g., risk management on sharing information).
- Each CA has a different way of sharing information (e.g., they don't all have an open-data policy).
- It will be challenging to share information and resources in an equitable manner. Perhaps the provincial and federal government should be providing resources to CAs.

Participant feedback highlighted the following considerations:

- There is a need to draw provincial and federal governments back into Great Lakes shoreline protection. Everyone needs to be involved.
- Consider shared target setting for CA Key Performance Indicators (KPIs) across larger eco-zones rather than a single CA.

Priority #4: Modernizing Funding Mechanisms

Overall key themes/issues:

- Increasing access to funding should be a top priority. Funding should be aligned with CAs' mandate.
- There is support for clarifying municipal levies. Apportionment of levies and the funding formula need to be enhanced, better defined and made consistent.
- Clarity around fees and how they can be used by a CA would be beneficial. It was suggested that the Ministry should provide clear guidance on acceptable revenue streams.
- There is a desire for standardized and consistent budgeting practices; however, standardizing budget templates may add complexity and an administrative burden.
- The timing of the release of transfer payments creates challenges for CAs (i.e. fiscal years are misaligned). A multi-year funding model would create greater efficiencies in administering programs.
- Multi-ministerial funding opportunities should be explored as well as federal funding opportunities to address the sustainable funding needs of CAs.

A. Enhancing clarity, consistency and accountability around municipal levies

Participants expressed support for clarifying municipal levies. It was noted that apportionment of levies and the funding formula need to be enhanced, better defined and made consistent.

Participant feedback raised the following concerns and/or issues:

- There is some discrepancy between the CA Act and Ontario Regulation 139/96 (Municipal Levies). The language needs to be clarified. This would help avoid lengthy appeal processes.

- Some member municipalities feel they don't have enough influence on the CA budget and that there is an imbalance of representation of municipalities on CA boards.
- The intent of the municipal levy has to be made clear. There is confusion regarding whether the levy is a tax or a collection of charges for the CA. If it is not a tax, municipalities should have more of a say with respect to its uses.

Participants emphasized that there is a desire for fairness and impartiality among small and large CAs; one size does not fit all. Population density and different sizes of CAs mean that a standard formula is likely not effective. There needs to be an equalization mechanism for municipal levies.

B. Promoting clarity, consistency and accountability around fees and generated revenue

Participants expressed that clarity around fees and how they can be used by a CA would be beneficial. It was suggested that the Ministry should provide clear guidance on acceptable revenue streams.

Participant feedback highlighted the following considerations:

- Ensure changes to the CA Act do not limit a CAs ability to raise funds.
- Some CAs need support in justifying user fees as the public does not usually understand how they are derived.

C. Improving fiscal oversight and transparency

Participants expressed that there are no major issues with fiscal oversight and transparency.

Participant feedback highlighted the following considerations:

- There is a desire for standardized and consistent budgeting practices; however, standardizing budget templates may add complexity and an administrative burden. Some municipalities currently ask for compliance with their own budget formats.
- There is concern that municipalities may ask to have too much involvement in budgeting by increasing municipal oversight through changes to the CA Act.

D. Improving clarity in the use of provincial funding processes

Participants raised the following concerns and/or issues:

- The timing of the release of transfer payments creates challenges for CAs (i.e. fiscal years are misaligned). A multi-year funding model would create greater efficiencies in administering programs.
- The transfer payment should be indexed to the rate of inflation. Municipalities are currently making up the difference for inflation increases.
- CAs should be eligible for Trillium funds and development charges.

Participant feedback highlighted the following considerations:

- Increasing access to funding should be a top priority. Funding should be aligned with a CAs mandate.
- Multi-ministerial funding opportunities should be explored as well as federal funding opportunities to address the sustainable funding needs of CAs.
- Without secure and stable funding there is an inability to plan for the future.
- New legislation that impacts CAs (e.g., Accessibility for Ontarians with Disabilities Act, Health and Safety legislation) is increasing costs for CAs but budgets are not increasing to reflect this.

Priority #5: Enhancing Flexibility for the Province

Overall key themes/issues:

- There is support from some participants for the Minister to have authority and flexibility to expand resource conservation and management programs and services.
- Appropriate support and funding is required for any additional programs or services delegated to CAs.
- External partners need to have the right expertise and capacity to deliver natural resource conservation and management programs and services. Appropriate oversight and transparency is required for any external partner activities.

A. Giving the Minister the authority to use the Act to develop additional natural resource conservation and management programs and services in the future

Participant feedback expressed support for giving authority to the Minister to develop additional natural resource conservation and management programs and services. It was noted that duplication of efforts should be avoided.

B. Giving the Minister the authority to formally delegate the delivery of current and additional natural resource conservation and management programs and services to conservation authorities in the future

Participants emphasized that additional programs and services delegated to CAs must be accompanied by appropriate funding. There was a general feeling that delegation is already happening but there is a need to better define the scope of what/when/how delegation can occur.

C. Giving the Minister the authority to formally delegate the delivery of current and additional natural resource conservation and management programs and services to other public bodies, not-for-profit organizations, municipalities and other Ministries

Participants expressed support for enhancing natural resource conservation and management in areas not currently within the jurisdiction of a CA.

Participant feedback highlighted the following considerations:

- External partners need to have the right expertise and capacity to deliver natural resource conservation and management programs and services.
- Appropriate support and oversight of external partners is needed if they are delegated to deliver programs and services.
- Appropriate accountability and transparency measures must be in place.
- CAs should be considered before external partners in the delivery of additional programs and services since the framework is already in place.

D. Giving the Minister the authority to deliver additional natural resource conservation and management programs and services throughout the province

Participants noted the importance of avoiding any duplication of services or programs already in place.

Other Actions to Consider

Overall key themes/issues:

- It is important to reduce the administrative burden associated with obtaining approval of board per diems. Existing best practices should be applied as an alternative to requiring OMB approval for per diems.
- There is support for aligning board terms with the municipal elections cycle, while still maintaining flexibility for individual CAs.
- Orientation and training should be developed for board members with acknowledgement of local differences in each CA.
- CAs should be encouraged to share code of conduct documents and tools to support board member training.

A. Reducing administrative burdens associated with appointing and replacing board members and obtaining approval of board per diems.

Participants expressed that it is important to reduce the administrative burden associated with obtaining approval of board per diems. It was suggested that existing best practices be applied as an alternative to requiring OMB approval for per diems.

B. Aligning board terms with the municipal elections cycle.

Participants expressed support for aligning board terms with the municipal elections cycle, while still maintaining flexibility for individual CAs to determine term length.

C. Developing an orientation and training program for board members.

Participants expressed support for developing an orientation and training program for board members. Many CAs already undertake new board member training. It was suggested that CAs share code of conduct documents and tools to increase the level of board member competence. It was noted that training should also acknowledge the local differences in each CA.

D. Developing a coordinated communications plan outlining any changes to conservation authority operations, programs and services resulting from the review in partnership with municipalities and conservation authorities

Participants expressed support for a coordinated communications plan; however questions were raised regarding who would be responsible for this and whether it is a potential role for Conservation Ontario.

Additional Comments

Additional comments provided by participants include:

- A multi-stakeholder CA commission that reports to the Minister should be established. It could act as a review and guidance body and ongoing communication channel between CAs and the MNRF.
- Education and training should be provided to the courts/legal system to provide a stronger foundation of knowledge when addressing appeals to planning and permitting in the CA Act.
- Regarding composition of the CA board, it was suggested that it is unfair to grant additional seats to double-tier municipalities. There is a need for more consistency among all CAs. It was also noted that the ideal board composition is a mixture of individuals engaged in governance (e.g., municipal councillors) and those who are experts in the field (e.g., engineers, environmental groups, etc.).
- It was suggested that an agriculture expert be employed by the CA so landowners can reach out to discuss agriculture-related questions/concerns.
- Participants discussed the idea of listing CA levies separately on property tax bills to draw the connection that it is a levy on the homeowner.
- There was support for maintaining biophysical boundaries for CAs rather than municipal/political boundaries.

Appendix A – Questions of Clarification

The following topics and themes were discussed after the overview presentation:

Q. What is the timeline for amending the CA Act?
A. That is up to the government. Our plan is to report back on the feedback that we receive from these sessions and the Environmental Registry to the Minister and Cabinet in the fall 2016. Based on what they hear, they will make decisions about whether legislative changes will move forward and where it will fit on the legislative agenda.

Q. Should we try to involve our MPP in the proposed changes?
A. If you have concerns locally that you feel that your MPP should be made aware of, you can copy them on you correspondence with us. Your MPP would welcome talking to you about it.

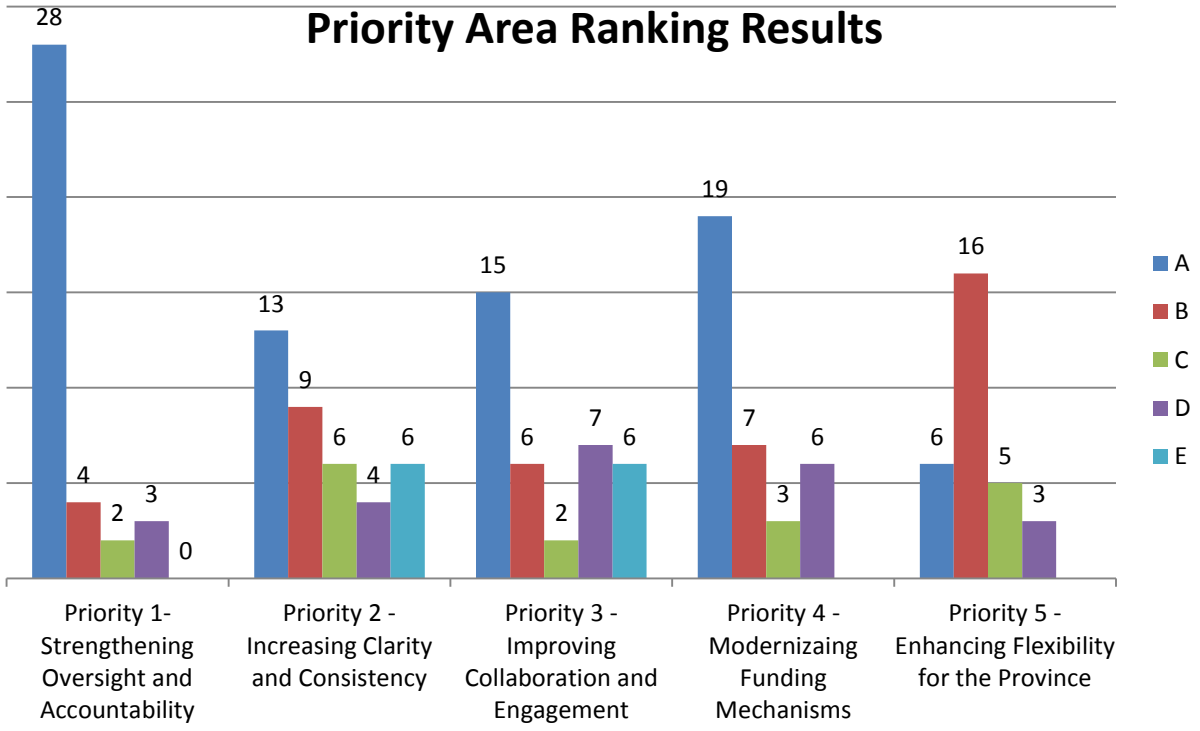
Q. With the introduction of the provincial Climate Change Action Plan, will this slow down the process to update the CA Act? How does that plan fit in?
A. There are so many different pieces that are ongoing and that fit together. There is work being done on the four land use plans, the Aggregate Resources Act, and climate change. The government has a broad and aggressive agenda. Because of that, we are having a lot of inter-ministerial discussion about the various reviews that are ongoing and how we can coordinate.

Q. Once the legislative changes are proposed, do you anticipate it going to Committee?
A. That is a decision that is made by the government and Cabinet.

Q. Every ministry or group has a Provincial Policy Statement on what the province wants them to do and a lot of them are conflicting. Which one has as higher priority? As a private landowner, how do we know what takes precedent? It is not clear.
A. That is common feedback we have heard. The Drummond Report released a few years ago highlighted this overlap and confusion between provincial/municipal/CA roles and responsibilities in permitting. We will talk about that today. We would like your thoughts on how to streamline it and where those issues exist. We also encourage you to submit your comments to the Environmental Registry so it can be received formally in writing.

Appendix B – Ranking Results

At the end of the session participants were asked to choose the most important potential action under each priority area. The results of this optional exercise are presented in the graph below. Note that some attendees did not participate in the ranking because they felt the potential actions do not reflect the fundamental issues affecting CAs. The results represent the number of attendees that chose to respond and do not represent a statistically significant sample. Thirty-seven (37) completed forms were received. The potential actions under each priority area are represented by the letters A to E in the graph below.



Additional comments

- Collaborate with other ministries to prevent overlap and accelerate the process to update the CA Act.
- Provide clear direction on IWM as the prime focus for CAs.
- Add a separate CA levy line on property tax bills.
- Developing an inter-ministerial committee should be a priority.
- Any of the actions to enhance flexibility for the province should come with financial support if mandated.

- Focus should be on clearly identifying roles and providing appropriate funding levels.
- Any delegation of new responsibility requires funding resources.
- Prioritize a “one-window” approach for direction on legislation/regulation at the CA level (e.g., Department of Fisheries and Oceans Agreements) to reduce duplication and maintain a strong local watershed perspective.
- Clarify the role of board members as representing the watershed, not the municipality.
- Promote/incent/encourage CA partnerships where capacity is needed.
- Reduce administrative burdens experienced by CAs in the delivery of programs and services.
- Move CA oversight to the Ministry of Environment and Climate Change.
- Remove planning and permitting from CA programs. Improve the appeal process if planning is to remain under CA jurisdiction and make it consistent with the Planning Act.

This summary of participant feedback has been prepared by Lura Consulting and Planning Solutions Inc. to provide the Ministry of Natural Resources and Forestry with the recurring themes and priorities raised by participants during the Newmarket session of the Conservation Authorities Act Review, Phase II. The feedback from each individual session will be used to compile a final engagement session report.

Introduction

The Ministry of Natural Resources and Forestry (MNRF) is undertaking a phased review of the Conservation Authorities Act. The intent of the review is to identify opportunities to improve the legislative, regulatory and policy framework that currently governs the creation, operation and activities of conservation authorities (CAs). In Phase I of the review, completed in 2015, MNRF led an extensive consultation process to engage stakeholders in a discussion about opportunities to improve the Conservation Authorities Act, which resulted in extensive feedback.

Based on the input received in Phase I of the review, MNRF has released the document, *Conserving Our Future: Proposed Priorities for Renewal*, that outlines a series of actions that could be taken under five proposed priority areas for improvement: (1) Strengthening Oversight and Accountability, (2) Increasing Clarity and Consistency, (3) Improving Collaboration and Engagement, (4) Modernizing Funding Mechanisms, and (5) Enhancing Flexibility for the Province. In June 2015, MNRF led a second round of consultations with a diversity of stakeholders to obtain input on the potential actions outlined within the five priority areas.

On June 13, 2016, the MNRF hosted a full-day workshop in Newmarket, Holiday Inn Express & Suites Newmarket as part of the Phase II consultation program. The purpose of the workshop was to provide an overview of the five priority areas for improving the Conservation Authorities Act. The workshop consisted of an overview plenary presentation with time for questions of clarification, followed by three rounds of facilitated small group discussions. The facilitated discussions were designed to encourage dialogue and obtain feedback on the five (5) priority areas for improving the Conservation Authorities Act.

A total of 59 individuals participated in the workshop, including participants from the following organizations:

- AWARE Simcoe
- Blue Mountain Watershed Trust
- Building Industry and Land Development Association
- Central Lake Ontario CA
- Christian Farmers Federation of Ontario
- Conservation Ontario
- County of Simcoe
- Credit Valley CA
- Dillon Consulting Limited
- Ducks Unlimited Canada
- Friends of the Rouge Watershed

- Ganaraska Region CA
- Green Durham Association
- Halton Region CA
- Kawartha Region CA
- Lake Erie North Shore Landowners Association
- Lake Simcoe Region CA
- Mattamy Corporation
- Member of the Public
- Midhurst Ratepayers Association
- MMM Group Limited
- Niagara Peninsula CA
- Nottawasaga Valley CA
- Ontario Federation of Agriculture
- Ontario Federation of Anglers and Hunters
- Ontario Home Builders Association
- Ontario Stone, Sand and Gravel Association
- Peterborough County
- Region of Peel
- Regional Municipality of Durham
- Simcoe County Federation of Agriculture
- Toronto and Region CA
- Town of Bradford West Gwillimbury
- Town of Springwater
- Waterfront Toronto

This report presents a summary of the comments and suggestions provided by participants during the workshop, and received during the two-week comment period after the session.

Summary of Participant Feedback

The summary of participant feedback is organized according to the five priority areas: (1) Strengthening Oversight and Accountability, (2) Increasing Clarify and Consistency, (3) Improving Collaboration and Engagement, (4) Modernizing Funding Mechanisms and (5) Enhancing Flexibility for the Province. Each priority area contains a synopsis of the overall key themes and issues as well as specific feedback received through plenary discussions (see Appendix A) and completed discussion guides relating to each discussion question.

The following points highlight the recurring comments, concerns and/or advice which emerged from the Newmarket session.

- Concern that the potential actions do not reflect the fundamental issues affecting CAs.
- Concern that the review focuses on processes and procedures instead of protecting and enhancing the natural environment.
- Increase and diversify provincial funding to CAs to support the implementation of conservation programs and services (e.g., access to funds generated through the provincial cap and trade system).
- Reinstate the provincial partnership; this is a critical component that is missing from the collaborative model that was envisioned for CAs.

- Establish a multi-ministerial body to promote dialogue and collaborative decision-making regarding CA roles and responsibilities.
- Consider an evolving provincial role that could see Provincial Resource Managers (under the leadership of MNRF) act as information coordinators and process conveners.
- Add a purpose statement to the Act that includes Integrated Watershed Management (IWM) as this is the tool and the basis for collaboration, partnership and engagement of all stakeholder and government interest.
- Consider legislative changes that focus on positive approaches (e.g., relationship building, collaboration, IWM) to improve conservation efforts instead of increasing oversight.
- Recognize that CAs are inherently unique. Local conditions and circumstances influence programs and services; legislative changes must recognize the need for continued local autonomy (i.e., flexibility).
- Establish a third-party process or mechanism to resolve disputes with CAs (e.g., Ontario Municipal Board, appeal mechanism, penalties).
- Update and expand the tools available to support compliance and enforcement of regulatory requirements (e.g., stop work orders).
- Provide provincial support to navigate legal proceedings (e.g., funding, guidance).
- Establish a mechanism for CAs to capture funds from compliance and enforcement activities (e.g., penalties, legal processes).
- Consider non-legislative approaches to streamline planning and permitting requirements and processes (e.g., pre-consultation meetings and/or checklists, collaborating with municipalities, updating guidance documents).
- Establish a provincial “one-window”, with clear expectations for provincial, municipal and CA roles and responsibilities.
- Increase funding to Conservation Ontario (CO) to enhance capacity, consistency and transparency through leadership.
- Consider the provision of orientation and training by CO, with assistances from CAs.
- Promote two-way dialogue with a broad spectrum of stakeholders, particularly landowners and farmers, through a variety of mechanisms (e.g., committees, online participation).
- Build on existing communication and public education strategies to increase clarity, consistency and transparency.
- Consider mandatory requirements for public meetings (comparable to provisions under the Planning Act).
- Consider a funding formula to equalize funding between CAs (based on population, programming, species at risk, watershed characteristics, etc.) paid by the province.
- Promote the establishment of fees through a collaborative process to ensure they are clear and predictable.
- Address gaps in the potential actions identified by participants (e.g., actions to enhance land securement).

- Learn from other reviews that have been completed in the past and have been carried out across other jurisdictions (e.g., Coordinated Review).

Priority #1: Strengthening Oversight and Accountability

Overall key themes/issues:

- Concern that the potential actions do not reflect the fundamental issues affecting CAs; the review should focus on collaboration and partnership and advancing a healthy watershed.
- Add a purpose statement to the Act that includes integrated watershed management as the overall approach to conservation.
- Establish a multi-ministerial body to promote dialogue and collaborative decision-making.
- Consider legislative changes that focus on positive approaches (e.g., relationship building, collaboration, integrated watershed management) to improve conservation efforts (instead of increasing oversight).
- Find a balance between prescriptive policies and maintaining flexibility for CAs.
- Establish a third-party process or mechanism to resolve disputes with CAs (e.g., Ontario Municipal Board, appeal mechanism, penalties).
- Reinstate MNRF representation on CA Boards.
- Consider mandatory review periods for municipality/CA MOUs and Service Level Agreements (e.g., every five years).

A. Updating the Act to reflect modern legislative structures and accountabilities

Participants expressed support to update the vision of the Act.

Participant feedback raised the following concerns and/or issues:

- Concern that consultations on potential policy changes are not being undertaken consistently by the Ministry of Natural Resources and Forestry (MNRF).
- Concern that there are no clear objectives or outcomes that the review is trying to address (e.g., a healthy watershed).

Participant feedback highlighted the following considerations:

- Define the purpose and mandate of the Act in the legislation (i.e., form follows function).
- Add a purpose statement to the Act that:
    - Includes integrated watershed management (IWM) as the overall approach to conservation;
    - Includes a vision, mission, and values for CAs that can be updated on a regular basis.
- Include a purpose statement in the legislation or in the Provincial Policy Statement (PPS); the PPS must indicate that it is mandatory for CAs to develop watershed and subwatershed plans.

- Focus legislative changes on positive approaches (e.g., relationship building) rather than oversight.
- Ensure flexibility within the legislation as priorities vary across the region and will change over time (e.g., climate change considerations).
- Ensure policies are prescriptive (to improve clarity) and flexible to address the diverse qualities and circumstances of CAs throughout the province.
- Find a balance between prescriptive policies and maintaining flexibility for CAs; avoid creating or exacerbating inconsistencies.
- Consider including best practices from other statutes (e.g., Not-For-Profit Corporations Act) in the legislation to increase transparency.
- Update provincial policies and technical guidelines to ensure they reflect the current suite of issues facing CAs.
- Update and revise legislative requirements for watershed and subwatershed planning, using the approach that was in place when CAs submitted watershed plans to the province for review and approval (and funding).
- Reinstate compulsory integrated watershed planning and subwatershed planning; the model worked and was highly effective.

B. Adopting and/or aligning with governance best management practices

Participant feedback highlighted the following considerations:

- Note that the existing governance model is working well; many CAs comply with codes of conduct or provide board member orientation.
- Establish an inter-ministerial body to promote dialogue and collaborative decision-making; funding should be tied to the provincial mandate; the Fish and Wildlife Commission was offered as a suggestion.
- Enhance CA collaboration and governance; there is a need to improve relationship building rather than changing the governance structure.
- Note that CA boards are following best management practices; this does not need to be included in the legislation.
- Consider formal agreements with sectoral groups (e.g., MOUs with agricultural community; MOUs with development community, etc.) to formalize the approach on a watershed basis and ensure that those working with CAs promote the collaborative partnership model. This should be an enabling provision and not a prescriptive provision to allow for local flexibility.

C. Enhancing provincial oversight

Participants expressed support to enhance provincial oversight; however it was noted that CA autonomy is also important.

Participant feedback raised the following concerns and/or issues:

- Concern that CAs are not accountable to any organization/the public.
- Concern that more programs and services will be delegated to CAs without funding through increased provincial oversight.
- Concern that CAs have lost a partner at the provincial level.

Participant feedback highlighted the following considerations:

- Note that there is already accountability and oversight at the provincial level.
- Broaden the provincial oversight model to a multi-ministerial approach with dedicated funding.
- Establish a third-party process or mechanism to address public concerns and ensure CAs are accountable to their legislated roles and responsibilities (e.g., Ontario Municipal Board, appeal mechanism, penalties); while there is currently an appeal process of a CA decision/lack of decision to the Mining and Lands Commissioner, there are no formal mechanisms to appeal any matter that is unrelated to a board decision (e.g., disclosure of information).
- Consider retaining a third-party consultant to review each CA to identify what is working well and where there is room for improvement.
- Consider an "accreditation" process to assesses CA operations and provide advice on an annual basis, serving a peer-review, assistance-based function.
- Enhance provincial coordination of CA programs and services to enhance consistency (leadership rather than oversight).
- Reinstate MNRF representation on CA boards to improve consistency in governance.
- Focus on relationship building between CAs, municipal and provincial partners and watershed stakeholders.
- Move away from organizational silos.
- Strengthen the research efforts at MNRF to provide CAs with better policy direction.
- Consider a role for MNRF to serve as a resource manager at the province, playing a stronger liaison role with other ministries and agencies.
- Ensure CA partners (e.g., non-profit organizations) are given the opportunity to comment on any proposed changes related to this potential action that would affect their operations (e.g., CA approvals).

D. Enhancing municipal oversight

Participants expressed support to enhance local decision-making; accountability should be at the local level.

Participant feedback highlighted the following considerations:

- Note that there is already accountability and oversight at the municipal level.
- Consider mandatory review periods for municipality/CA MOUs and Service Level Agreements (e.g., every five years); this would ensure that MOUs and Service Level Agreements remain current.

E. Developing or updating criteria for establishing, enlarging, amalgamating or dissolving a CA

Participants raised concerns about municipalities within a watershed opting out of a CA; there needs to be holistic management of natural resources on a watershed scale.

Priority #2: Increasing Clarity and Consistency

Overall key themes/issues:

- Add IWM to the Act to help increase clarity and consistency.
- Clarify CA roles and responsibilities (including non-regulatory expectations).
- Ensure CAs have access to the tools and resources (e.g., funding, maps, and communication materials) required to implement the consistent delivery of programs and services.
- Clarify the roles of various ministries (e.g., Ministry of Natural Resources and Forestry, Ministry of Environment and Climate Change).
- Build on communication and public education strategies to increase clarity, consistency and transparency.
- Update and expand the tools available to support compliance and enforcement of regulatory requirements (e.g., stop work orders).
- Provide provincial support for legal proceedings (e.g., funding, guidance).
- Consider non-legislative approaches to streamline planning and permitting requirements and processes (e.g., pre-consultation meetings and/or checklists, collaborating with municipalities, updating guidance documents).

A. Clearly delineating between mandatory and optional programs and services

Participant feedback highlighted the following considerations:

- Provide sustainable funding for mandated programs and services.
- Provide provincial direction for funding (instead of delineating between mandatory and optional programs and services).

Participants noted that there are trade-offs to clearly delineating between mandatory and optional programs and services (e.g., increasing clarity/reducing flexibility).

B. Establishing a Provincial Policy Directive

Participant feedback expressed support to:

- Establish a provincial policy directive to identify and define CA roles and responsibilities that is current and up to date.
- Establish a provincial policy directive that has a purpose and is tied to outcomes.
- Establish a harmonized policy framework (that aligns with other provincial legislation).

Participant feedback highlighted the following considerations:

- Use integrated watershed management (IWM) as an approach to recognize the multiples roles and responsibilities CAs undertake.
- Develop a policy "roadmap" to delineate which policies CAs must adhere to (e.g., what's in/what's out).
- Retain flexibility, but provide enough direction in the provincial policy directive to facilitate compliance.

C. Providing clarity and consistency in CA's regulatory roles and responsibilities

Participant feedback expressed support to:

- Enhance the clarity and consistency of CA roles and responsibilities (this is beneficial from a staffing/resourcing perspective).
- Provide clarification of key terms (e.g. conservation of land, wetland).
- Ensure nomenclature is aligned across different statutes (e.g. natural heritage, natural resources, etc.).

Participant feedback raised the following concerns and/or issues:

- Concern that some CAs do not have staff with the requisite skills (e.g., engineers) to review permit applications.
- Recognize that some CAs do not have the capacity (e.g., resources such as qualified staff, mapping tools, funding, etc.) to deliver programs and services consistently; more funding is needed to address this issue.
- Concern that CAs address landowner concerns inconsistently.
- Concern that CA Act regulations are implemented inconsistently by CA boards (e.g., s. 28 regulations pertaining to certain categories of wetlands).

Participant feedback highlighted the following considerations:

- Add IWM to the legislation to help increase clarity and consistency (and identify linkages to other legislation with corresponding policies).
- Emphasize that the core focus of CAs should be watershed planning.
- Note that clarity and consistency are two different issues:
    - There is a need to clarify CA roles and responsibilities (including non-regulatory expectations); and
    - There is a need to ensure the consistent delivery of programs and services across the CA landscape; this is well defined in the Conservation Authority Liaison Committee (CALC) Report.
- Ensure CAs staff have access to the tools and resources (e.g., funding, maps, and communication materials) required to implement policy objectives consistently; it was noted that municipal staff also need clarity and tools to support CAs.

- Establish rules/procedures to ensure programs and services are delivered consistently in areas where there is no CA (i.e., by MNRF or another body).
- Clarify the roles of various ministries (e.g., Ministry of Natural Resources and Forestry, Ministry of Environment and Climate Change) as they relate to supporting CAs regulatory roles and responsibilities.
- Suggest sharing and coordinating resources between MNRF and CAs to overcome resource limitations.
- Note that communication and public education are important "soft tools" that can help improve clarity, consistency and transparency (in terms of CA roles and responsibilities).
- Provide training for CA staff.
- Note that the programs and services delivered by CAs are based on the needs of their respective watersheds.
- Consider the need to increase transparency; freedom to access MOUs was suggested as an option.
- Recognize that CAs are the conduit to the province, municipality and landowners.
- Provide provincial leadership and funding.
- Learn from the original establishment of the Conservation Authorities Act developed for planning at the watershed level.

D. Enhancing compliance and enforcement

Participants expressed support to enhance compliance and enforcement.

Participant feedback raised the following concerns and/or issues:

- Concern that there is no process to address conflicts of interest (i.e., ensure CAs are accountable and transparent).
- Concern that legal proceedings are costly and time consuming, negatively impacting limited CA resources.
- Concern that too much flexibility makes compliance and enforcement a challenge.
- Concern about inconsistent CA board decisions.

Participant feedback highlighted the following considerations:

- Update and expand the tools available to support compliance and enforcement of regulatory requirements (e.g., stop work orders).
- Clarify which tools will be updated.
- Provide provincial support for legal proceedings (e.g., funding, guidance).
- Establish a mechanism to recover legal costs.
- Update fines to ensure they correspond to the environmental impact incurred.
- Ensure that municipalities comply with legislation designed to protect watersheds (e.g., Lake Simcoe Protection Act).

- Ensure individuals adjudicating legal proceedings understand the CA Act.
- Establish linkages between Acts that promote Integrated Watershed Management to enhance consistency and facilitate compliance.

E. Streamlining planning and permitting requirements and processes

Participant feedback expressed support to:

- Streamline planning and permitting requirements and processes to increase clarity and predictability for end-users (e.g., landowners, developers, non-profit partner organizations).
- Increase consistency on rules of engagement, performance standards and timelines (aligned with the Planning Act).

Participant feedback highlighted the following considerations:

- Consider pre-consultation meetings and/or checklists; these have worked well in municipal planning processes.
- Collaborate with municipalities to identify what constitutes a complete application.
- Establish universal timelines for permit reviews with municipalities.
- Update guidance documents to help streamline processes (e.g., flood line mapping).
- Update administrative processes and procedures to improve CA efficiencies.
- Promote the management of natural resources on a watershed basis; this requires collaboration and partnerships between the province, municipalities and CAs with input from the public and stakeholders.
- Consider a triage approach for fast tracking urgent applications (e.g., emergency works).

Priority #3: Improving Collaboration and Engagement

Overall key themes/issues:

- Concern that the potential actions in this priority area do not reflect the fundamental issues affecting CAs.
- Support to establish a “one-window”, with clear expectations for provincial, municipal and CA roles and responsibilities.
- Support Conservation Ontario’s efforts to provide more strategic and policy direction, with dedicated funding.
- Provide more guidance and resources (e.g., funding) to CAs to enhance First Nations engagement in CA processes.
- Include IWM in the Act to as an approach to promote partnerships and relationship building (i.e., consultation should be included in the development of integrated watershed plans).
- Promote two-way dialogue with a broad spectrum of stakeholders, particularly landowners and farmers, through a variety of mechanisms (e.g., committees, online participation).
- Provide funding to support collaboration and engagement.

A. Establishing a provincial "one-window"

Participants expressed support to enhance communication and coordination with the province and CAs.

Participant feedback raised the following concerns and/or issues:

- Concern about the effectiveness of a "one-window" approach; there is a need to clarify roles and responsibilities at each legislative/planning layer to ensure the approach streamlines the current planning and approvals process.
- Concern about "silos" at the provincial level and the need for multi-ministry alignment and integration.

Participant feedback highlighted the following considerations:

- Bring provincial ministries together to address challenges facing the development community regarding permitting issues.
- Require MOUs to ensure the "one-window" approach is clear to all parties involved.

B. Establishing a business relationship with Conservation Ontario

Participants expressed support for Conservation Ontario (CO), with dedicated provincial funding, to provide strategic direction and planning policy coordination. CO could provide a coordinated service on behalf of the province, tied to CA MOUs. CO could also provide more comprehensive training for conservation authorities.

Participants (some) raised concerns that there is no oversight of Conservation Ontario.

C. Enhancing Indigenous Peoples' participation

Participant feedback raised the following concerns and/or issues:

- Concern that there is a lack of funding provided to CAs to conduct engagement with Indigenous Peoples.
- Concern that there are challenges in engaging Indigenous Peoples (no examples were provided), requiring a more thoughtful process.
- Do not legislate the duty to consult with Indigenous Peoples to municipalities or CAs. There is a unique process and timeframe required; First Nations groups have different needs and preferences for participation.

Participant feedback highlighted the following considerations:

- Create opportunities for Indigenous Peoples to serve on CA boards; this is welcomed by CAs.
- Note that First Nations advisory committees are working well in some areas.
- Provide guidance on how to engage Indigenous Peoples.

D. Enhancing public and stakeholder participation

Participant feedback expressed support to:

- Increase stakeholder representation in CA decision-making processes (specifically the agricultural sector).
- Establish agriculture advisory committees for CAs.

Participant feedback raised the following concerns and/or issues:

- Concern that meaningful engagement with landowners is not taking place consistently across the province.
- Concern that there is a lack of appreciation of agricultural goods and services provided by farmers.
- Note that farmers are experiencing engagement fatigue.
- Concern that there is no mention of IWM; it is a critically important approach and tool to promote partnerships and relationship building.
- Enhance two-way dialogue with stakeholders (e.g., instead of education).

Participant feedback highlighted the following considerations:

- Include engagement activities in process improvements and guidelines, not in the Act.
- Ensure a broad spectrum of stakeholders (e.g., landowners, farmers) is represented/consulted in CA decision-making processes.
- Consider a mechanism to address complaints regarding CAs.
- Inform CA board decisions through proactive discussions with multiple stakeholders; this will improve transparency.
- Note that the development of integrated watershed plans should include consultation as part of the process to identify priorities.
- Consider mandatory requirements for public meetings if there are changes that impact landowners.
- Improve relationship building through ancillary means (e.g., engagement and information sharing can be made more effective by using technology to live-stream meetings, etc.)
- It is important that landowners are informed of significant natural features (e.g., wetlands) located on their properties.
- Consider a Conservation Authority Liaison Committee to improve harmonization.

E. Supporting CAs in sharing and coordinating resources

Participant feedback highlighted the following considerations:

- Consider the need for additional funding to support collaboration and engagement (e.g., staff, financial resources).

- Note that many CAs already share best management practices and resources; there is no need to set prescriptive guidance.
- Promote partnerships and relationship building between CAs, municipalities and the province.
- Promote service level agreements between CAs and municipalities to coordinate the sharing of resources.
- Strengthen partnerships with non-profit organizations.

Priority #4: Modernizing Funding Mechanisms

Overall key themes/issues:

- Increase and diversify provincial funding to CAs to support the implementation of conservation programs and services (e.g., provincial cap and trade system).
- Concern that the present funding model creates a conflict of interest between CAs and municipalities.
- Consider a funding formula to equalize funding between CAs (based on population, programming, species at risk, watershed characteristics, etc.) paid by the province.
- Include levies for CA programs and services as a separate line item on municipal tax bills.
- Promote the establishment of fees through a collaborative process to ensure they are clear and predictable.
- Establish a mechanism to mediate disputes regarding fees (e.g., appeal to a third-party such as the OMB).
- Establish a mechanism for CAs to capture funds from compliance and enforcement activities (e.g., penalties, legal processes).
- Increase funding to CO to enhance capacity, consistency and transparency.

A. Enhancing clarity, consistency and accountability around municipal levies

Participant feedback raised the following concerns and/or issues:

- Concern that the present funding model creates a conflict of interest between CAs and municipalities (and limits opportunities for CAs to disagree with municipalities); the province should provide funding.
- Concern about the varying ability of different municipalities, particularly smaller or rural municipalities, to provide funding and the impact to CA programs and services.
- Concern that the varying levels of financial resources available to CAs throughout the province contributes to inconsistent program delivery and implementation of CA Act regulations.

Participant feedback highlighted the following considerations:

- Note that some CAs have good relationships with the municipalities in their watersheds; there is no need to include prescriptive language regarding this potential action.
- Provide direction to encourage CA and municipal collaboration (where it is needed).

- Consider a funding formula to equalize funding between CAs (based on population, programming, species at risk, watershed characteristics, etc.) paid by the province.
- Include levies for CA programs and services as a separate line item on municipal tax bills (e.g., comparable to water rates).
- Do not define eligibility criteria for municipal levies within the Act.
- Establish a working group with the Association of Municipalities of Ontario (AMO) regarding funding; the current budgeting process is not adequate.
- Consider the other models for funding to address the disparity of CA resources (e.g., Ontario Municipal Partnership Fund).

B. Promoting clarity, consistency and accountability around fees and generated revenue

Participants expressed support to enhance accountability around fees and generated revenue (e.g., report on how/where funds used).

Participants raised concerns about the exclusion of other revenue generating mechanisms in the proposed actions; existing mechanisms to generate revenue (e.g., the delivery of recreational programs and services) should be maintained, and new ones considered.

Participant feedback highlighted the following considerations:

- Undertake an evidence-based review of fees (e.g., similar to the study completed on development charges).
- Consider the need to standardize fees; CO could facilitate this, but would require financial support from the province.
- Promote collaborative fee setting but recognize that there are many CAs who already do this.
- Encourage regular communication and collaboration on fees (e.g., liaison committee, bi-annual meetings with stakeholders).
- Ensure the fee structure is clear and predictable.
- Educate stakeholders to convey that fees vary for multiple reasons (e.g., reflect internal capacity and capabilities, complexity, etc.).
- Establish a minimum standard of service delivery for CAs; some flexibility is needed to recognize the capabilities of different CAs.
- Establish a mechanism to mediate disputes regarding fees (e.g., appeal to a third-party such as the OMB).
- Ensure the language regarding fees in the Act is defensible.
- Establish a mechanism for CAs to capture funds from compliance and enforcement activities (e.g., penalties, legal processes).
- Consider the opportunity for CAs to release conservation land with marginal natural heritage benefits for other uses; the resources spent to maintain these lands could be re-deployed elsewhere.

C. Improving fiscal oversight and transparency

Participants are concerned that CA roles and responsibilities are expanding without a parallel increase in funding.

Participant feedback highlighted the following considerations:

- Ensure funding is tied to programs and services to enhance accountability.
- Provide funding through CO to enhance capacity, consistency and transparency.
- Provide support to publicly share financial statements.
- Note that CAs support the need to be fiscally accountable, however staff time should not be scrutinized.
- Consider increasing the percentage of funding allocated for administrative responsibilities (e.g., grant writing, financial reporting, etc.); a considerable amount of staff time is spent on these duties.

D. Improving clarity in the use of provincial funding processes

Participant feedback raised the following concerns and/or issues:

- Concern about the historical decrease of provincial funding.
- Concern about the requirement to reapply for certain grants annually; this is an administrative burden for many CAs.

Participant feedback highlighted the following considerations:

- Increase and diversify provincial funding to CAs to support the implementation of conservation programs and services (e.g., provincial cap and trade system).
- Increase provincial funding to support CO policy development and leadership.
- Facilitate access to federal funding for water management (e.g., Building Canada Fund).
- Link the natural heritage system to green infrastructure to access new funding streams.
- Establish eligibility criteria for Ontario Trillium grants.
- Restrict CA access to Ontario Trillium grants; they are a critical source of funding for non-profit organizations.
- Note that municipalities do not fund CAs, they levy on behalf of the province.
- Partner with post-secondary institutions to explore alternative funding mechanisms.
- Consider a mechanism for CAs to negotiate natural heritage benefits through new development (e.g., new access roads, riparian improvements, etc.).

Priority #5: Enhancing Flexibility for the Province

Overall key themes/issues:

- Supportive of developing or delegating additional programs and services to CAs as long they are appropriately funded.
- Include IWM as an approach to conservation in the Act to provide ongoing flexibility.
- Establish a multi-ministerial body to delegate programs and services to CAs or other bodies through a collaborative decision-making process.

A. Giving the Minister the authority to use the Act to develop additional natural resource conservation and management programs and services in the future throughout the province

Participants expressed support to give the Minister authority to use the Act to develop additional programs and services, recognizing that this enables the Minister to be more responsive to contemporary issues.

Participant feedback raised the following concerns and/or issues:

- Concern that this potential action will be misinterpreted as the province moves toward a "command and control" approach.

Participant feedback highlighted the following considerations:

- Clarify the intent of this potential action.
- Note that the Minister already has the flexibility to do this.

B. Giving the Minister the authority to formally delegate the delivery of current and additional natural resource conservation and management programs and services to conservation authorities in the future

Participants support this potential action in principle as long as any additional programs and services are delegated with funding.

Participants suggested establishing a multi-ministerial body to delegate additional programs and services through a collaborative decision-making process.

C. Giving the Minister the authority to formally delegate the delivery of current and additional natural resource conservation and management programs and services to other public bodies, not-for-profit organizations, municipalities and other Ministries

Participant feedback expressed support to delegate the delivery of programs and services to other bodies or organizations to eliminate duplication; this will increase capacity for other programs and services.

Participants raised concerns that regulated programs and services should not be delegated to other bodies; there was support to delegate education and outreach activities to other bodies.

Participant feedback highlighted the following considerations:

- Clarify the mandate of CAs; ensure stakeholders (e.g., landowners) have the opportunity to review the revised mandate.
- Note that it may be more appropriate for a multi-organizational body to delegate programs and services to other organizations.
- Provide funding to CAs to deliver programs and services.
- Delegate programs and services with funding to CAs first as there is a framework for delivery already in place.

D. Giving the Minister the authority to deliver additional natural resource conservation and management programs and services throughout the province

Actions C and D were discussed together; comments regarding this action were captured under the preceding Action C.

Other Actions to Consider

Overall key themes/issues:

- Consider the provision of orientation and training by CO, with assistances from CAs.
- Reinstate provincial presence on CA boards (to enhance the relationship between MNRF and CAs).

A. Reducing administrative burdens associated with appointing and replacing board members and obtaining approval of board per diems

Participants expressed support for the potential actions in this priority area.

Participant feedback highlighted the following considerations:

- There is a need to balance CA board composition to reduce political influence.
- Ensure representation on CA boards is reflective of watershed stakeholders (e.g., farmers).
- Consider an accreditation process to appoint members (e.g., university accreditation panels).
- Provide provincial guidance to help resolve issues and ensure adherence to policies.

B. Aligning board terms with the municipal elections cycle

Participants expressed support to align board terms with council terms.

Participants suggested that appointing CA board members should be undertaken in the same way members are appointed to other committees under the Municipal Act (i.e., eliminate the three-year term).

C. Developing an orientation and training program for board members

Participants expressed support to educate CA board members to enhance governance.

Participants expressed concerns that some CA boards function as a regulatory body.

Participant feedback highlighted the following considerations:

- Include natural heritage as a topic for orientation and training.
- Consider the provision of board member orientation and training by CO, with assistances from CAs; however this should not be mandatory.
- Share best practices through CO (e.g., orientation manuals).
- Reinstate provincial presence on CA boards (to enhance the relationship between MNRF and CAs).
- Consider an oath of office requirement for CA board members.

D. Developing a coordinated communications plan outlining any changes to conservation authority operations, programs and services from the review in partnership with municipalities and conservation authorities

Participants suggested providing CAs with guidance and/or training on outreach, consultation and managing controversial issues.

Additional Comments

- There is a strong need to align provincial policies (e.g., Drainage Act, Conservation Authorities Act), not just modify the Conservation Authorities Act, and address any inconsistencies in a holistic manner.

- Consider a land securement strategy for CAs.
- Recognize that government funding and support is aligned with the social service and health sector; there is a strong connection and alignment between environmental health and human health – this connection needs to be made as CA priorities are connected to environmental health and human health outcomes.
- Concern that the current view of the environment is too myopic – there is a tendency to focus on the environment from the lens of toxics and contaminants. There is a need to view the environment and the natural world as the foundation for healthy communities and healthy people. CAs already adopt this view. Organizationally particularly at the provincial level, the environment needs to be managed holistically.
- Recognize the need for planning based on the carrying capacity of a watershed.
- Concern that review of provincial legislation and supporting policies is being conducted on an ad hoc basis; there is a need for outcome specific directions and a general clean-up of provincial legislation overall.

Appendix A – Questions of Clarification

The following topics and themes were discussed after the overview presentation:

Conserving our Future (Document)

- Concern that the potential actions do not reflect the fundamental issues affecting CAs
- Concern that too much weight was placed on negative issues raised during the first round of consultations.

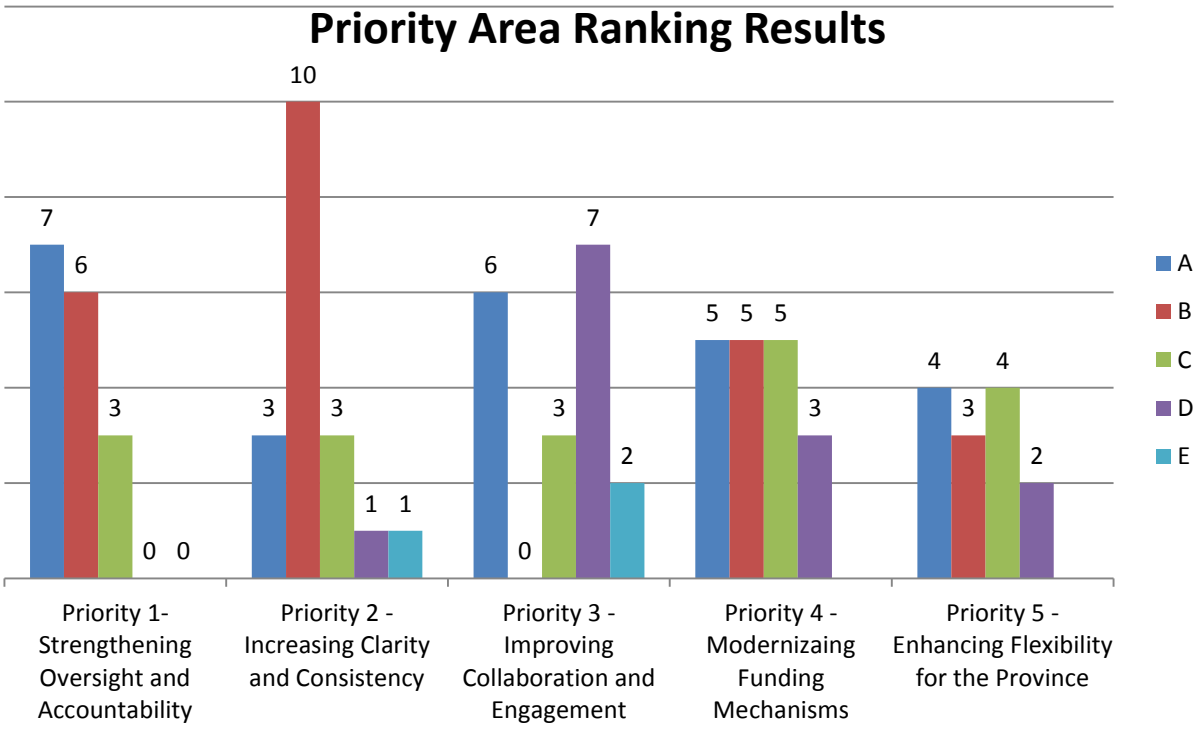
Priority Areas

- Clarify whether the potential actions include direction for a land securement strategy.
- Confirm the roles of elected board members.
- Establish a working group with the Association of Municipalities of Ontario (AMO) regarding funding; the current budgeting process is not adequate.
- Concern that feedback obtained during consultations will be influenced by the discussion questions; a bigger picture perspective is needed.
- Concern that the potential actions are a misguided attempt to reduce CA autonomy.
- Speak to the implications of the proposal to increase watershed planning presented during the current round of consultations on the Coordinated Review.
- Clarify who will lead the proposed one-window approach (e.g., province, CAs).
- Note that the Ministry of Natural Resources and Forestry and the Ministry of the Environment and Climate Change need to resume a leadership role (in terms of funding and resources).
- Review the opportunities and solutions that have emerged through academic research with respect to the role and function of CAs.
- Concern that the terms “natural heritage” and “natural resources” are defined and applied inconsistently.
- Consider a mechanism for municipalities to opt out of conservation programs.
- Consider the other provincial reviews that are currently underway (e.g., Coordinated Review, Aggregates Act Review); ensure that provincial legislation is aligned.
- Consider restoring the funding that was allocated to watershed and sub-watershed studies, which are being proposed in the Coordinated Review.
- Concern that the review focuses on processes and procedures instead of protecting and enhancing the natural environment; note that integrated watershed management (IWM) provides a comprehensive approach.
- Support the need for a clear purpose statement.
- Acknowledge that the ability of CAs to deliver programs and services varies based on available resources (e.g., funding, tools, staff, etc.), as demonstrated in the implementation of source water protection initiatives.
- Consider a mechanism for third party appeals.
- Consider a mechanism for landowners to ensure CAs are accountable.

- Support the priorities and potential actions proposed through this review.
- Ensure a broad spectrum of stakeholder interests (e.g., landowners) are considered in decision-making processes or the formation of a multi-body organization; there is a need for CAs to enhance current engagement and outreach efforts.
- Note that some CAs have a long history of working collaboratively with landowners; agree there is a need to resume the education and outreach that used to be done, and the funding to make it feasible.
- Ensure there is a clear delineation between Priorities 1 (Oversight and Accountability), 4 (Funding Mechanisms) and 5 (Flexibility); any delegated responsibilities must be funded.
- Consider how the potential actions work together to provide clarity and predictability for end-users (e.g., industry, landowners).
- Ensure the cost structure for permits is transparent (e.g., different prices for different applications).
- Concern about the priority areas and potential actions; the review should focus on how CAs can help realize provincial and municipal sustainability objectives.
- Note that the Conservation Authorities Act does provide direction for programming and is intended to be broad; do not introduce changes that would restrict the original vision of the act.
- Recognize that environmental outcomes are based in part on the attitudes and actions of landowners.
- Ensure CAs have the requisite tools and resources to translate policies into action.

Appendix B – Ranking Results

At the end of the session participants were asked to choose the most important potential action under each priority area. The results of this optional exercise are presented in the graph below. Note that some attendees did not participate in the ranking because they felt the potential actions do not reflect the fundamental issues affecting CAs. The results represent the number of attendees that chose to respond and do not represent a statistically significant sample. Twenty-Four (24) completed forms were received. The potential actions under each priority area are represented by the letters A to E in the graph below.



Additional comments

- Acknowledge integrated watershed management (IWM) as CA focus.
- Align provincial funding with CAs core mandate.
- Establish the purpose of the CAs in order to develop and implement an IWM program within their watersheds. The function and accountability, consistency, engagement and funding will follow.
- Establish a vision for CAs then set priorities from there. Implement IWM at the local level with strong provincial (i.e., inter-ministerial) policy and guidance.

- Disband Conservation Ontario (CO).
- Concern that the priorities and actions are not in line with the issues facing CAs (the ranking exercise is not valuable).
- Consult with municipalities and CAs regarding the potential actions in Priority #5.
- Amalgamate small CAs.
- Ensure CAs have qualified staff.
- Mandate stakeholder/landowner positions on each CA Board of Directors.
- Consider the need for creative discussion about a broad suite of funding approaches and mechanisms.
- Set the value of CAs (and IWM) within complete communities and a sustainable future; this is the first priority.
- Concern that the potential actions are too obscure to rank; the detailed proposals will be more important.
- Create a provincial based commission or committee that is multi-stakeholder.
- Increase provincial funding and accountability to eliminate conflict of interest.
- Note that all the priorities go hand in hand.
- Support training for CA board members.
- Consider the need for an ombudsman.
- Consider the mandate should focus on conservation or sustainability.

This summary of participant feedback has been prepared by Lura Consulting and Planning Solutions Inc. to provide the Ministry of Natural Resources and Forestry with the recurring themes and priorities raised by participants during the Sudbury session of the Conservation Authorities Act Review, Phase II. The feedback from each individual session will be used to compile a final engagement session report.

Introduction

The Ministry of Natural Resources and Forestry (MNRF) is undertaking a phased review of the Conservation Authorities Act. The intent of the review is to identify opportunities to improve the legislative, regulatory and policy framework that currently governs the creation, operation and activities of conservation authorities. In Phase I of the review, completed in 2015, MNRF led an extensive consultation process to engage stakeholders in a discussion about opportunities to improve the Conservation Authorities Act, which resulted in extensive feedback.

Based on the input received in Phase I of the review, MNRF has released the document, *Conserving Our Future: Proposed Priorities for Renewal*, that outlines a series of actions that could be taken under five proposed priority areas for improvement: (1) Strengthening Oversight and Accountability, (2) Increasing Clarity and Consistency, (3) Improving Collaboration and Engagement, (4) Modernizing Funding Mechanisms, and (5) Enhancing Flexibility for the Province. In June 2015, MNRF led a second round of consultations with a diversity of stakeholders to obtain input on the potential actions outlined within the five priority areas.

On June 15, 2016, the MNRF hosted a full-day workshop in Sudbury, 117 Elm Street as part of the Phase II consultation program. The purpose of the workshop was to provide an overview of the five priority areas for improving the Conservation Authorities Act. The workshop consisted of an overview plenary presentation with time for questions of clarification, followed by three rounds of facilitated small group discussions. The facilitated discussions were designed to encourage dialogue and obtain feedback on the five (5) priority areas for improving the Conservation Authorities Act.

A total of 12 individuals participated in the workshop, including participants from the following organizations:

- Nickel District CA
- Sault Ste. Marie Region CA
- North Bay-Mattawa CA
- Conservation Ontario
- Ontario Rivers Alliance
- Junction Creek Stewardship Committee Inc.
- Mattagami Region CA
- Ontario Federation of Agriculture

This report presents a summary of the comments and suggestions provided by participants during the workshop.

Summary of Participant Feedback

The summary of participant feedback is organized according to the five priority areas: (1) Strengthening Oversight and Accountability, (2) Increasing Clarify and Consistency, (3) Improving Collaboration and Engagement, (4) Modernizing Funding Mechanisms, and (5) Enhancing Flexibility for the Province. Each priority area contains a synopsis of the overall key themes and issues as well as specific feedback received through plenary discussions (see Appendix A) and completed discussion guides relating to each discussion question.

The following points highlight the recurring comments, concerns and/or advice which emerged from the Sudbury session.

- Include integrated watershed management (IWM) in the Act as the overarching approach to conservation.
- Recognize that the interface between CAs and municipalities is multifaceted.
- Recognize that CA roles and responsibilities have expanded beyond hazard management.
- Establish a multi-ministerial body to promote dialogue and collaborative decision-making regarding CA roles and responsibilities (i.e., enhance provincial partnership).
- Consider opportunities to effect positive change from a non-statutory lens (e.g., resource sharing).
- Find a balance between clarifying roles and responsibilities and ensuring CAs have the flexibility (and autonomy) to respond to the needs of their respective watersheds.
- Build on existing CA communication and education initiatives.
- Ensure a broad spectrum of stakeholder interests are represented and considered in CA processes.
- Increase and diversify funding sources to enable the delivery of CA programs and services.
- Ensure that new or additional programs and services are delegated with funding.
- Clarify the process to appoint (and remove) CA board members.
- Emphasize collaboration and partnership.

Priority #1: Strengthening Oversight and Accountability

Overall key themes/issues:

- Include integrated watershed management (IWM) in the Act as the overarching approach to conservation.
- Recognize that CA roles and responsibilities have expanded beyond hazard management.
- Concern that there is a conflict of interest between municipalities and CAs due to the current funding structure; the province should fund CAs.
- Clarify the role and responsibilities of municipalities in relation to CAs.
- Establish a multi-ministerial body to promote dialogue and collaborative decision-making regarding CA roles and responsibilities.

A. Updating the Act to reflect modern legislative structures and accountabilities

Participants expressed support to add a purpose statement to the Act.

Participant feedback highlighted the following considerations:

- Include integrated watershed management (IWM) in the Act as the approach to conservation.
- Recognize the range of CA roles and responsibilities (i.e., the core focus has expanded beyond hazard management). There are multiple provincial acts and policies that rely on CAs to implement them.
- Support outreach and education initiatives to increase awareness and accountability of CA roles and responsibilities.

B. Adopting and/or aligning with governance best management practices

Participants raised the need to establish a multi-ministerial body to oversee the multiples roles and responsibilities of CAs.

C. Enhancing provincial oversight

Participant feedback highlighted the following considerations:

- Provide CAs with assistance to ensure programs and services are delivered consistently (e.g., best practices, resources, etc.).

D. Enhancing municipal oversight

Participant feedback raised the following concerns and/or issues:

- Concern that enhancing municipal oversight will impact the ability of CAs to make critical decisions objectively (e.g., review permits, perform advisory function).

- Note that while many CAs carry out services per the Planning Act, they do not have planning agreements with municipalities.
- Remove this potential action; there should be no municipal oversight or direction of CAs.
- Concern that there is a conflict of interest between municipalities and CAs due to the current funding structure; the province should fund CAs.

Participant feedback highlighted the following considerations:

- Clarify the role and responsibilities of municipalities in relation to CAs, including fiduciary duties. Different municipal departments (e.g., planning, engineering, politicians) have different expectations of CAs which can be difficult to navigate.
- Note that CAs need to maintain a strong collaborative relationship with municipalities.
- Note that municipal oversight is important; CAs have to be accountable to municipalities as they provide funding through levies.
- Ensure municipal oversight allows flexibility of CA roles based on watershed needs.

E. Developing or adopting criteria for establishing, enlarging, amalgamating or dissolving a CA

Participant feedback highlighted the following considerations:

- Ensure the Ministry of Natural Resources and Forestry (MNRF) is properly resourced to follow through with any proposed actions to strengthen oversight and accountability.
- Concern that there is a disconnect between CAs (particularly smaller CAs) and MNRF (i.e., in terms of guidance and support).

Priority #2: Increasing Clarity and Consistency

Overall key themes/issues:

- Concern that CA roles and responsibilities are being expanded without the appropriate funding.
- Define IWM to establish an overarching framework for CAs.
- Find a balance between clarifying roles and responsibilities and ensuring CAs have the flexibility to respond to the needs of their respective watersheds.

A. Clearly delineate between mandatory and optional programs and services

Participants expressed support to delineate between mandatory and optional programs and services (to enhance consistency and certainty in their delivery).

B. Establishing a Provincial Policy Directive

Participants expressed the need to update provincial policies and guidelines to reflect contemporary issues facing CAs.

C. Providing clarity and consistency in CA's regulatory roles and responsibilities

Participants are concerned that CA roles and responsibilities are being expanded without the appropriate funding.

Participant feedback highlighted the following considerations:

- Note that clarifying definitions and terminology can be addressed through the Act or supporting regulations, while most of the other potential actions can be implemented through responsive policies or enabling provisions.
- Clarify the following terms and definitions: watercourse, conservation land, wetlands.
- Note that all the potential actions under this priority are important.
- Support the provision of ongoing training (i.e., non-regulatory actions) to enhance consistency.
- Define IWM to establish an overarching framework for CAs.
- Find a balance between clarifying roles and responsibilities and ensuring CAs have the flexibility to respond to the needs of their respective watersheds.

D. Enhancing compliance and enforcement of regulatory requirements

No comments specific to this potential action were received.

E. Streamlining planning and permitting requirements and processes

Participants expressed support to establish a streamlined approach for planning and permitting requirements, as long it recognizes the need for flexibility (i.e., one size fits all is not appropriate).

Participant feedback raised the following concerns and/or issues:

- Concern that streamlining will eliminate safeguards that are currently in place. A risk-based approach should be based on a comprehensive approach to conservation.

Participant feedback highlighted the following considerations:

- Establish a risk-based approach that is common to all CAs, particularly staff who make decisions.
- Provide enabling tools to guide and define CA decision-making (e.g., communication tools, MNRF permit by regulation).
- Identify where known wetlands are to better communicate regulated areas during land transfer processes.
- Ensure information is readily accessible to the public and on the internet (i.e., a different business model based on openness and transparency that is resourced).

Priority #3: Improving Collaboration and Engagement

Overall key themes/issues:

- Note that the five priority areas are not mutually exclusive.
- Establish a business relationship with Conservation Ontario.
- Provide funding to coordinate resource sharing (e.g., databases).
- Ensure a broad spectrum of stakeholder interests are represented and considered in CA processes.

A. Establishing a provincial "one-window"

Participants are concerned that changes in provincial or municipal support (i.e., staffing, funding, etc.) will impact the "one-window" approach.

B. Establishing a business relationship with Conservation Ontario

Participants expressed support to establish a business relationship with Conservation Ontario (CO), particularly to coordinate resources among CAs (e.g., training, best practices, templates). It was noted that this already takes place but is not applied consistently in practice as more funding is needed for implementation.

Participant feedback highlighted the following considerations:

- Strengthen collaboration between MNRF, CO and CAs.
- Provide funding to establish a central repository of CA resources.

C. Enhancing Indigenous Peoples participation

Participants expressed support to enhance indigenous participation.

D. Enhancing public and stakeholder participation

Participants are concerned that different stakeholder perspectives are not voiced often; different perspectives can enlighten the discussion and should not be confused with being non-compliant.

Participant feedback highlighted the following considerations:

- Ensure CA board members represent a diversity of interests.
- Provide funding for the educational programming that CAs provide; it is an essential component of collaboration and engagement.
- Note that some CAs are very good at engaging stakeholders and the public (e.g., committees, advisory groups, etc.).

E. Supporting CAs in sharing and coordinating resources

Participant feedback highlighted the following considerations:

- Note that partnerships can increase capacity and flexibility for CAs, particularly from a community perspective (e.g., collect data, etc. with minimal funding).
- Provide funding to establish a resource database of studies, data, etc. that is available to the public.

Priority #4: Modernizing Funding Mechanisms

Overall key themes/issues:

- Provide CAs with the leverage to ask municipalities for more funding.
- Concern about the conflict of interest between municipalities and CAs due to the current funding structure; the province should fund CAs.

A. Enhancing clarity, consistency and accountability around municipal levies

Participants expressed support for the need to define costs in municipal levies.

Participants noted that it is not clear whether reviewing apportionment is valuable as it will be difficult to do so.

Participant feedback highlighted the following considerations:

- Note that there is already significant consultation between some CAs and municipalities before the CA budget is voted on.
- Provide CAs with the leverage to ask municipalities for more funding.
- Enhance communication and education to realize the potential actions listed here.

B. Promoting clarity, consistency and accountability around fees and generated revenue

Participants noted that fees vary by watershed to reflect local needs. Reconvening the CALC table should be considered as a non-regulatory change.

C. Improving fiscal oversight and transparency

Participants expressed support to clarify the role of municipalities in overseeing CA budget processes if the intent is to educate (as opposed to a change in the budget process).

Some participants are concerned about the conflict of interest between municipalities and CAs due to the current funding structure; the province should fund CAs. It was noted that CAs exist at the request

of their municipalities, and while it essential to ensure CAs can make decisions objectively there is an underlying relationship between municipalities and CAs that cannot be severed.

Participant feedback highlighted the following considerations:

- Consider the need to provide funding based on the value (for money) of CA programs and services.
- Build on existing communication and education efforts to broaden awareness of the benefits of CA programs and services.
- Create a reporting template for financial reporting.

D. Improving clarity in the use of provincial funding processes

One participant explained that municipal representatives sit on CA boards that can provide clarity regarding eligibility criteria. Increase awareness to ensure this is universally known.

Priority #5: Enhancing Flexibility for the Province

Overall key themes/issues:

- Ensure that new or additional programs and services are delegated with funding.

A. Giving the Minister the authority to use the Act to develop additional natural resource conservation and management programs and services in the future throughout the province

B. Giving the Minister the authority to formally delegate the delivery of current and additional natural resource conservation and management programs and services to conservation authorities in the future

Participants suggested combining the first two potential actions under this priority area. They noted that new or additional programs and services should be delegated with funding.

Participants raised the need to ensure delegated programs and services are implemented (i.e., accountability mechanisms for reporting outcomes and auditing, MOUs).

C. Giving the Minister the authority to formally delegate the delivery of current and additional natural resource conservation and management programs and services to other public bodies, not-for-profit organizations, municipalities and other Ministries

D. Giving the Minister the authority to deliver additional natural resource conservation and management programs and services throughout the province

Participants expressed support for this potential action as it would enable the consistent delivery of CA programs and services outside CA boundaries by MNRF or another organization.

Participants suggested delegating programs and services to other bodies through other legislation.

Other Actions to Consider

Overall key themes/issues:

- Clarify the process to appoint (and remove) CA board members.

A. Reducing administrative burdens associated with appointing and replacing board members and obtaining approval of board per diems

Participant feedback highlighted the following considerations:

- Clarify the process to appoint (and remove) CA board members; this could be included in a regulation.
- Consider a mechanism (at the municipal level) to remove CA board members.
- Clarify who is responsible for approving CA board per diems. Some municipalities permit them while others do not.
- Consider a code of conduct for CA board members (including non-politicians).

B. Aligning board terms with the municipal elections cycle

No comments specific to this potential action were received.

C. Developing an orientation and training program for board members

Participants noted that that board members need to be educated and informed (i.e., provide training where needed).

D. Developing a coordinated communications plan outlining any changes to conservation authority operations, programs and services resulting from the review in partnership with municipalities and conservation authorities

No comments specific to this potential action were received.

Additional Comments

- Concern that the CA Act review is not focusing on what CAs are doing well. There are also other CA roles and responsibilities that need to be captured (e.g., low impact development, Great Lakes Initiative, etc.). The legislation should empower CAs help the province meet its objectives (i.e. enabling change).

Appendix A – Questions of Clarification

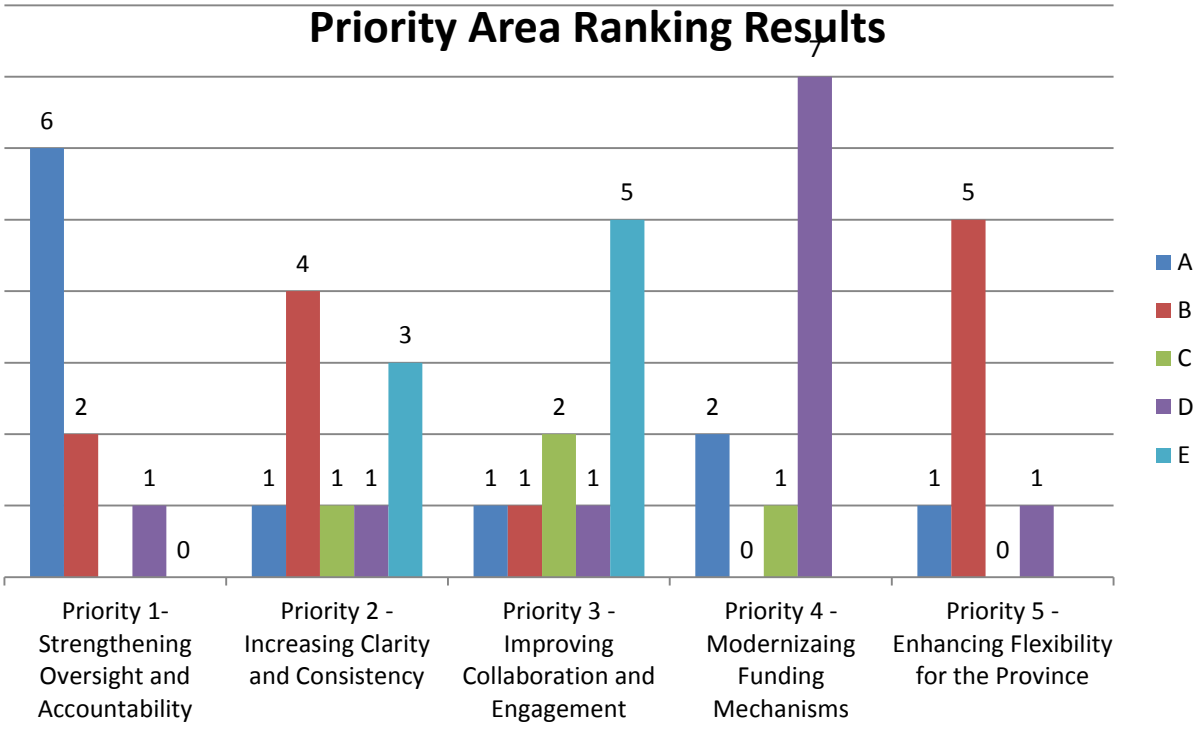
The following topics and themes were discussed after the overview presentation:

Priority Areas

- Clarify the intent of the potential actions under Priority #5.
- Concern that the potential actions under Priority #5 could be used to reduce or expand CA roles and responsibilities unilaterally.
- Note that CAs can only legally operate within their watershed boundaries; some CAs have had to decline programs and services outside their watershed boundaries for this reason. This is an important opportunity to address this gap as it is more likely to occur in Northern Ontario.
- Concern that there is a conflict of interest between municipalities and CAs due to the current funding structure (i.e., CAs carrying out municipal interests, CAs treated as municipal department).
- Note that CAs require flexibility and autonomy (from municipalities) to deliver programs and services based on their watershed needs.
- Ensure CA Act legislation recognizes the different capabilities across CAs. There may be opportunities for some CAs to share resources, but the full spectrum of implications should be considered (i.e., CAs with large watersheds and small staff, instances where best practices are not transferrable as in Northern Ontario).
- Note that there are trade-offs in terms of CA autonomy and independence when it comes to sharing resources (e.g., office space) with municipalities.
- Consider the opportunities and gaps not captured in the priority areas and potential actions.
- Concern that an increase in CA autonomy will lead to the inconsistent application of provincial policies and regulations, particularly in Northern Ontario. CAs and municipalities should operate collaboratively (this would be beneficial from an agricultural perspective).

Appendix B – Ranking Results

At the end of the session participants were asked to choose the most important potential action under each priority area. The results of this optional exercise are presented in the graph below. Note that some attendees did not participate in the ranking because they felt the potential actions do not reflect the fundamental issues affecting CAs. The results represent the number of attendees that chose to respond and do not represent a statistically significant sample. Ten (10) completed forms were received. The potential actions under each priority area are represented by the letters A to E in the graph below.



Additional comments

- Increase provincial funding to meet the mandate requirements of the provincial government.
- Empower CAs with a motherhood statement as a precursor to the Act – as the leaders of integrated watershed management (IWM) and all the provincial goals that can be achieved (e.g., climate change, wetland policy, etc.).
- Prioritize funding to CAs.
- Address core issues before contemplating flexibility.
- Resource everything.
- Note that municipalities should not have more oversight or be allowed to provide more direction.

- Strengthen CA capacity to enforce compliance.
- Enhance data sharing and collaboration with relevant community partners.
- Recognize that funding for large CAs with a small tax base (e.g., Conservation Sudbury is inadequate to support a broad/comprehensive range of programs.

THINK RINK The ♥ of CLIFFORD

OCTOBER 2016

CLIFFORD RECREATION ASSOCIATION (CRA) NEWSLETTER

UPCOMING EVENTS...

OCT 08: HOMECOMING MEETING, **9 am**

OCT 15: ARENA SEASON KICKOFF, **6-8 pm**

OCT 16: GRASSROOTS HOCKEY PROGRAM STARTS, Clifford Arena, Sunday Afternoons

OCT 18: CRA NOV. NEWSLETTER DEADLINE

GRASSROOTS HOCKEY PROGRAM

Clifford Arena

October 16th to March 5th

◆ 18 weeks ◆

Sunday Afternoons

This grassroots hockey program is geared toward children **between 5 and 14 years of age** who have not played hockey but have basic skating skills. All of the basics from learning how to skate and how to pass and shoot the puck will be covered.

PRICE: $100

To register or for more info: 519 338-2511 or matt@town.minto.on.ca

Clifford-Run OMHA/MMH Hockey Tournaments

November 5 — Bantam Rep
November 19 — PeeWee Rep
January 21 — PeeWee LL
February 9-12 — annual Cricket Tournament

There is NO ADMISSION FEE for these tournaments. Come out and support some great young hockey talent!

Clifford Arena still has available

some Saturday ice times

for private ice rentals — birthday parties, family skates, etc.

Please contact Al at the Clifford Arena for details.

519 327-8100

New!

Check out what's happening or ice availability at the Clifford Arena **ONLINE**

http://town.minto.on.ca/departments/recreation/facilities-parks/clifford/clifford-arena

Welcome back!

The CLIFFORD ARENA is beginning the 2016-17 season with an…

Arena Season Kickoff

Sat., October 15, 6-8 pm

Enjoy a free skate and some treats as our guests!

Free hot dogs and homemade burgers!

*We all continue to work to keep our local arena up and running, but we could not do it without the ongoing support of **our terrific little community**! Thank you!*

Brought to you by the Clifford Recreation Assoc (CRA)

CRA

DEADLINE for NOVEMBER 2016 CRA Newsletter is Tues., OCTOBER 18,

randy@ruetz.ca

Country Gospel Concert featuring...

The Busbys

■ **Friday, October 21, 2016**

7:30 p.m. ■ Knox United Church, Clifford

Show preceded by a Casserole Supper 5-7 pm

Show Tickets: Adults - $10, Under 12 - $6.

Advance Dinner Tickets: leave message (519) 327-8362

www.cliffordpastoralchargeuc.ca

Clifford MEALS on WHEELS

are available three times a week to Clifford seniors who want/need meals. Contact **Ross Derbecker** for details **519 327 8967**

North Perth-North Wellington Branch of the Canadian Diabetes Association

Information Meeting

Thursday, Oct. 13th at 7:30 p.m.

Knox United Church, Clifford

Speaker: Kathryn Alton, B.Sc., O.D., Palmerston Optometry Clinic

"How Diabetes Can Affect Your Vision"

Bring a friend!

Refreshments served. For more information please contact us at **519 338-3181** or **npnw@diabetes.ca**

Next HOMECOMING meeting
Saturday, October 8, 9:00 am
Knox United Church Basement

Clifford Activity Group

EUCHRE or SOLO

$3/evening October 3 & 17 (every 2 weeks)

7:30 p.m. Clifford Community Hall (small room)

St. John's Lutheran Church Annual

TURKEY SUPPER

Tuesday, October 4, 2016

4:30 to 7:00 p.m.

Clifford Community Hall

Adults: $15; Children 5-12: $5; Under 5: free

For tickets call... Ethel Weber 327-8135;
Dennise Niesen 367-2120;
Heather Schaus 338-2445.

Wheelchair accessible, take-out available, co-sponsored by FaithLife Chapter 74030

Clifford Community Kids Club

THURSDAY EVENINGS starting **October 6th**

at Clifford Community Hall

❍ **6:45 pm to 8:00 pm** ❍

For children 4 to 12 years

Come and enjoy a fun time with a Bible lesson, games, crafts, snacks and fun time together.

For more information call Stephanie 881-1159; Pat 327-8748 or the Botts 327-8157

Join us at the...

Clifford Library!

EVENING BOOK CLUB (adult), 2nd Thursday of each month 6:45-8:00 pm. Oct. 13, discussing *"Girl Runner"* by Carrie Snyder. All welcome.

BABY TIME (0-12mos) pre-register Oct. 4, Tues, 2:30-3:00 pm

STORY TIME (all ages), Oct. 5, 12,19, 26, Wed., 2:00-3:00 pm

BEDTIME STORIES (all ages) Oct. 5, 12, 19, 26 Wed, 6:30-7pm

iPAD BASICS FOR ADULTS (adult) pre-register, Oct. 18, Tues., 2:00-3:00 pm

SCRABBLE CLUB (adult), Oct 21, Fri., 1-3 pm

All branches closed Monday, October 10, 2016.

For more information about Wellington County Library programmes, please call the Clifford Branch (519) 327-8328 or visit www.wellington.ca/library

CORPORATE SERVICES DEPARTMENT
TELEPHONE 613-968-6481
FAX 613-967-3206

City of Belleville

169 FRONT STREET
BELLEVILLE, ONTARIO
K8N 2Y8

September 28, 2016

Lisa Thompson, MPP
Huron-Bruce
Room 425, Main Leg Bldg, Queen's Park
Toronto, ON, M7A 1A8

Dear Ms. Thompson:

RE: Municipal Resolution on Supporting Agricultural Experts in Their Fields
Motions
11.1, Belleville City Council Meeting, September 26, 2016

This is to advise you that at the Council Meeting of September 26, 2016, the following resolution was approved.

> "WHEREAS, Ontario-grown corn, soybean and wheat crops generate $9 billion in economic output and are responsible for over 40,000 jobs; and
>
> WHEREAS, Ontario farmers are stewards of the land and understand the importance of pollinators to our environment and ecosystems; and
>
> WHEREAS, the Ontario government is implementing changes to ON Reg. 63/09 that would prevent any Certified Crop Advisor (CCA) from carrying out a pest assessment if they receive financial compensation from a manufacturer or retailer of a Class 12 pesticide; and
>
> WHEREAS, Ontario's 538 Certified Crop Advisors who are capable of and willing to conduct pest assessments will be reduced to 80 should the proposed changes to the definition of professional pest advisor be implemented in August 2017 and

../2

WHEREAS, the reduction in CCAs would force corn and soybean farmers to terminate the relationships that they have built with experts that understand their unique crop requirements, soil types, and field conditions, placing undue delays on planting crops;

THEREFORE, be it resolved that the Council of The Corporation of the City of Belleville supports the efforts of the Member of Provincial Parliament for Huron-Bruce to eliminate barriers to employment opportunities for CCAs, and allow Ontario farmers the freedom to engage in business with the expert of their choice; and

THAT a copy of this resolution be forwarded to all Members of Provincial Parliament, municipalities, and AMO."

I trust this is sufficient.

Yours truly,

Matt MacDonald
Acting Director of Corporate Services/City Clerk

MMacD/nh
Pc: Todd Smith, MPP, Prince Edward-Hastings

September 29, 2016

Honourable Kathleen Wynne
Premier of Ontario
11th Floor, 77 Grenville Street
Toronto, Ontario, M7A 1B3

Dear Honourable Wynne,

Re: Ontario's Intensive Therapy Funding/Services for Children with Autism

Please be advised that Council passed the following resolution at their September 7, 2016 meeting:

WHEREAS Autism Spectrum Disorder is now recognized as the most common neurological disorder affecting 1 in every 94 children, as well as their friends, family and community; and

WHEREAS Applied Behavior Analysis (ABA) is the scientific process based on objective evaluation and empirically based interventions used to achieve meaningful, generalizable and enduring behavioral change. Intensive Behavioral Intervention (IBI) is an application of the principles of ABA in an intensive setting used to affect behaviour change and improvement; and

WHEREAS the current waiting of children for Intensive Behavioural Intervention (IBI) is over 2,000 and more than 13,000 children await Applied Behaviour Analysis; and

WHEREAS the Province of Ontario has announced it intends to discontinue IBI services to children over the age of four and provide a one-time payment to assist with services, thereby abandoning thousands who have been wait-listed for years; and

WHEREAS there are two service models for affected children to be treated, 1) the Direct Service Offering (DSO) where children receive services directly from trained staff at Ontario's nine regional service providers, and 2) the Direct Funding Offering (DFO) where parents receive funding directly in order to purchase services; and

WHEREAS the DFO model to provide services is used in Alberta, British Columbia and imminently in Saskatchewan. Such a model is clinically rigorous and has been identified by the Auditor General of Ontario as being less expensive then Ontario's DSO model;

THEREFORE BE IT RESOLVED THAT a letter be sent to Hon. Tracey MacCharles, Minister of Children and Youth Services; Alexander Bezzina, Deputy Minister; Hon. Eric Hoskins, Minister of Health; and Hon, Kathleen Wynne, Premier of Ontario, requesting the Province to:

1. Amend its policy to one that will allow all children on the current waiting list to receive the IBI services promised them; and
2. Remove the age limit for IBI therapy and replace it with a program that provides ongoing IBI services based on need and individual development, not age; and
3. Ensure oversight by professionals and parents based in 'development progress' criteria and milestones; and
4. Adopt a Direct Funding Offering (DFO) model in lieu of the current Direct Service Offering(DSO);

AND FURTHER THAT a copy of this resolution be forwarded to all municipalities within the Province of Ontario.

Your consideration of Council's request is appreciated.

Sincerely,

Michelle Mantifel

FEDERATION OF CANADIAN MUNICIPALITIES | FÉDÉRATION CANADIENNE DES MUNICIPALITÉS

REPORT TO COUNCIL

MEETING OF THE BOARD OF DIRECTORS

OAKVILLE, ON

SEPTEMBER 13-16, 2016

FEDERATION OF CANADIAN MUNICIPALITIES FÉDÉRATION CANADIENNE DES MUNICIPALITÉS

SUMMARY

The FCM Board of Directors met in Oakville, ON, from September 13-16. Board members spent four days addressing vital national issues playing out at the local level as well as the historic momentum achieved by the municipal sector. The details of those discussions are presented in the Committee reports that follow.

With this meeting taking place just days before MPs return to Parliament in Ottawa, it was timely to make Phase 2 of the federal government's ambitious infrastructure plan a key theme in the discussions. Board members explored the central role municipalities will play in making these historic infrastructure investments a success, from tapping local expertise to identifying local projects that offer the best return on investment. And they talked about municipal Phase 2 priorities, with an emphasis on an allocation-based model for transit and green investments, as well as significant, dedicated funding for housing and rural infrastructure. Another important topic of conversation was the imperative partnership needed among orders of government to ensure Phase 2 lives up to its potential. On that note, Board members agreed that the federal government must maintain its 50 per cent contribution to project costs, while provinces need to partner with no less than their traditional one-third share.

The Executive of the Board met with a special guest, Jean-Yves Duclos, the Minister of Families, Children and Social Development. The Executive welcomed plans for a National Housing Strategy, but also stressed to the Minister the need for urgent investments in social and affordable housing. Members of the Social-Economic Development Committee met with Dwight Dorey, National Chief of the Indigenous Peoples' Assembly of Canada. The meeting was an important step forward in our joint efforts to work together to support urban Indigenous people living in cities and communities across the country.

Board members adopted a number of resolutions on issues ranging from rural post office closures to the installation of truck sideguard safety equipment. They also confirmed the importance of remaining active and engaged in the critical coming months, as the federal government finalizes the details of Phase 2, as well as a National Housing Strategy. They agreed that influencing these federal policies was paramount to furthering the unprecedented momentum of the municipal sector.

REPORT OF THE MEETING OF THE STANDING COMMITTEE ON SOCIAL AND ECONOMIC DEVELOPMENT

SUMMARY OF DISCUSSION

Committee Vice-Chair Pam McConnell opened the meeting by introducing the other Vice-Chair, Tom Taggart, and welcoming new members and returning members. Vice-Chair McConnell provided members with a brief overview of the mandate of the SED Committee and reminded members that the purpose of the September meeting is to establish the policy and advocacy priorities for the coming year.

In the Update on Committee Activities and Action Items Status report, delivered by Matt Gemmel, the Committee heard that FCM is monitoring the government's roll out of their budget commitments on housing and homelessness which, while significant, were short-term in nature and didn't adequately address the issue of expiring social housing operating agreements. FCM provided a submission to the Canada Mortgage and Housing Corporation (CMHC) regarding the development of the Affordable Rental Housing Financing Initiative, specifically on how the Initiative could expand the availability of affordable, high-quality rental housing in Canada over the long-term. Members also learned that FCM participated in a pre-consultation meeting and expert roundtables pursuant to the development of the National Housing Strategy (NHS) at the invitation of CMHC.

Further, in an ongoing effort to building stronger relationships with Aboriginal organizations, FCM staff have met with senior staff from national indigenous organizations. In June, FCM members participated in five of the consultations on the federal Urban Aboriginal Strategy, which took place in cities and communities across the country and were organized by Indigenous and Northern Affairs Canada.

The Committee discussed the need to continue to monitor settlement challenges for Syrian refugee families, particularly as financial support for government sponsored refugees ends one year after arrival, which will occur soon for many families. Members directed staff to report back on this issue at its November meeting.

Following that update, the Committee received a report from Vice-Chair Pam McConnell on the recent work of the Urban Aboriginal Working Group.

Next was a presentation delivered by Dwight Dorey, National Chief of Indigenous Peoples' Assembly of Canada (IPAC), formerly the Congress of Aboriginal Peoples. Chief Dorey provided an overview of key challenges facing Indigenous people living off-reserve, including the inadequate access to affordable housing. Chief Dorey then described the role of IPAC in representing Indigenous people living off-reserve in cities and communities of all sizes.

Committee Chair Brian Pincott then turned the Committee's attention to establishing priorities for the upcoming year. Members concurred with the FCM Shared Priority as it pertains to the SED Committee. The Committee then considered and approved the proposed 2016-17 Committee-specific priorities, which are a) affordable housing and homelessness; and b) urban indigenous policy.

Members then considered three resolutions and made recommendations to the Board.

Following, the Committee provided recommendations on FCM's submission regarding the federal government's National Housing Strategy, which they indicated should include an immediate focus on a housing carve-out within the Phase 2 Social Infrastructure fund and a commitment to protect the quality and affordability of social housing impacted by the expiry of operating agreements. The Committee equally provided recommendations on FCM's submission with respect to the future of the federal Urban Aboriginal Strategy.

The Committee was then briefed on FCM's First Nation-Municipal Community Economic Development Initiative (CEDI), particularly regarding the new funding over five years which was recently secured for this program.

STANDING COMMITTEE RECOMMENDATIONS

Recommendations for adoption:

1. Adopt the following 2016-17 policy and advocacy priorities: a) Phase 2 Infrastructure Advocacy Strategy; b) affordable housing and homelessness; and c) urban indigenous policy;

2. Approve a submission to the Minister of Indigenous and Northern Affairs regarding the future of the Urban Aboriginal Strategy (UAS) that includes the following recommendations:
    a. Increase operational funding, and establish new funding, for local Aboriginal organizations and service providers;
    b. Include capital funding for the renovation and construction of community and cultural spaces;
    c. Reinstate funding for urban Indigenous coalitions in order to help strengthen local leadership and linkages between municipal governments and improve delivery of municipal services;
    d. Direct funding to existing and new local Indigenous organisations in order to build local capacity and empower local decision-making;
    e. Enable program flexibility so that funding meets local needs and priorities;
    f. Provide long-term, predictable funding so that service delivery organizations can plan and deliver appropriate services based on local needs.
    g. Ensure culturally appropriate programs and services that meet the needs of First Nations, Inuit and Métis;
    h. Take into consideration the programs and services being delivered by municipalities and seek to align with and support those services where appropriate; and
    i. Ensure that funding meets the needs of Indigenous people residing in small-urban municipalities, rural areas and the North;

3. Approve a submission to the Minister of Families, Children and Social Development pursuant to the National Housing Strategy that includes the following recommendations:

    a. Commit the federal government to playing a leadership role in ensuring the housing needs of all Canadians, especially those most vulnerable, are met;

b. Provide a substantial carve-out for affordable housing and homelessness from the Phase 2 Social Infrastructure Fund in budget 2017;
c. Protect existing social housing affected by the expiry of operating agreements and the low-income households who live there, by providing a commitment for capital repair and retrofit fund and a fund for new long-term rent subsidies in budget 2017;
d. Build new social and affordable housing, which includes a decision-making role for local governments;
e. Prevent and end homelessness;
f. Preserve, retrofit and grow the rental housing sector;
g. Recognize and support the distinct housing needs of Indigenous people;
h. Recognize and support housing needs in the North;
i. Engage municipalities in addressing challenging housing markets; and
j. Develop the National Housing Strategy so that it is comprehensive, provides long-term, predictable funding and formally includes local governments.

The Standing Committee recommends this report be received.

REPORT OF THE MEETING OF THE STANDING COMMITTEE ON MUNICIPAL FINANCE AND INTERGOVERNMENTAL ARRANGEMENTS

SUMMARY OF DISCUSSION

Committee Chair Sav Dhaliwal opened the meeting by welcoming Committee members and introducing Vice-Chairs Sandra Desmeules and Doug Dobrowolski, and by welcoming new and returning members.

Following approval of the agenda and the report of the March 2016 meeting, members were updated on the advocacy efforts of FCM leadership and staff since the last meeting. Staff outlined progress on key policy areas of interest to the Committee, including international trade and investment attraction, infrastructure financing and Canada Post. Committee members formally requested that FCM staff work with Global Affairs Canada to provide information and analysis on CETA's implications for social procurement policies. The Committee was also updated on Finance Canada's consultation on proposed amendments to clarify the application of the GST/HST to supplies of municipal transit services and the government's comprehensive review of Canada Post.

Following extensive discussion, the Committee approved the recommended 2016-2017 policy and advocacy priorities of 1) Phase 2 Infrastructure Advocacy Strategy; and 2) Municipal Considerations for a Federal Infrastructure Bank and Federal Role in Public-Private Partnerships. Committee members agreed that an infrastructure bank should ensure easier access to financing and that the focus of such a body remains limited and non-conditional, while the federal government should continue to support local decision-making and discretion on using P3 procurement models.

Next, Committee members were updated on Phase 1 and Phase 2 program design and cost-sharing and fiscal sustainability. The Committee approved a recommendation to the Board to endorse a cost-sharing approach for Phase 2 infrastructure funding that includes 50 percent federal contributions and at least 33 percent provincial contributions towards eligible costs for projects in the provinces, and 75 percent federal contribution towards eligible costs for projects in the territories.

Senior Manager, Policy and Research, Daniel Rubinstein then provided an update on FCM's Legal Defense Fund. Finally, the Committee heard an update by Policy Advisor Marc LeBlanc on the Jack Layton Fellowship program.

STANDING COMMITTEE RECOMMENDATIONS

Recommendations for adoption:

1. Approve the two proposed priority areas: Phase 2 Infrastructure Advocacy Strategy and Municipal Considerations for a Federal Infrastructure Bank and Federal Role in Public-Private Partnerships; and

2. Endorse a cost-sharing approach for Phase 2 infrastructure funding that maintains 50 percent federal contributions and a formal requirement for at least 33 percent

provincial contributions towards eligible costs for projects in the provinces, and 75 percent federal contribution towards eligible costs for projects in the territories.

3. Direct staff to work with Global Affairs Canada officials to collect information and provide an analysis on CETA's implications for municipal social procurement policies and community benefit agreements and report back to the Board of Directors at the November 2016 Board meeting.

The Standing Committee recommends this report be received.

REPORT OF THE MEETING OF THE STANDING COMMITTEE ON ENVIRONMENTAL ISSUES AND SUSTAINABLE DEVELOPMENT

SUMMARY OF DISCUSSION

Committee Chair Pauline Quinlan opened the meeting by introducing the Vice-Chairs, Paul Pirri and Edgar Rouleau, and welcoming new and returning members. Chair Quinlan provided members with a brief overview of the mandate of the Standing Committee on Environmental Issues and Sustainable Development (EISD), and reminded members that the purpose of the September meeting is to establish the policy and advocacy priorities for the coming year.

Following approval of the agenda and the report of the March 2016 meeting, members were updated on the policy and advocacy work that has been undertaken by FCM since the last Board meeting. In an update from Dallas Alderson, members heard about FCM's participation in consultations being held by Federal/Provincial/Territorial (FPT) governments as part of the development of the Pan-Canadian Framework on Clean Growth and Climate Change. FCM participation in other roundtables and presentations on water and wastewater investments, environmental assessment processes and other issues were also highlighted.

The Committee then turned its attention to establishing priorities for the upcoming year. Members discussed FCM Shared Priorities as they pertain to the EISD Committee, and recommended that the Green Infrastructure component of the federal government's Phase 2 infrastructure plan be the EISD portion of the FCM shared priority of the Phase 2 Infrastructure Advocacy Strategy. The Committee further recommended the Committee-specific policy priorities for the coming year including 1) climate change in terms of the investment required to support local government action in reducing GHG emissions and in adapting to climate change and 2) FCM's participation in a review of federal environmental assessment processes and environmental legislation. The Committee discussed the federal review of the Navigation Protection Act and the Fisheries Act and directed staff to engage with the Parliamentary Committees which will be reviewing the Acts this fall.

The Committee then considered five resolutions and made recommendations to the Board with respect to their categorization.

Staff then outlined the proposed components of FCM's submission to federal Minister of Environment and Climate Change on the Pan Canadian Framework on Clean Growth and Climate Change with the objective that the Framework reflects municipal considerations and supports the important municipal role in addressing climate change. Staff indicated their understanding that the Framework will be the federal government's guiding document towards implementing its climate change priority. The Committee discussed ways the submission could be strengthened by including examples of municipal leadership, and indicated that, in future, relevant regulations which impact the ability to mitigate and manage the effects of climate change may need to be considered. The Committee agreed that the proposed components of the FCM submission focus on: a) mitigation policy recommendations; b) adaptation and resilience policy recommendations; and c) municipal considerations on carbon pricing.

Next was an update on FCM's engagement in the federal government's review of the National Energy Board (NEB), and a decision on next steps. As part of this, President

Somerville and Chair Quinlan, as co-Chairs of FCM's Task Force on National Municipal Energy Infrastructure, outlined the work that has taken place over the summer by the Task Force. Matt Gemmel then presented highlights of the Task Force's report, highlighting areas where the federal role in regulating existing pipelines and reviewing proposed pipelines could be strengthened to better reflect municipal concerns and perspectives. The Committee discussed the report and directed staff to build on the work of the final report of the National Municipal Energy Infrastructure Task Force by developing recommendations on how the National Energy Board public hearing process can be reformed to give local governments a greater voice, and how municipal interests can be adequately considered in the construction, operation and decommissioning of federally-regulated pipelines. Staff will return to the Committee in November with detailed recommendations for the consideration of the Committee.

Following, the Committee was asked to consider a set of principles meant to guide FCM's input into the federal government-led consultations on the design of a national residential flood insurance market for Canada. Committee members discussed key challenges around affordability and municipal liability that such an insurance program could bring. They underscored the value of FCM participating in the discussions on this possible program, but that participation may need to be re-considered in the future, depending on what the potential program includes. The Committee approved the enclosed principles, but added principles around affordability and municipal liability.. The full list of detailed principles will come back to the Committee in November.

Lastly, Councillor Ben Henderson, Chair of the Green Municipal Fund Council, provided an update on last year's work of the Green Municipal Fund and Tim Kehoe, FCM Deputy CEO, provided an update on the new programs, including the Capacity Building for Climate Change Challenges (CBC3) Program.

STANDING COMMITTEE RECOMMENDATIONS

Recommendations for adoption:

1. Adopt the following 2016-17 policy and advocacy priorities: (a) phase 2 infrastructure advocacy strategy (b) climate change mitigation and adaptation and (c) and federal environmental assessment;

2. Approve a submission to the Minister of Environment and Climate Change on the Pan-Canadian Framework on Clean Growth and Climate Change which reflects the proposed components which focus on a) mitigation policy recommendations b) adaptation and resilience policy recommendations and c) municipal considerations on carbon pricing;

3. Direct staff to build on the work of the final report of the National Municipal Energy Infrastructure Task Force and develop recommendations on how the National Energy Board public hearing process can be reformed to give local governments a greater voice, and how municipal interests can be adequately considered in the construction, operating and decommissioning of federally-regulated pipelines;

4. Direct staff to return to the Committee in November with detailed recommendations that will inform FCM's submission to the federal government's review of the National Energy Board;

5. Adopt the "Principles to Protect Municipal Interests in the Design of a National Residential Flood Insurance Regime for Canada", with the addition of principles around affordability and municipal liability; and

6. Direct staff to seek an opportunity to have FCM present to the Parliamentary Committees which are reviewing the Navigation Protection Act and the Fisheries Act.

The Standing Committee recommends this report be received.

REPORT OF THE MEETING OF THE RURAL FORUM

SUMMARY OF DISCUSSION

The meeting began with roundtable introductions and the election of the Chair and Vice-Chairs for the coming year. Ray Orb was acclaimed as Chair, and Scott Pearce and Al Kemmere were elected as Vice-Chairs.

Members were then updated on the advocacy efforts of FCM leadership and staff since the last meeting. Policy Advisor Marc LeBlanc outlined progress on key policy areas of interest to the Forum, including federal efforts to improve broadband in rural communities and the government's review of Canada Post. In particular, members stressed the need for additional federal support for both backbone and last-mile solutions to improve broadband service in rural communities.

Following extensive discussion, the Forum approved the recommended 2016-2017 policy and advocacy priorities of 1) Phase 2 Infrastructure Advocacy Strategy; and 2) Rural Economic Development. Forum members stressed the importance of continuing to call for the removal of stacking restrictions and ensure an allocation-based funding mechanism reflects the higher costs of delivering services in rural communities.

Members were also updated on FCM's negotiations on program design for the government's second phase of infrastructure investments, and discussed FCM's proposal to the federal government to build on the existing Small Communities Fund to support core infrastructure needs in rural areas that may not be fully addressed elsewhere in the Phase 2 plan. The Forum made a number of design recommendations to the Board ensure that Phase 2 infrastructure programs meet the needs of rural communities.

The Forum received an update on rural-specific programming at the 2016 Annual Conference. For the 2017 Annual Conference, FCM has committed to continue rural-specific programming and to develop a rural-specific plenary session. In particular, conference programming will recognize the critical role that rural communities have played in shaping Canada over the last 150 years and explore innovative approaches to rural economic development. New members of the Rural Forum are also invited to participate in the ad-hoc working group

The Forum considered one resolution on rural post office closures and recommended that the Board adopt this resolution. Members also discussed the Rural Forum's role in FCM governance and the differences between a Forum, standing Committee and regional caucus.

FORUM RECOMMENDATIONS

Recommendations for adoption:

1. Approve the two proposed priority areas: Phase 2 Infrastructure Advocacy Strategy and Rural Economic Development.

2. Approve the proposed approach to Phase 2 infrastructure program design to meet the needs of rural communities, including the following:

i. A new $1-billion rural infrastructure fund to provide additional targeted funding for rural priorities not fully addressed through the transit, social and green components of the government's Phase 2 investment plan or the existing Small Communities Fund, with flexibility for eligibility thresholds to be negotiated between provinces/territories and their respective municipal associations;
ii. Allocation-based funding mechanisms for Phase 2 infrastructure programs in order to provide predictability to local governments of all sizes; and
iii. A rural lens applied to the eligibility criteria for Phase 2 infrastructure programs.

The Forum recommends this report be received.

REPORT OF THE MEETING OF THE STANDING COMMITTEE ON COMMUNITY SAFETY AND CRIME PREVENTION

SUMMARY OF DISCUSSION

Committee Chair Randy Goulden opened the meeting by welcoming the Committee to Oakville and introducing Vice-Chairs Linda Rydholm and Marie-Eve Brunet, and by welcoming new members and returning members. Chair Goulden provided members with a brief overview of the mandate of the CSCP Committee and reminded members that the purpose of the September meeting is to establish the policy and advocacy priorities for the coming year.

Following approval of the agenda and the report of the March 2016 meeting, members were updated on the advocacy efforts of FCM leadership and staff since the last Committee meeting. FCM continues to monitor the progress of Bill C-7, which has passed third reading in the Senate. The bill will return to the House of Commons to consider proposed amendments in the fall. FCM will re-engage with government on this topic in September. On August 25, 2016, the Executive Committee approved draft principles to support the engagement of the municipal sector in the development of a legalization framework for the production, distribution and consumption of marijuana in Canada.

Further, FCM staff have continued to engage with Public Safety Canada officials on a number of occasions to discuss shared priorities including the National Disaster Mitigation Program, the Disaster Risk Roundtable and the Heavy Urban Search and Rescue teams. FCM continues to engage with Public Safety Canada and has recently participated in three meetings of the PSC's consultations on the design and roll-out of the Public Safety Broadband Network (PSBN) through the establishment of a new consultative forum under the Federal/Provincial/Territorial Interoperability Working Group.

The Committee then turned its attention to establishing priorities for the upcoming year. The Committee considered the proposal for 2016-17 Committee-specific priorities to adopt (a) Phase 2 Infrastructure Advocacy Strategy; (b) Marijuana Legalization and Regulation; and (c) RCMP Labour Relations and Bill C-7.

The Committee considered five resolutions, which addressed rail safety, volunteer tax credits, tax exemptions for emergency response kits, standards for reflective wear for non-professional road users, and drug impaired driving. The rail safety, volunteer tax credits and standards for reflective wear and drug impaired driving were passed as recommended. The resolution on a tax exemption for emergency response kits was reclassified to a Category B.

Alana Lavoie provided an update on the Marijuana Legalization Framework. On June 30, 2016, the federal government announced the creation of a Task Force on the Legalization and Regulation of Marijuana in Canada, acting on a commitment to work on a framework toward the legalization of marijuana. Members heard more detail on the four principles advanced by FCM to the Task Force. FCM will continue engaging with the federal government in designing the framework over the coming months.

Following that update, Alana Lavoie presented to the Committee on RCMP Labour Relations and Bill C-7. In municipalities that employ the services of the RCMP directly, it is anticipated that changes to operational costs resulting from changes brought forward in Bill C-7 will

impact police staffing levels and costs. The Committee heard that on May 6, FCM sent letters to Ministers Goodale and Brison to signal the municipal sector's concerns with Bill C-7. As Bill C-7 progresses, FCM will continue to engage with the RCMP and Public Safety Canada to ensure the impacts of the bill are understood and options to mitigate these impacts are considered. FCM will also continue to support the PTAs in their engagement on this matter.

Lastly, the Committee heard an update on the Public Safety Broadband Network (PSBN) and the Interoperability Working Group (IWG). In the coming months, FCM will engage with the federal government through the Interoperability Working Group on important design details for this new network.

In response to discussion surrounding rail safety under other business, a motion was tabled regarding the mandate of the Rail Safety Working Group. The motion calls for the Rail Safety Working Group to expand its work to include examining the costs associated with funding operations related to rail safety, such as training and safety equipment.

STANDING COMMITTEE RECOMMENDATIONS

Recommendations for adoption:

1. Approve the three proposed priority areas: Phase 2 Infrastructure Advocacy Strategy, Marijuana Legalization and Regulation and RCMP Labour Relations and Bill C-7.

2. Give the Rail Safety Working Group a mandate to study the issues and possible action relating to funding for rail safety operations (e.g., equipment and training) and to follow up by sharing the results at the November Board of Directors meeting.

The Standing Committee recommends this report be received.

REPORT OF THE MEETING OF THE STANDING COMMITTEE ON MUNICIPAL INFRASTRUCTURE AND TRANSPORTATION POLICY

SUMMARY OF DISCUSSION

Committee Chair Bob Long opened the meeting by introducing Vice-Chair Anne Marie Gillis and Vice-Chair David Price, and by welcoming new members and returning members.

Following approval of the agenda and the report of the March 2016 meeting, members were provided information on the advocacy efforts of FCM leadership and staff since the last meeting. Members were updated on FCM's work with the federal government on designing Phase 2 of the infrastructure plan to meet the needs of municipalities. Committee members provided feedback on the shortcomings of existing funding programs for municipal infrastructure and public transit projects. The Committee also discussed the urgent need for additional funding to help municipalities meet required upgrades under Transport Canada's *Grade Crossings Regulations.* Furthermore, members expressed disappointment with the Supreme Court's decision in *Rogers v. Ville de Chateauguay* and its implications for municipal decision-making.

Following extensive discussion, the Committee approved the recommended 2016-2017 policy and advocacy priorities of 1) Phase 2 Infrastructure Advocacy Strategy; and 2) the Asset Management Capacity Building and Infrastructure Data Collection. Committee members also recommended to the Board to direct staff to analyze the existing Gas Tax Fund structure and its implications for municipalities and report back at the November 2016 Board meeting.

Members were then updated on the progress of the Phase 1 programs announced in Budget 2016 and details of the Phase 2 program design including funding mechanisms and reporting. Committee members expressed concerns with the design and roll-out of Phase 1, including the new reporting requirements and different funding mechanisms, and provided detailed feedback for enhancements for Phase 2. Members emphasized the need to develop a funding formula that best supports public transit projects in communities of all sizes.

The Committee recommended to the Board to endorse a predictable, allocation-based funding model for Phase 2 public transit investments based on a formula that combines transit usage and population, with an additional mechanism to support transformative investments and grow ridership in cases where an allocation formula does not fully meet local needs.

Furthermore, the Committee recommended that the Board direct staff to undertake a technical analysis and needs assessment to inform recommendations on formula options for an allocation-based funding model for Phase 2 public transit investments. The Committee also requested an update on the roll-out of existing and proposed infrastructure programs for the November 2016 board meeting.

The Committee also discussed the Railway Association of Canada's proposals calling for new federal funding for grade crossing improvements and grade separations, a greater federal role in implementing the FCM-RAC Proximity Guidelines, and additional support for the Operation Lifesaver Program. The Committee was then updated on the design and roll-out FCM's Asset Management Fund to support asset management capacity-building at the

local level. Committee members expressed an interest in an increased alignment between FCM's Asset Management Fund and existing programming delivered by provincial/territorial municipal associations.

Committee members considered five resolutions. The Committee recommended that the Board adopt resolutions on the installation of truck sideguards, municipal consultation on the regulation of drones, rail safety and ferry services. The Committee recommended that the Board not adopt a resolution increasing the provincial cost-share to 40 percent for the New Building Canada Fund's National Infrastructure Component. Committee members called on FCM staff to send urgent correspondence to the Minister of Transport if the amended resolution on the installation of truck sideguards is adopted by the Board of Directors.

STANDING COMMITTEE RECOMMENDATIONS

Recommendations for adoption:

1. Approve the two proposed priority areas: Phase 2 Infrastructure Advocacy Strategy and the Asset Management Capacity Building and Infrastructure Data Collection;

2. Endorse a predictable, allocation-based funding model for Phase 2 public transit investments based on a formula that combines transit usage and population, with an additional mechanism to support transformative investments and grow ridership in cases where an allocation formula does not fully meet local needs; and

3. Direct staff to undertake a technical analysis and needs assessment to inform recommendations on formula options for an allocation-based funding model for Phase 2 public transit investments.

4. Direct staff to analyze the existing Gas Tax Fund structure and its implications for municipalities and report back at the November 2016 Board meeting.

The Standing Committee recommends this report be received.

REPORT OF THE MEETING OF THE NORTHERN AND REMOTE FORUM

SUMMARY OF DISCUSSION

Chair Diana Rogerson opened the meeting by welcoming new and returning members, as well as by welcoming the Vice-Chairs, Charles Furlong and Jeannie Ehaloak, who called into the meeting from Alavik, NWT and Cambridge Bay, NU, respectively. Chair Rogerson provided members with a brief overview of the mandate of the Forum and reminded members that the purpose of the September meeting is to establish the policy and advocacy priorities for the coming year.

Following approval of the agenda and the report of the March 2016 meeting, members were updated on the policy and advocacy work that has been undertaken by FCM since the last board meeting. In an update from Matt Gemmel, members heard that FCM Past-President Raymond Louie presented to the Canadian Radio-television and Telecommunications Commission (CRTC) as part of their review of basic broadband services. In our final submission to the review, FCM recommended universal access to affordable and reliable broadband services at evolving speeds, and a specific strategy for Canada's North. FCM also made a submission to the Senate Committee on National Finance supporting the increase to the Northern Residents Tax Deduction, which was included in Budget 2016.

The Forum received a summary of the feedback provided by delegates at the Northern and Remote Forum session at FCM's 2016 Annual Conference in Winnipeg. Delegates highlighted northern and remote considerations on the design of FCM's asset management program, and federal Phase 2 infrastructure investments in green infrastructure and social infrastructure.

The Forum then turned its attention to establishing priorities for the upcoming year. Members heard how Phase 2 of the federal government's infrastructure plan will impact northern and remote communities and identified a need to integrate a northern and remote perspective into in FCM's Phase 2 Infrastructure Advocacy Strategy. Recognizing that the federal government is developing a National Housing Strategy, but that there are distinct needs and challenges that must be considered in designing and delivering affordable housing and homelessness programming in northern and remote communities, the members recommended Northern and Remote Affordable Housing and Homelessness as the 2016-17 Forum-specific priority.

Lastly, the Forum heard a presentation from the Senior Manager for Housing Policy with the Canada Mortgage and Housing Corporation (CMHC) who presented plans for developing the National Housing Strategy, particularly as it pertains to northern and remote communities. The Forum heard that, as part of the National Housing Strategy, the federal government is planning to develop a specific plan for Northern and Indigenous housing that will address the particular needs of the north, including the importance of federal support for social housing. FCM members were invited to participate in upcoming consultation sessions in the North.

FORUM RECOMMENDATIONS

Recommendations for adoption:

1. Adopt the following 2016-17 policy and advocacy priorities: (a) Phase 2 Infrastructure Advocacy Strategy; (b) Northern and Remote Affordable Housing and Homelessness.

The Forum recommends this report be received.

REPORT OF THE MEETING OF THE STANDING COMMITTEE ON INCREASING WOMEN'S PARTICIPATION IN MUNICIPAL GOVERNMENT

SUMMARY OF DISCUSSION

Standing Committee Chair Chris Fonseca, Regional Councillor, Region of Peel, ON, introduced the Councillor Darren Hill and Councillor Irene Dawson as the Vice-Chairs. She then welcomed Committee members, observers and staff to the meeting. The agenda and minutes were approved based on the minutes being amended to ensure clarity on intersectional approach referenced in the final paragraph of the minutes.

Vice-Chairs Hill and Dawson presented the 2016-17 Committee-specific priorities as well as the shared priority as it relates to the Committee's mandate. One of the recommended priorities of the Committee is the delivery and promotion of *Diverse Voices for Change*, a three-year, $500,000 initiative. FCM's *Diverse Voices for Change* initiative seeks to increase the number of women across diverse communities who are actively informed by, and engaged in, local government decision-making. Committee members shared their experiences on increasing women's participation as it relates to the Regional Champions network. FCM staff will look at different ways to strengthen the communication in support of the Regional Champions program in an effort to share experiences, strengthen the network, and increase the number of Regional Champions. The Committee also received a presentation from Councillor Chris Coleman on FCM's international programming, including his experience at the Ukraine Municipal Forum in June 2016. In October, FCM will host a webinar on women entrepreneurship as part of international series; Committee members were encouraged to participate in the webinar that will be delivered in English. The Committee approved the following as its priorities for 2016-17:

1. Delivery of the Diverse Voices for Change initiative
2. Regional Champions
3. Scholarships and Awards
4. Promoting Policies, Practices and Strategies in support of the Committee's 30% Representation Goal
5. International Women's Day
6. International partnerships on gender-related programs

In support of the priority on scholarships and awards, the Committee was presented with the recommendation to have the Vice-Chair of the Committee, Councillor Darren Hill, be appointed as co-Chair with Councillor Lorrie Williams for the Sub-Committee. The addition of Councillor Hill will ensure consistency of communication and strategic links of the scholarships and awards with staff and Board members. Councillor Fonseca thanked Councillor Williams for her leadership with the Sub-Committee.

The Committee discussed the implications of increasing the Committee's goal of 30 percent representation of women elected to local government to 50 percent by 2026. Committee members were interested at looking at the Committee through an intersectional analysis approach to the Committee as well as data collection. Staff was asked to gather information and report back to the Committee.

STANDING COMMITTEE RECOMMENDATIONS

Recommendations for referral to staff:

1. That staff analyze the implications of increasing the 30% target in the policy statement to 50% by 2026 and report back in November.

The Standing Committee recommends this report be received.

REPORT THE MEETING OF THE STANDING COMMITTEE ON INTERNATIONAL RELATIONS

SUMMARY OF DISCUSSION

Chair Roger Anderson introduced the new Vice-Chairs Councillor Garth Frizzell and Councillor Bev Esslinger and welcomed Committee members and presented FCM staff. The members approved the agenda and the minutes from the March 2016 Board of Directors' meeting in Sherbrooke.

The Committee was presented with an update on the work plan of FCM's International Relations Framework. In 2016, for example, FCM will continue to: strengthen its relationship with the federal government through the Joint Working Group, which will meet in early October; advance its development cooperation programming; support the engagement of Canadian municipalities and experts, including members of the Committee, in its programs.

Following the presentation, staff went over FCM's submission to the International Assistance Review, which was led by Global Affairs Canada between May and July 2016. The primary objective of the review was to determine how best to focus Canada's international assistance on helping the poorest and most vulnerable populations, and supporting fragile states. FCM's submission recommended that Canada's international assistance should reflect the following: 1) that Canada pay particular attention to urbanisation and the high proportion of the poor who are living in urban areas; 2) that governance focus on decentralisation and capacity building support for local governments as a way to address these thematic priorities; and 3) include a goal of strengthening innovative strategic partnerships with key Canadian sectors, including with Canadian municipalities. FCM will develop a plan to disseminate the recommendations to government officials and other international partners and stakeholders.

The Committee welcomed the Honourable Jean-Yves Duclos, Minister of Families, Children and Social Development to the meeting. Minister Duclos provided an overview of the Government of Canada's plans for the upcoming Habitat III conference in Quito, Ecuador. FCM President Clark Somerville will lead a delegation of Canadian elected officials to Habitat III along with representatives from Metro Vancouver, Montreal and the Communauté métropolitaine de Montréal. The delegation will participate in various sessions and forums to demonstrate and express the importance of local governments as development actors. Habitat III will be an opportunity to promote its international and domestic programming and policies through various meetings and presentations.

The Chair announced the appointment of the new SCIR Governance Representatives, who provide strategic oversight to each of FCM's five international programs. The 2016-17 Governance Representatives will be Chair Roger Anderson for the Program on Local Economic Development and Democratic Governance (PLEDDG) in Ukraine; Cllr Michael Thompson for the Caribbean Local Economic Development (CARILED) program; Cllr Brian Pincott for the Haiti-Municipal Cooperation Program (MCP); Cllr Garth Frizzell for the Sustainable and Inclusive Communities of Latin America (CISAL), Cllr Sylvie Goneau for the Partnerships for Municipal Innovation-LED in Africa; Cllr Bev Esslinger for the Partnerships for Municipal Innovation-LED in Asia; and Cllr Marvin Plett for the Partnerships for Municipal Innovation-LED in Latin America. Committee members received reports on each of the programs.

In 2017, FCM will mark 30 years of international programming. The Committee members undertook a brainstorming exercise to identify different ideas to promote the international work of FCM in Canada and abroad throughout the year. Members emphasized the importance of the annual conference as a key moment to celebrate the results of the FCM's work. FCM staff was asked to prepare a plan based on the suggestions to present at the November meeting. Updates will be provided to the Committee throughout 2017 on the progress of the plan.

STANDING COMMITTEE RECOMMENDATION

The Standing Committee recommends this report be received.

Ministry of Infrastructure

8th Floor, Hearst Block
900 Bay Street
Toronto, Ontario M7A 2E1
Tel: 1-800-268-7095

Ministère de l'infrastructure

8e étage, édifice Hearst
900 rue Bay
Toronto (Ontario) M7A 2E1
Tél. : 1-800-268-7095

Ontario

September 14, 2016

Town of Minto
5941 Highway 89
Harriston, ON
N0G 1Z0

Dear CAO/Clerk:

The 2016 Federal Budget announced the establishment of a Clean Water and Wastewater Fund (CWWF) that proposes to invest up to $569.6 million in the province of Ontario for immediate improvements to water distribution and treatment infrastructure, starting in 2016-17.

CWWF will provide municipalities with vital infrastructure funding to help accelerate short term investments to support the rehabilitation and modernization of drinking water, wastewater and stormwater infrastructure, and the planning and design of future facilities and upgrades to existing systems.

The provision of CWWF funding is governed by a bilateral agreement between Canada and Ontario, with the Ontario Ministry of Infrastructure being responsible for the administration of CWWF. The federal government will contribute 50% of the eligible project costs, up to the maximum federal allocation noted below. In addition, the Province will contribute 25% of eligible project costs, up to the maximum provincial allocation noted below.

Municipality allocations under the CWWF are based on the amount of water, wastewater and stormwater assets owned by municipalities and their economic conditions. Grants for First Nations are based on each community's population on reserve. All recipients receive a minimum of $75,000.

Projects must be complete with all costs incurred prior to March 31, 2018. Where need is demonstrated, up to 25% of costs can extend beyond March 31, 2018. Extensions beyond March 31, 2018 require pre-approval by the Province and the Federal Government.

I am pleased to note that, Town of Minto will be eligible to receive a maximum federal allocation of $498,740 and a maximum provincial allocation of $249,370.

In order to submit an application to receive CWWF funding and access the CWWF Program Guide, please visit: http://www.grants.gov.on.ca/GrantsPortal/en/OntarioGrants/GrantOpportunities/PRDR015994.html.

Please note that eligible recipients must complete in full and submit electronically a CWWF Project List Template to the email identified on the Grants Ontario web portal by October 31, 2016.

For more information on how to complete each component, in addition to information regarding general program requirements and eligibility criteria please refer to the CWWF Program Guide.

If you have any questions regarding the Clean Water and Wastewater Fund (CWWF), please contact Infrastructure Ontario, at 1-844-803-8856.

Sincerely,

Elizabeth Doherty
Director, Intergovernmental Policy Branch
Infrastructure Policy Division

Disponible en français

Jamesway Board Meeting
June 9, 2016 @ 9:00 A.M.

Attendance - Randy Reetz, Dianne Lawless Jean Anderson, Karen Dowler, Marion Hylie
Minutes from Meeting April 13, 2016 Motion from Dianne Lawless that we accept seconded by Marion Hylie Carried
Update to Existing Business - New Thresholds have been installed at all the Tenants doors
New Business - Building Condition Assessment will be done June 22, 2016.
Sounds like the money coming from the Government for renovations will be geared towards retrofit (Lighting, windows etc.) but no final details yet.
Catch Basin Repair - Have 3 to replace and 1 to just fix. Dianne Lawless made a motion to accept T.D. Concrete Forming (Doug Speers) at $2,022.70 seconded by Jean Anderson Carried.
Tubs Karen Dowler has a quote to do Step-In Tubs for all the Apartments at a cost of $14,791.70 Motion by Dianne Lawless seconded by Jean Anderson to have Quick Tubs installed and caps as needed at a cost of $4490 each Karen Dowler will talk to each Tennant Carried
Generator - Karen has 3 Contractors to give quotes to put a Generator in. Quotes will be available by Month end. We can review in July or August.
BBQ Tennants BBQ will be on July 18th @ 5 P.M.
Karen attended County meeting in Guelph

DEW

Review Profit + Loss

Accounts Payable

May - $ 27,608.57
June - 18,457.08

Motion to accept by Jean Anderson seconded by Dianna Lawless. Carried

Next Meeting August 11 @ 9 A.M.

Adj - Jean Anderson

President

Secretary
Marion B. Wylie

Minutes

Board of Directors Meeting #7/16

July 20, 2016

DIRECTORS PRESENT: Jim Campbell, Deb Shewfelt, Alvin McLellan, Wilf Gamble, Matt Duncan, Bob Burtenshaw, David Turton

ABSENT WITH REGRETS: Art Versteeg, Alison Lobb, Roger Watt, Paul Gowing,

STAFF PRESENT: Phil Beard, General Manager/Secretary-Treasurer
Danielle Livingston, Administrative/Financial Services Coordinator
Jayne Thompson, Communications Coordinator
Stewart Lockie, Conservation Areas Coordinator
Jason Moir, FRCA Park Superintendent
Paul, Kroll, FRCA Assistant Park Superintendent

COMMUNITY ATTENDEES: Rod MacRae, Associate Professor of Food Studies, York University

1. Call to Order

1st Vice Jim Campbell called the meeting to order at 7:00 pm and reviewed the meeting objectives with the Board.

2. Declaration of Pecuniary Interest

There were no pecuniary interests at this time.

3. Minutes

The minutes from the Board of Directors meeting #6/16 held on June 15, 2016 have been circulated to the Directors for their information and approval. The Directors agreed with the minutes and the following motion was made.

Motion FA #63/16

Moved by: Wilf Gamble **Seconded by: Alivn McLellan**

THAT the minutes from the Board of Directors meeting #6/16 held on June 15, 2016 be approved.

(carried)

4. **Business Out of the Minutes**

i) Additional Revisions to Development, Interference with Wetlands & Alterations to Shorelines & Watercourses Regulation Policies: **Report #43/16** (attached)

The Directors approved revisions to the Maitland Valley Conservation Authority's development regulation policies at the June 15, 2016 Board Meeting. Some additional revisions and clarifications were presented by Phil Beard, General Manager/Secretary-Treasurer. The Board concurred with the proposed additional revisions/clarifications.

The following motion was approved.

Motion FA #64/16

Moved by: Deb Shewfelt **Seconded by: Bob Burtenshaw**

THAT the changes proposed to Maitland Valley Conservation Authority's for compliance with the development regulation for flood plains, river valleys, shorelines and gullies be approved.

(carried)

ii) Conservation Authorities Act Review/Key Messages: **Report #44/16** (attached)

This report provides an update to the follow up actions of report #39/16 from the June meeting. The Director's reviewed Conservation Ontario's preliminary response to the Ministry of Natural Resources and Forestry's discussion paper. The Board concurred with the key messages outlined in Report #44/16. The Board decided that the Chair should be given authorization to review Conservation Ontario's revised response and decide whether to support the revised response or not. The Board also agreed that MVCA should submit a response to MNRF's discussion paper prior to the September 9th deadline, with a copy to be circulated to our member municipalities.

Motion FA #65/16

Moved by: Bob Burtenshaw **Seconded by: Wilf Gamble**

THAT Chair Art Versteeg review and respond to Conservation Ontario's revised draft response to the Ministry of Natural Resources and Forestry's discussion paper; **AND THAT** Maitland Valley Conservation Authority develop a response based upon the key messages outlined in Report #44/16 to the Ministry of Natural Resources and Forestry's discussion paper; **AND FURTHER THAT** a copy of this response be circulated to member municipalities.

(carried)

5. **Business Requiring Direction**

i) Review of Options for Operation of Falls Reserve Conservation Area: **Report #45/16** (attached)

Following the service area review of the Falls Reserve Conservation Area by Conservation Areas Coordinator Stewart Lockie, this report was presented to the Director's to obtain direction on future operations.

The following motion was made following thorough review and discussion.

Motion FA #66/16

Moved by: Deb Shewfelt **Seconded by: Bob Burtenshaw**

THAT the Falls Reserve Conservation Authority continues to operate with the existing camping services as outlined in Option #2A of Report #45/16.

(carried)

Reports

a) Chair's Report

There were no reports from Chair Art Versteeg.

b) Director's Reports

Director Matt Duncan informed the Board that CTV news published a story on the decommissioning of the Listowel Dam and restoration of the river on July 19, 2016.

1st Vice Jim Campbell announced that there have been many reports made of hogweed along the Maitland River by residents of North Huron.

6. **Board Education Session "Agriculture/Food and Climate Change": Rod MacRae, Associate Professor of Food Studies, York University**

Rod MacRae, York University Professor delivered an informative presentation entitled "Developing a More Climate Resilient Food System & Improving the Viability of Rural Communities". A copy of the presentation will be circulated to all Directors.

7. **Review of Meeting Objectives/Follow-up Actions/Next meeting: September 21, 2016 at the Admin. Centre in Wroxeter**

1st Vice Chair Jim Campbell reviewed the meeting objectives.

8. **Adjournment**

The meeting adjourned at 9:10 pm with this motion.

Motion FA #67/16

Moved by: Matt Duncan **Seconded by: David Turton**

THAT the meeting be adjourned.

carried)

Jim Campbell
Acting Chair

Danielle Livingston
Administrative/Financial
Services Coordinator

TOWN OF MINTO

DATE: September 29th, 2016
REPORT TO: Mayor and Council
FROM: Matthew Lubbers, Recreation Services Manager
SUBJECT: Van Replacement Update

STRATEGIC PLAN:

Analyze, prioritize and evaluate major capital projects from a cost-benefit perspective to determine fiscally feasibility.

BACKGROUND:

The Town of Minto Recreation Department purchased a 2003 Chevrolet Venture mini-van in 2005. Used by multiple departments, the van has been convenient in transporting multiple people to and from work-related functions as well as moving weather-sensitive cargo.

COMMENTS:

The van has had over 10 years of useful life and is showing signs of age. During 2016 Budget deliberations, $30,000 was earmarked for a replacement vehicle. The plan is to have the Building Department be the primary users of the new vehicle, but it will remain available for use by all departments. Staff will look for a vehicle that at minimum has:

- seating for up to 7 people
- AWD or 4-wheel drive
- automatic transmission
- basic power package
- covered storage area
- dark blue exterior

A type of SUV, crossover vehicle or van will be the most likely replacement option. Recreation Services Manager Lubbers and CBO Terry Kuipers will work together to select the best option.

FINANCIAL CONSIDERATIONS:

Up to $30,000 is budgeted. Half will be funded through the tax budget and the other half from Building Department reserves.

RECOMMENDATION:

That Council receives the Recreation Services Manager's September 29th, 2016 report regarding Van Replacement Update and staff proceed with request for quotation for the vehicle type outlined in the report.

Matthew Lubbers, Recreation Services Manager

Town of Minto

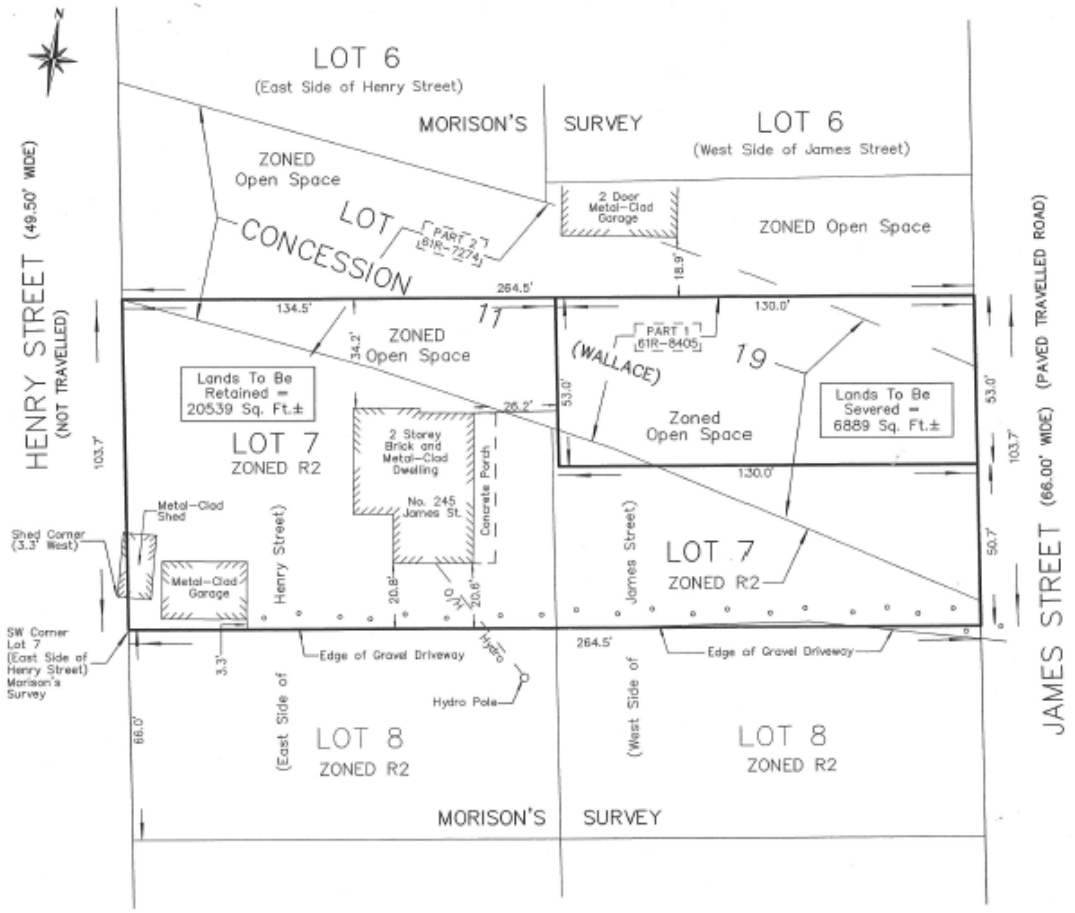
DATE: September 22, 2016
TO: Mayor Bridge and Members of Council
FROM: Stacey Pennington, Building Inspector
RE: B70/16 – Will Severance
245 James Street Palmerston

STRATEGIC PLAN

Ensure growth and development in Clifford, Palmerston and Harriston makes cost effective and efficient use of municipal services, and development in rural and urban areas is well planned, reflects community interests, is attractive in design and layout, and is consistent with applicable County and Provincial Policies.

BACKGROUND

This application to County Land Division is to sever a 53' x 130' lot and retain a larger parcel at 245 James Street in Palmerston. A large portion of the severed parcel, labeled Lot 19 Concession 11 (Wallace) is on a former rail land property. This portion of the property is currently zoned Open Space.



COMMENT

Clerks

The applicant will be required to pay all applicable fees to the Town of Minto, including fees in relation to certified list of landowners, letter of consent, and parkland dedication.

Building/Zoning
The proposed severed parcel is currently zoned open space. The lot size and similar requirements required in the zoning by-law meet the requirements of the Open Space Zone.

A rezoning will be required to permit residential development as suggested in the application. The lot frontage will not meet the requirements of a R1B zoning, but it will meet the requirements if rezoned to R1C or R2. Fees applicable to building permits and development charges will be required prior to the issuance of a building permit.

As it is former rail land they should be required to supply a record of site condition prepared by a qualified person in accordance with Provincial Legislation prior to any building permits being issued for a residential use.

Public Works
Both the severed and retained parcels have adequate servicing in relation to water and sewer. The severed parcel was serviced with a 1" water line and 5" sanitary during the reconstruction of James Street. The frontage fees have not yet been paid. An entrance permit will be required.

RECOMMENDATION

THAT the Council recommends County of Wellington Land Division Committee approve Severance Application B70/16 WIII, 245 James Street, Palmerston Town of Minto that the following conditions be considered:

1. THAT the applicant satisfies all requirements of the Town of Minto, financial and otherwise which the Town may deem to be necessary for the proper and orderly development of the subject lands.

2. THAT the applicant satisfies the requirements of the Town of Minto in reference to Parkland Dedication as provided for in the Planning Act including where applicable paying cash-in-lieu of parkland in the amount of $500 per lot or other specified in the applicable policy of the Town at the time of consent.

3. THAT the applicant obtain a written statement from the Town of Minto confirming the proposed lots and associated land uses, buildings and structures comply with the all applicable requirements in the Town of Minto zoning by-law.
4. That the applicant provides written confirmation from the Town of Minto Public Works Department that they are satisfied that separate municipal services are available to each of the separate lots proposed for the subject lands, these services are properly connected to each existing structure.
5. That the applicant provide proof of payment from the Town of Minto that outstanding frontage charges for water, sanitary sewer, and or storm sewer where applicable and required by the Town for the severed lot(s) at the rate established by policy in place at the time of payment of the frontage charge (for reference only and subject to change, the rate applicable at the time of this decision is $221.00 per metre lot frontage), and that the applicant is also advised this does not include paying the cost of lateral connections to any service which shall be payable to the Town at time of connection.
6. That the applicant written confirmation from the Town of Minto Public Works Department that satisfactory access arrangements to the subject lands has been

including payment of applicable fees.

ATTACHMENTS

County of Wellington Planner, Jameson Pickard, Junior Planner

Planning and Development Department | County of Wellington
County Administration Centre | 74 Woolwich Street | Guelph ON N1H 3T9
T 519.837.2600 | F 519.823.1694

Application	B70/16 – **PRELIMINARY COMMENTS**
Location	Part Lot 7, w/s James St., Morrision's Svy TOWN OF MINTO
Applicant/Owner	David & Liette Will

PLANNING OPINION: This application would sever a vacant 6,889 ft² (640 m²) Residential parcel in the Urban Centre of Palmerston. A 20,539 ft² (1,908 m²) parcel would be retained with existing dwelling, garage and shed.

The existing proposal is located on a former CN railway line and is designated the Recreational in the Official Plan and Open space in the Township Zoning By-law. Because of this former use the applicant will be required to provide a record of site condition demonstrating the lands are not contaminated and also amend the Official Plan and zoning by-law to appropriate residential categories in order to facilitate this development.

We note that there may be an opportunity to move or reconfigure the severed parcel to the south which would bring majority of the lot out of the former railway corridor potentially reducing some of the required conditions. It may be in the applicant's interest to defer the application to allow time to review some of these alternatives.

However, if the applicant prefers the current location staff would generally have no concerns with the proposed application provided the following conditions are addressed as a condition of approval:

a) That an Official Plan Amendment for the severed parcel be approved to the satisfaction of the County of Wellington Planning Department;
b) That the severed lands be rezoned to the appropriate residential zone category to the satisfaction of the local municipality;
c) That the applicant provides, to the satisfaction of the local Municipality and County of Wellington, an MOEE acknowledged Record of Site Condition for the severed parcels which provides:

    i) evidence that the site is not contaminated and no remediation is required;
    ii) or that the required site remediation has taken place; and

d) That safe driveway access and servicing can be provided to the site to the satisfaction of the local municipality

PLACES TO GROW: The Places to Grow policies place an emphasis on intensification and optimizing the use of existing land supplies. Under section 2.2.2.1 which deals with managing growth it states, "population and employment growth will be accommodated by focusing intensification in intensification areas". Intensification is defined as "the development of a property, site or area at a higher density than currently exists through,…..b) the development of vacant and/or underutilized lots within previously developed areas; or c) infill development".

PROVINCIAL POLICY STATEMENT (PPS): Section 1.1.3.1 of the PPS directs growth to settlement areas. The proposed severance is located in the Urban Centre of Palmerston.

Section 3.2.2 of the PPS states sites with contaminants in land or water shall be assessed and remediated as necessary prior to any activity on the site associated with the proposed use such that there will be no adverse effects.

WELLINGTON COUNTY OFFICIAL PLAN: The property is designated RESIDENTAIL and RECREATIONAL and is located in the Urban centre of Palmerston on Schedule A5-3 of the Official Plan. The proposed severed parcel is completely with the RECREATIONAL designation. Residential uses are not permitted within the RECREATIONAL designation and an Official Plan amendment is required to facilitate the proposed development.

Further, the proposed severance is proposed on portion of an abandoned CN Rail way line, section 4.5.2 of the Plan provides policy direction for dealing with contaminated sites, including the following:

Development will not be permitted on contaminated sites. Development may only proceed once a contaminated site is restored such that no adverse effect will result from any on-site activity associated with the proposed use. Also, the applicant is required to provide an MOEE acknowledged Record of Site Condition for the severed lands which provide evidence that the site is not contaminated and no remediation is required, or that the required site remediation has taken place.

The matters under section 10.1.3 were also considered including a) "that any new lot will be consistent with official plan policies and zoning regulations"; and i) "that lots are not created in areas which would pose a threat to public health or safety."

Planning and Development Department | County of Wellington
County Administration Centre | 74 Woolwich Street | Guelph ON N1H 3T9
T 519.837.2600 | F 519.823.1694

WELL HEAD PROTECTION AREA: The subject lands have been identified to be within a Wellhead Protection Area (WHPA) A and B, with a vulnerability score of 10 and 6 respectively. The severed parcel is completely within the WHPA A with a vulnerability score of 10.

LOCAL ZONING BY-LAW: The subject property is currently zoned Residential (R2) and Open Space (OS). The proposed severed parcel is completely within the OS zone and would need to be rezoned to an appropriate residential category to permit a residential dwelling.

SITE VISIT INFORMATION: The subject property has not yet been visited.

Jameson Pickard, Planner
September 28th, 2016

TOWN OF MINTO

DATE: September 14, 2016
REPORT TO: Mayor and Council
FROM: Bill White, C.A.O. Clerk
SUBJECT: Changing Workplaces Review Special Advisors Interim Report

STRATEGIC PLAN:

12.7 Demonstrate innovation in all aspects of municipal business acknowledging the importance of training, succession planning, transparency, communication and team-based approaches to municipal operations.

BACKGROUND

The review commissioned by the Province considered 300 written submissions, and 12 days of public hearings where 200 organizations and individuals spoke on the following areas:

- Broader issues affecting the workplace like globalization, trade liberalization, technology, service sector growth, and changes in standard employment relationships
- How the Labour Relations Act 1995 and Employment Standards Act 2000 address these workplace trends
- Possible changes to legislation given the changing nature of the workforce, the workplace, and the economy.

The focus of the review is on "vulnerable workers in precarious jobs and the need for legislative amendments to address some of the issues facing these workers". They intend to be "mindful of the interests of employers" while recognizing the "power imbalance" between employees and employer has always required legislation to protect basic employee rights. The review seeks to ensure legislation provides for the following:

1. Decent working conditions defined by a fair income, productive work, security, protection, personal development.
2. Respect for the Law and Consistent Compliance
3. Access for Justice

The report is 304 pages beginning with an Introduction, Guiding Principles, Values & Objectives, and Changing Pressures & Trends. Key sections on Labour Relations and Employment Standards include a review of the history and scope of the legislation, and then an assessment of key issues and options for legislative reform. Comments on the legislation are due by October 14, 2016.

The Labour Relations Act passed in 1995 had several reviews over the year with amendments last made in 2005. It deals with union certification, collective agreements, strikes and lock-outs. As a non-union employer the Town is not directly impacted by legislative changes in this area. While private sector unions are noted to have decreased in the report, public sector unions are active and growing. Options in the area of organization could eliminate the "voting" process in favour of a "card signing" process favoured by national unions, or removing a second vote option available under the Act.

The Employment Standards Act was passed in 2000 and last changed in 2015. It covers hours of work, overtime pay, minimum wage, job-protected leave, public holidays, vacation, termination and severance of employment, equal pay for equal work; and temporary help agencies. Town employment policies, under review, meet or exceed the minimum standards in the Act. The Town's pay equity and job evaluation processes ensure equal pay for equal work rules are met.

Options for new rules that may impact the Town are discussed in the following areas:
1. Hours of work for managers and supervisors
-set a standard requiring overtime be paid for supervisors/managers under a certain pay
-require overtime be paid if a supervisor/manager exercises care and control over 2 or less employees or do not have the authority to hire, fire or terminate
-require overtime be paid where the supervisor or manager does direct manual work rather than work related to management or general business operations

2. Unpaid intern/trainees
-eliminate unpaid intern/trainee positions or require them to be paid
-require employers who use unpaid intern/trainee positions to file a plan with the Ministry

3. Rest periods and work days
-compulsory daily rest period of at least 11 hours, limiting workdays to 12 hours (no exceptions except by regulation)
-8 hour rest required between two shifts of more than 13 hours combined duration;
-weekly/bi-weekly rest periods: 24 consecutive hours off per week or 48 consecutive hours off per 2 weeks;

4. Benefits for part time employees
- Require part-time, temporary and casual employees be paid the same as full-time employees if holding a position similar to a full time employee with same skills, abilities etc.
- Require pay in lieu of benefits, or some other rated benefit restricted to those earning less than twice the minimum wage
- Limit the number of consecutive contracts an employee may be given part time work

5. Termination of employment
- Eliminate the eight week cap for written notice of termination for employees (an employee with 20 years' service receives 20 weeks' notice instead of 8 weeks)
- Add recurring periods of employment when calculating notice
- Require mandated notice provisions for employees to employers

6. Severance pay, Just Cause
- is paid in addition to termination notice for employees who have severed employment (no cause) from employers with 50 or more staff or payrolls over $2.5 million
- paid at a rate of 1 weeks' pay per year to maximum of 26 weeks
- option to change number of staff or payroll size to severance pay, or remove or change the 26 week limit, or change the 1 week per year to something higher
- include just cause protection for all employees

<u>COMMENTS:</u>
The biggest workplace change identified is the shift from manufacturing to service and retail industries resulting in "smaller, more flexible and leaner, workplaces" which demand more

highly skilled workers and “flatter hierarchies”. There is also more part time, contract and self-employed which in some cases has little over-riding legislation. Employers seek independence to operate their business in a responsible, fair and efficient manner. Most employers support government enforcing the law against employers who violate the rules, but prefer government interference in the operations is minimal.

Council has repeatedly expressed concerns with growing administrative and reporting requirements to the Province in many programs. There is a good chance this review will result in new legislation which increases reporting requirements and cost to good employers with no real impact on employment conditions for vulnerable workers, which are typically with smaller employers with high turn-over, part time status, and direct vulnerability to international competition.

Town employees are not “vulnerable workers in precarious jobs” as their work allows for a decent income in reasonable working conditions. Full time positions earn competitive benefits including one of the best defined benefit pensions around. The Town reviews its pay policy every four years to ensure pay rates remain competitive within the mid-point of comparably sized municipalities, and provides feedback through its employee committee and its Minto Mettle program.

The Town does have some seasonal and part time workers who do not receive the benefits of full time staff. Town seasonal workers are usually working with construction companies not requiring their services in the winter, or students seeking summer employment. The Town needs to monitor working conditions and wages in these cases, although it should be noted that Town’s succession plan has resulted in them moving into full time employment. The Town has had relatively stable full time employment over the years and has not moved to replace these jobs by contracting out or with part time positions.

As such many of the options contained in the report are not typically directed at employees with employers like the Town. As a relatively small employer the Town is able to develop a one to one relationship with its employees. It is not difficult for any employee to meet with the C.A.O. Clerk or Mayor if there is an issue of importance to be discussed. Staff is close enough to allow “one-off’ solutions to help employees through challenging periods all the while maintaining a reasonable standard that ratepayers can afford.

Changes to the Labour Relations Act making it easier to unionize should not be a significant concern to the public sector where unionized work is growing. Unionized workplaces tend to have much less flexibility than non-union, eliminating options for “one-off” or special circumstances in favour of specific rules for the bargaining unit. Making it easier to unionize employers like the Town does not address needs of more vulnerable employees. As such current rules seem sufficient for public sector employees. Changes related to collective bargaining, strikes or lock-outs are not of concern to the Town at this time.

Changes to the Employment Standards Act could have more impact on Town employment costs if managers/supervisors received mandated overtime, part time employees must receive full benefits, or hours of work mandates change dramatically particularly as they apply to employees who plow snow. The Town uses a practical and measured approach to protect employee health and safety when winter blizzard events are declared. This may result in work periods slightly longer than 14 hours followed by rest periods longer than eight. Some flexibility would be beneficial.

Care is required when mandating certain requirements during severance or termination without cause. If there is a severed or frustrated employment situation, termination with full notice and severance pay can be beneficial to the employer and the employee, as they can part ways with reasonable compensation to carry that employee to his/her next job without the stigma of a "cause for termination". Eliminating that option could see employers simply terminate with cause and argue against severance pay at the Labour Board. As difficult as these situations are on occasion employers need the flexibility to terminate without cause and allowing an employee time to move on to new employment with a fresh start.

The Town supports retaining internship and part time employment practices without change provided they are not used as a means to avoiding creating full time positions where an employer has a designated succession plan in place.

FINANCIAL CONSIDERATIONS:

The Town payroll is in the area of $2.5 million annually. There are fewer than 50 full time employees.

RECOMMENDATION:

That Council receives the C.A.O. Clerk's September 14, 2016 report regarding Changing Workplaces Review Special Advisors Interim Report, and that the following comments be sent to the Ministry of Labour:

1. That the Town of Minto request annual reporting or administrative processes not be increased as a result of any changes made to the Labour Relations Act or the Employment Standards Act.
2. That the Employment Standards Act continues to allow for reasonable and safe flexibility in hours of work for winter snow removal employees during a declared winter storm event.
3. That Employment Standards Act provisions for interns and part time employees remain unchanged so long as these positions are seen as training opportunities for the employer or positions that allow for movement within a municipal employers succession plan.
4. That municipal employers retain sufficient flexibility under the Employment Standards Act to deal with restructured, frustrated or severed employment situations with proper notice of termination and severance pay without being limited by just cause provisions.

Bill White
C.A.O. Clerk

July 2016

Changing Workplaces Review

SPECIAL ADVISORS' INTERIM REPORT

Ministry of Labour

Special Advisors
C. Michael Mitchell
John C. Murray

Contents

01 | Introduction

Purpose of the Interim Report

Our chief purpose in issuing this Interim Report is to advise Ontarians of the range of issues that have been identified and the options for change that we are being asked to consider.

The Changing Workplaces Review has generated much interest. In 12 days of public hearings around the province we have heard from over 200 organizations and individuals and received more than 300 written submissions. We have also met with a variety of stakeholder representatives, ordinary citizens and experts. Before making final recommendations to the government, we felt it advisable to report on the issues identified and the proposals for change that have been suggested so that interested parties will have a chance to make further submissions.

This Review is the first independent review commissioned by the Ontario Government seeking recommendations for legislative change of the *Employment Standards Act, 2000* (ESA) and the *Labour Relations Act, 1995* (LRA) in more than a generation. It is the first independent review of the two Acts undertaken together, focusing on changes in the workplace as an integrated problem in both the unionized and the non-unionized workplaces.

This Review is occurring after a lengthy period of significant changes in the economy of Ontario and in its workplaces. Not surprisingly, because of the breadth of the Review, combined with the scope of change, there is a very large number of issues for us to canvass. Of necessity, we must prioritize and be selective with respect to the issues that we examine in depth.

The scope of our Review is very broad and, while we intend to deal with a variety of matters, in keeping with our mandate, our key focus will be on vulnerable workers

in precarious jobs and the need for legislative amendments to address some of the issues facing these workers. At the same time, we will be mindful of the interests of employers and the potential impact of any proposed change and will carefully consider changes being sought by employers that could impact employees.

The Interim Report is comprised of 5 Chapters: Chapter 1 (Introduction), Chapter 2 (Guiding Principles, Values and Objectives), Chapter 3 (Changing Pressures and Trends), Chapter 4 (Labour Relations) and Chapter 5 (Employment Standards).

We invite the constructive views of Ontarians on the issues and the options set out in the Interim Report. We expect that submissions will be thoughtful, constructive and informative. We encourage interested parties to provide comments in writing as soon as is practicable, in line with the consultation period as posted on the Ontario Ministry of Labour website. We will continue to accept written submissions until the deadline but, practically speaking, the earlier we receive them the better. We strongly encourage stakeholders not to wait until the last minute to make their submissions.

Some caution should be exercised before jumping to any conclusions about the options canvassed in the Interim Report. With perhaps one exception in Chapter 5 – in the section on exemptions to the ESA – we have not yet come to any conclusions about our recommendations and we have an open mind on all issues. The options canvassed are purposively inclusive and sometimes contain proposals that are conflicting or contradictory. In almost every case, the status quo is an option.

While we have made an effort to be expansive in the listing of options, we cannot be limited in the end result to only the listed options. We may receive new good ideas in the balance of our consultation process, or we may think of additional options ourselves. Having said that, we certainly wish to avoid, to the extent possible, anyone being taken by surprise by the substance of the recommendations we ultimately will make.

In the "Guide to Consultations" paper, we asked for the views of the community as to the values and principles we should employ in coming to our recommendations, and we received comments and ideas from many sources. We take this opportunity to advise the community as to our views of the appropriate principles and objectives as well as some of the considerations that will guide our recommendations.

In addition, we have heard and read much, some of it contradictory and controversial, about the nature of the changes in the Ontario economy – in the workforce and workplace – that have occasioned this Review. As best we can, we have summarized some of the most important changes and who has been affected.

In order to assist us in our work, we have commissioned research from independent researchers, some of whom have reported on the academic literature on subjects that concern us. Others have researched specific areas. A list of research papers that we have commissioned will be made available to the public concurrently with this Interim Report. Opinions or conclusions expressed by the researchers are theirs and, at this stage, are part of a broad range of facts and opinion that that we need to consider in coming to our recommendations.

The Perspective of the Parties

Employers, unions, employees and social commentators have joined this discussion with strong, diverse perspectives. In our report, we endeavour to summarize and report what we heard about specific issues and the options for change that we have been asked to consider.

The fact that this Review is taking place is strong evidence of a broad societal concern over the changes that have taken place in the workplace and the fact that for many there has been a long-standing trend of deteriorating working conditions for a growing number of workers. At the same time, the mandate from the Minister of Labour to recommend changes that will support business (also reflected in our Terms of Reference) is recognition that change cannot take place without taking into account its impact on business and that keeping the economy strong is a priority for everyone.

We have found that stakeholders are generally well aware of the legitimate competing interests of others. However, the fundamental starting points of each side are rooted in their own experience and perspectives and these are important to understand.

Employers come to this discussion having to compete in a new, highly competitive, dynamic, and changing economy. This economy and the changes in it move at lightning speed, and in this environment, employers have to adapt and be flexible.

There are many employers in Ontario who provide "good jobs", with decent wages, benefits, and reasonable hours of work for their employees where there is an opportunity for self-fulfillment and participation in the workplace. These employers know that there are vulnerable workers and precarious "bad jobs" in parts of the economy, but they are concerned that changes designed to address those workers if applied to all employers will negatively impact their businesses and undermine their competitive position.

There are also employers who operate in very competitive markets who feel that they cannot afford to provide higher wages or benefits and still remain competitive. They are required to serve the demands of their customers by providing good value and competitive pricing and they need flexibility in deploying their workforce. Some tend to see legislative change as a threat that may interfere with their competitiveness and profitability and therefore the number of jobs they provide and/or their ability or willingness to create new jobs.

Moreover, among employers in the non-unionized private and public sector, there is little appreciation of – and perhaps little sympathy for – the constitutional right of Canadians to: freedom of association, the right to join a union, the right to engage in meaningful collective bargaining, and the right to strike. There is little enthusiasm for changes to the law that may make it easier for employees to organize a union or to bargain effectively. The employer community has suggested no change to the LRA and, indeed, all the options for change to the LRA canvassed in this report will likely be seen as changes supporting unions even if some are employer friendly or if their purpose is to remove obstacles to unionization and give effect to constitutional rights.

Employers generally would like to have as much independence as possible to operate their business in a responsible, fair and efficient manner. Although they are very supportive of government enforcing the law and pursuing employers who contravene the rules, they would strongly urge a minimum of statutory or regulatory interference in the operation of their enterprises. In a world of intense competition, business needs to be in a position to operate with maximum flexibility to meet the challenges of the marketplace. Flexibility in a global economy includes the ability to decide the terms and conditions of employment and the working conditions for employees that enable employers to attract and retain the workforce they need in order to succeed. This concern about the need for flexibility informs a general concern about the adverse impact of some of the proposals for change that we have been asked to consider.

Probably the most significant employer concern expressed to us relates to hours of work and the limitations on scheduling that are currently in the ESA. Employers have also expressed concern about the complexity of the ESA and the difficulty in understanding and in applying it. Some, mostly larger, employers have raised concerns about the personal emergency leave provisions of the ESA, asserting that they are unfairly additive to generous leave and benefit packages provided to their employees and that they get insufficient credit for them. Furthermore, they believe that personal emergency leave provisions are often abused, causing excessive absenteeism that impairs productivity and efficiency.

On the other hand, worker advocates, unions, many non-government organizations, policy institutes, academics and individuals see in the current situation of vulnerable and precarious workers an urgent and serious threat to the well-being, not only of a significant number of workers in Ontario, but also to their families and to Ontario society. There is widespread agreement in this group that significant and growing numbers of workers – particularly women (but also increasing numbers of men), members of racial and ethnic minorities, immigrants, youth – are working in low wage jobs, many of them temporary, many of them unstable with little or no security, and mostly without benefits. They argue this is occurring in many retail businesses and in service industries such as food service, home care, child-care, and custodial services as well as in agriculture and for the increasing number of workers working through temporary help agencies in manufacturing.

This group of vulnerable employees is seen largely as being unable to control their work schedules and being at the mercy of the scheduling whims of their employers where too little account is taken of the employee need for predictability in their lives. The argument is made that there is a greater degree of social isolation in this vulnerable population and that the uncertainty and anxiety over their situation interferes with their personal lives and their ability to make commitments to relationships and to having children. The combination of low income, uncertainty, lack of control over scheduling, lack of benefits such as sick leave, and stress, is said to create great anxiety in many workers and their families. Many assert that this results in a disproportionately high level of mental health issues in this population as well as a deterioration in their overall physical health.

A common perception among this group of stakeholders – reinforced by a series of studies, articles and publications – is that precarious work is a major and growing problem. In addition, the growth in numbers of so-called “self- employed”

individuals is seen as reflecting not only the lack of availability of good jobs but also the misclassification of employees as independent contractors by employers in order to save money and avoid contributions to basic government programs like the Canada Pension Plan and Employment Insurance.

In Ontario, 86% of the private sector workforce is now non-union. The decline in unionization and the absence of any credible threat of unionization is said by these stakeholders to contribute to a deterioration in wages and benefits and to a great imbalance in bargaining power where employees have little, if any, voice. Employees are said to be fearful of complaining about violations of the law and certainly fearful of engaging in any attempts to organize. Labour laws are criticized as putting obstacles in the path of possible unionization and as not being severe enough on employers who commit illegal unfair labour practices that interfere with the constitutional right of employees to organize.

For these stakeholders the ESA is often seen as ineffective for the most vulnerable employees and does not provide sufficient enforcement tools to deal with non-compliant employers. In very broad brush strokes – without the nuance that would likely be a fairer characterization of the views of some of the stakeholders – this is the attitudinal backdrop which we have discerned.

We are grateful for the constructive advice and comments we have received and we look forward to hearing more from stakeholders.

02 | Guiding Principles, Values and Objectives

Our Terms of Reference state that the objective of this Review is to improve security and opportunity for those made vulnerable by the structural economic pressures and changes being experienced by Ontarians. We are directed to:

> *…consider the broader issues affecting the workplace and assess how the current labour and employment law framework addresses these trends and issues with a focus on the LRA and the ESA. In particular, the Special Advisors will seek to determine what changes, if any, should be made to the legislation in light of the changing nature of the workforce, the workplace, and the economy itself, particularly in light of relevant trends and factors operating on our society, including, globalization, trade liberalization, technological change, the growth of the service sector, and changes in the prevalence and characteristics of standard employment relationships.*[1]

An important focus is on vulnerable workers in precarious jobs in the context of employment standards and labour relations. It is trite to observe that effective protection of workers under both statutes depends on the education of employees and employers concerning:

- their respective legal rights and obligations;
- respect for the law;
- consistent enforcement; and
- effective compliance strategies.

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1 "Terms of Reference – Changing Workplaces Review," Ontario Ministry of Labour, last modified February 2015, http://www.labour.gov.on.ca/english/about/workplace/terms.php.

This focus on vulnerable workers in precarious jobs requires us to address:

- minimum standards of work;
- the labour relations framework; and
- whether the current legal framework effectively protects the rights of such workers.

Our mandate is to make recommendations on how the *Employment Standards Act, 2000* and the *Labour Relations Act, 1995* might be reformed to better protect workers while supporting businesses in our changing economy. We must determine what changes, if any, should be made to the legislation in light of the changing nature of the workforce, the workplace, and the economy.

Before turning to principles, values and objectives, we would like to mention two contextual and overarching themes. The first is the importance of work to all Ontarians. In this regard, we can do no better than to quote the former Chief Justice of the Supreme Court of Canada Brian Dickson on the central importance of work:

> *Work is one of the most fundamental aspects in a person's life, providing the individual with a means of financial support and, as importantly, a contributory role in society. A person's employment is an essential component of his or her sense of identity, self-worth and emotional well-being. Accordingly the conditions in which a person works are highly significant in shaping the whole compendium of psychological, emotional and physical elements of a person's dignity and self-respect.*[2]

Recognition of the central importance of work is the context in which we articulate the principles guiding our recommendations.

A second important contextual factor is the inherent power imbalance and inequality of bargaining power between employer and employee, or what the Supreme Court has stated to be "the presumptive imbalance between the employer's economic power and the relative vulnerability of the individual worker."[3] This power imbalance manifests itself in almost every aspect of the employment relationship, particularly in a non-union environment. As the Supreme Court has observed: "Individual employees typically lack the power to bargain and pursue

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2 *Reference Re Public Service Employee Relations Act (Alta.),* (1987) 1 SCR 313, para 91.
3 *Alberta (Information and Privacy Commissioner) v. United Food and Commercial Workers, Local 401,* (2013) SCC 62, 3 SCR 733, para 32.

workplace goals with their more powerful employers."[4] A recognition of this power imbalance has always informed the need for and the content of legislation of basic employee rights and employer obligations where the law acts as a countervailing force to the power imbalance in the employment relationship. Without legislation of basic employee rights and corresponding employer obligations, most employees would be powerless and vulnerable to the unilateral exercise of power by employers.

In the first phase of our consultations we asked for, and received, advice on the principles, values and objectives that should guide our work. We now briefly outline those key principles, values and objectives that will govern us in recommending those improvements.

Decency at Work

In *Fairness at Work*, Professor Harry Arthurs stated that labour standards "should ensure that, no matter how limited his or her bargaining power, no worker… is offered, accepts or works under conditions that Canadians would not regard as 'decent'".[5]

We believe that decency at work is a fundamental and principled commitment that Ontario should accept as a basis for enacting all of its laws governing the workplace.

Not only does the concept of decency at work relate to minimum acceptable workplace standards, but it also applies to the furtherance of decency through the expression of a collective voice and the facilitating of harmonious labour relations between employers and employees.

The International Labour Organization's describes decent work as follows:

> *Decent work sums up the aspirations of people in their working lives. It involves opportunities for work that is productive and delivers a fair income, security in the workplace and social protection for families, better prospects for personal development and social integration, freedom for people to express their concerns, organize and participate in the decisions that affect their lives and equality of opportunity and treatment for all women and men.*

4 *Mounted Police Association of Ontario v. Canada (Attorney General)*, (2015) 1 SCR 3, para 70.
5 Harry Arthurs, *Fairness at Work: Federal Labour Standards for the 21st Century* (Gatineau: Human Resources and Skills Development Canada, 2006), 47.

It is beyond the scope of our mandate and of labour standards laws to legislate decent work. Creating the conditions for decent work necessarily involve numerous stakeholders – government, employers, employees and their representatives – working together to ensure working environments where the dignity of employees is respected, in conditions which do not keep employees or their families in poverty, in which the potential inherent in every employee can be realized, and which do not put at risk employee health and safety. Ideally, actions of government and of workplace stakeholders will focus on making changes that not only eliminate poor employment practices but also which seek to change the conditions that produce such practices.

This focus will of necessity involve:

- education;
- increased training and skills development;
- efforts to eliminate discrimination; and
- efforts to consistently enforce employee rights.

Some, but not all, of these objectives are within the scope of this Review.

We are committed to making recommendations for minimum terms and conditions of employment and for a labour relations system that are consistent with – and will help pave the way to – the ultimate objective of creating decent work for Ontarians, particularly for those who have been made vulnerable by changes to our economy and workplaces. Furthermore, we are committed to do this within an overall framework that respects employer needs.

Respect for the Law and a Culture of Compliance: Meaningful Enforcement

We regard as critically important that there be a respect by all Ontarians for the laws of the workplace, and that we as a society recognize the importance of compliance with the law. We need to foster a culture where compliance with minimum terms and conditions of employment – together with respect for the rights of employees to organize and to bargain collectively – is widespread. Rules that are easy to understand and administer, and that provide workplace parties with compliance tools, together with enforcement that is consistent, are key to achieving these objectives.

In the absence of respect and general compliance with the laws governing the workplace, together with a meaningful ability to enforce those laws and to gain access to justice, the passage of laws by itself is relatively meaningless. There is probably nothing that causes more long term disrespect for the law than laws which are widely disregarded, exist only on paper and have no meaningful impact on people's lives. We agree that:

> *Ontarians also live in a society that strives to maximize access to justice for its citizens. Sophisticated and highly evolved rights and obligations are of little value if they cannot be asserted or enforced effectively and economically.* [6]

Access to Justice

The Chief Justice of Canada has spoken on the importance of access to justice stating that: "In order to maintain confidence in our legal system, it must be, and must be seen to be accessible to Canadians." [7]

Access to justice has both procedural and substantive components. Especially in the employment arena, complaint procedures must afford ordinary Ontarians the opportunity for fair and just adjudication and enforcement of their rights. Such opportunity for dispute resolution should be efficient, proportionate and accessible to self-represented individuals.

Our recommendations should recognize and attempt to reduce barriers to access to justice. Procedural efficiency and timely adjudication, if achievable, are designed to minimize or eliminate an economic barrier. But as the Supreme Court has reminded us,[8] an economic barrier to access to justice is not the only barrier that should concern legislators; this is particularly true when the barriers have such profound implications for many vulnerable working Ontarians.

We agree with the Court and with many commentators in this field that the barriers can be psychological or social (such as lack of knowledge of the availability of substantive rights) and may also include factors such as limited language skills, the elderly or young age of claimants, minority status of all kinds, gender, immigration

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6 Advisory Committee on Class Action Reform, *Report of the Attorney General's Advisory Committee on Class Action Reform* (Toronto: Ontario Ministry of the Attorney General, 1990), 16.
7 *Bourgoin v. Ouellette et al.,* (2009) 343 NBR (2d) 58.
8 *AIC Limited v. Fischer,* (2013) 3 SCR 949.

status and fear of reprisals. While the availability of resources and the uniqueness of individual circumstances may – as a practical matter – impair the ability of government to respond in a meaningful way to every barrier a claimant might face, we must be sensitive to the barriers and consider recommendations that may ameliorate them.

Consistent Enforcement and Compliance and a Level Playing Field

Consistency in the law is a value that in the labour and employment context means – among other things – consistent enforcement. Consistent enforcement means not only a level playing field for employers and business; it is also necessary for the law to be reputable. As Professor Arthurs observed:

> *Labour standards ultimately succeed or fail on the issue of compliance. Widespread non-compliance destroys the rights of workers, destabilizes the labour market, creates disincentives for law-abiding employers who are undercut by law-breaking competitors, and weakens public respect for the law.*[9]

Consistent enforcement and encouraging a culture of compliance will ensure a level playing field for all business. A level playing field "ensures that all those who are similarly situated should be regulated according to the same rules, and that the law should guarantee equal protection for all its intended beneficiaries." Consistent enforcement "serves to protect not only workers but also the majority of fair-minded employers who wish to meet their legal obligations without the risk of being undercut by those who do not. Clear laws, effective oversight, consistent interpretation and certainty of enforcement are critical to ensuring observance of the level playing field principle."[10]

Policies designed to encourage compliance and remedies designed to sanction the illegal behaviour of non-compliant parties are necessary. To encourage compliance, viable enforcement proceedings and strategies must be available and fines and penalties sufficient to deter non-compliance must be an integral part of achieving a culture where the law is respected and compliance is normative.

9 Arthurs, 53.
10 Ibid., 53.

Freedom of Association and Collective Bargaining

In previous reviews of labour law in the province of Ontario, freedom of association for the purpose of collective bargaining and the right to strike had not yet been fully and forcefully established as a constitutional right. This is the first review of the *Labour Relations Act* where account must be taken by government that in Canada the right to meaningful collective bargaining is a critically important constitutional right. The source of this right is The *Canadian Charter of Rights and Freedoms* that contains the guarantee of freedom of association in section 2(d).

The Supreme Court of Canada has provided significant jurisprudence relating to freedom of association under section 2(d) of the *Charter* that has, in the main, developed with respect to labour relations. The Court has given freedom of association a robust and purposive interpretation that is binding on all governments in Canada. In numerous cases, the Court has unambiguously set out the importance of the constitutional right that is protected. In the *Mounted Police Association* case[11], the Court said:

> *Freedom of association … stands as an independent right with independent content, essential to the development and maintenance of the vibrant civil society upon which our democracy rests.*

As in other labour cases, the Court, in *Mounted Police*, made it clear that in the employment context, freedom of association guarantees the right of employees to "meaningfully associate in the pursuit of collective workplace goals" and furthermore "includes a right to collective bargaining."[12]

> *Without the right to pursue workplace goals collectively, workers may be left essentially powerless in dealing with their employer or influencing their employment conditions. This idea is not new. As the United States Supreme Court stated in National Labor Relations Board v. Jones & Laughlin Steel Corp., 301 U.S. 1 (1937), at page 33:*
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> > *Long ago we stated the reason for labor organizations. We said that they were organized out of the necessities of the situation; that a single employee was helpless in dealing with an employer; that he was dependent ordinarily on his daily wage for the maintenance of himself*

11 *Mounted Police Association of Ontario v. Canada (Attorney General),* (2015) 1 SCR 3, para 49.
12 *Mounted Police Association of Ontario v. Canada (Attorney General),* (2015) 1 SCR 3, para 68.

> *and family; that if the employer refused to pay him the wages that he thought fair, he was nevertheless unable to leave the employ and resist arbitrary and unfair treatment... [Emphasis added.]*

On numerous occasions the Court has recognized the importance of freedom of association in responding to the imbalance between the employer and its economic power and the relative vulnerability of individual workers:[13]

> *… section 2(d) functions to prevent individuals, who alone may be powerless, from being overwhelmed by more powerful entities, while also enhancing their strength through the exercise of collective power. Nowhere are these dual functions of section 2(d) more pertinent than in labour relations. Individual employees typically lack the power to bargain and pursue workplace goals with their more powerful employers. Only by banding together in collective bargaining associations, thus strengthening their bargaining power with their employer, can they meaningfully pursue their workplace goals.*

In *Mounted Police*, the Court emphasized that collective bargaining is a fundamental aspect of Canadian society that enhances human dignity, liberty and the autonomy of workers:

> *Collective bargaining constitutes a fundamental aspect of Canadian society which "enhances the human dignity, liberty and autonomy of workers by giving them the opportunity to influence the establishment of workplace rules and thereby gain some control over a major aspect of their lives, namely their work" (Health Services, at para. 82). Put simply, its purpose is to preserve collective employee autonomy against the superior power of management and to maintain equilibrium between the parties. This equilibrium is embodied in the degree of choice and independence afforded to the employees in the labour relations process.*[14]

The Court has emphasized that to be meaningful the process of collective bargaining must provide a process for employees to pursue their goals:

> *The right to a meaningful process of collective bargaining is therefore a necessary element of the right to collectively pursue workplace goals in*

13 *Mounted Police Association of Ontario v. Canada (Attorney General),* (2015) 1 SCR 3, paras 70-71.
14 *Mounted Police Association of Ontario v. Canada (Attorney General),* (2015) 1 SCR 3, para 82.

> *a meaningful way (Health Services; Fraser). Yet a process of collective bargaining will not be meaningful if it denies employees the power to pursue their goals. As this Court stated in Health Services: "One of the fundamental achievements of collective bargaining is to palliate the historical inequality between employers and employees …" (para. 84). A process that substantially interferes with a meaningful process of collective bargaining by reducing employees' negotiating power is therefore inconsistent with the guarantee of freedom of association enshrined in s. 2(d)."*[15]

Creating an Environment Supportive of Business in our Changing Economy

As highlighted in the "Guide to Consultations" paper, current labour and employment standards legislation were introduced in the context of an expanding labour market anchored in the manufacturing and resource sectors. These often featured a relatively large, stable workforce consisting primarily of full-time workers whose jobs were protected by tariffs and limited international competition.

The shift away from manufacturing to service and retail industries has changed the nature of work for many. Some workplaces are now smaller, more flexible and leaner, requiring more highly skilled workers and flatter hierarchies. Ontario businesses face an increasingly competitive global environment where capital is mobile. As the Guide states:

> *Canada is one of the most open and "globalized" jurisdictions in the world. According to the federal government, trade is linked to one in five Canadian jobs. In Ontario, exports and imports of goods make up nearly two-thirds of gross domestic product (GDP). Over half of the province's manufacturing output is exported. Therefore, fostering an innovative, globally competitive economy is a priority for Ontario.*[16]

Technological change continues to alter the nature of work and the skills required by employers; it will continue to affect the competitiveness of employers. In some important manufacturing sectors, just-in-time manufacturing has had a significant impact not only on manufacturing processes and the high quality of goods

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15 *Mounted Police Association of Ontario v. Canada (Attorney General),* (2015) 1 SCR 3, para 71.
16 Ontario Ministry of Labour, Changing Workplaces Review: Guide to Consultations (Toronto: Ontario Ministry of Labour, 2015), 8.

manufactured but also on suppliers' response time. The growth of "the sharing economy" continues to challenge business, to lawmakers and to regulators.

Ontario's market economy must compete for business and investment. In addition to decent standards of work for employees, we must be sensitive to the legitimate concerns of business regarding its need for flexibility and reduced administrative burden to compete successfully. Every change regulated by government has some impact on employer flexibility. The day is long gone where employers could operate without regard for decency, safety, appropriate minimum terms and conditions of employment, and the rights of employees to associate and to bargain collectively. It is important to encourage a level playing field by helping employers to understand and meet their obligations.

We must recognize the diversity of the Ontario economy, its businesses, and the competition they face. A "one-size-fits-all" regulatory solution to a problem in a sector or an industry could have negative consequences if applied to all employers. The unique requirements of some businesses and/or of some employees may – in appropriate circumstances – support differentiation by sector or by industry rather than province-wide regulation.

Professor Gunderson has said that: "… any policy initiatives must consider their effect on business costs and competitiveness especially given the increased competitive global pressures, the North-South re-orientation and the increased mobility of capital." We agree that there is a need for "smart regulations" that can foster equity and fairness and at the same time also foster conditions that support the needs of the employers for efficiency and competitiveness.

The regulation of labour and employment law must not be so burdensome as to impair unnecessarily the competitiveness of Ontario business. We must be aware of regulatory regimes in competing jurisdictions – particularly in other Canadian provinces, American states and other developed countries. This is not to suggest that Ontario should abandon the goal of decent standards or embrace any concept of a "race to the bottom" because some Ontario business is required to compete with jurisdictions where standards are unacceptable to us or where acceptable and decent standards are not enforced. With these important caveats, we recognize that the regulation of the workplace in other jurisdictions may provide useful information, experience and guidance.

Stability and Balance

We recognize as two objectives of our Review, the need for balance in our recommendations and for stability in bringing change to the workplace.

In the last twenty years, Ontarians have seen significant alterations to The *Labour Relations Act* accompanying changes in the governing political party.

Ideally, changing political ideology or the strength of a lobby should not drive fundamental change in legislation to enable employees' to exercise their fundamental constitutional rights. These rights are entrenched and should remain relatively constant. Politicization of laws relating to the manner of exercise of an individual's constitutional rights leads to unpredictability, uncertainty and, in all likelihood, to dissatisfaction and mistrust. While changes in the law may well be required to respond to changing conditions and circumstances, the law should not undergo rapid "pendulum" swings if it is to produce stable expectations of what is required Ontarians – particularly when it comes to their exercise of fundamental *Charter* rights. In *Seeking a Balance*, the Sims Task Force (relating to Part 1 of the *Canada Labour Code*) made the point:

> *Our approach has been to seek balance…. We seek a stable structure within which free collective bargaining will work. We want legislation that is sound, enactable and lasting. We see the too frequent swinging of the political pendulum as being counterproductive to sound labour relations. We looked for reforms that would allow labour and management to adjust and thrive in the increasingly global workplace.*[17]

We will endeavour to craft recommendations for change that are balanced and, if implemented, will have a reasonable likelihood of being sustained by subsequent governments differently composed.

On the other hand, we recognize that laws change to meet the evolving needs of society. They must. Indeed, it is the radically altered nature of the workplace over many years that has informed this Review and which will require a meaningful response. We will therefore consider ways to build in procedures to facilitate on-going review and change in the context of a changing workplace.

In making our recommendations we will do our best to find the appropriate balance.

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17 Human Resources Development Canada, *Seeking a Balance: Canada Labour Code, Part I* (Ottawa: Human Resources Development Canada, 1995), 6.

03 | Changing Pressures and Trends

Under our Terms of Reference, the objective of this Review "is to improve security and opportunity for those made vulnerable by the structural economic pressures and changes being experienced by Ontarians in 2015." This requires that we reflect on the pressures and changes that have been and are occurring, and identify those employees who have been made vulnerable by these changes and are working in precarious jobs. Most of the pressures we describe are the subject of much literature and analysis by experts. We can do no more here than describe them in the briefest of terms.

Our understanding of the economic pressures, how the workplace has changed in ways relevant to this Review and who are vulnerable workers in need of greater protection, is based on our own reading and on a number of academic papers prepared for us, and especially two background reports prepared for the Review – Morley Gunderson, *Changing Pressures Affecting the Workplace, 2015, and Implications for Employment Standards and Labour Relations Legislation, 2015,* from which we have borrowed significantly. However, the views expressed here are our own.

Definitions and Terminology: Precarious and Vulnerable; Non-standard Employment

We have a broad mandate to recommend changes to the *Employment Standards Act, 2000* (ESA) and the *Labour Relations Act, 1995* (LRA), and we are not limited in that mandate by any particular concerns. Indeed, we are to consider in the broadest terms – what changes, if any, should be made to the legislation in light of the changing nature of:

- the workforce;
- the workplace; and
- the overall economy.

We have considered relevant trends and factors affecting our society, including:

- globalization;
- trade liberalization;
- technological change;
- growth of the service sector; and
- changes in the prevalence and characteristics of standard employment relationships.

Our Terms of Reference provide a lens through which we are to recommend changes "to improve the security and opportunity" for those who have been "made vulnerable" by the changes: "far too many workers are experiencing greater precariousness" today in Ontario. To fulfill our mandate, we must understand what is meant by "vulnerable workers" and identify those employees who are experiencing greater precariousness.

Before we describe pressures and begin our analysis, we must first acknowledge that there are important differences in how concepts such as "precarious employment" and "vulnerable workers" are used by scholars and commentators, and differences in the way that categories of standard and non-standard employment relate to these concepts.

These important differences may affect policy goals (i.e., who certain measures are designed to assist and the objective of the policy change). For example, we need to ask whether particular proposals are to be aimed only at those who are engaged in non-standard employment or whether we are concerned with a broader group of workers, including some who work in jobs that are considered standard employment. It is also vital to understand how concepts are being used in order to know whether we are talking in one case about jobs (precariousness) and on the other about people (vulnerability).

It is important to understand the differing usages of the terminology as they may affect our understanding of the magnitude of a particular problem. It is confusing when commentators use the same terminology but mean different things.

For some, precarious employment entails some form of contingency that is not present in standard employment, and the term is often used interchangeably to mean atypical employment, or employment which is non-standard. In looking at the issues, some might confine themselves to looking at the various categories of non-standard employment (such as part-time, temporary, casual, contract, on-call, etc.), asking what, if anything, should be done about the conditions of those working such jobs, but not looking at issues facing those performing standard work (i.e., full-time and some part-time employees who may be vulnerable for other reasons, such as low income and lack of benefits).

Precarious employment is defined by some in broader terms; they describe the character of precarious jobs "as work for remuneration characterized by uncertainty, low income, and limited social benefits and statutory entitlements".[18] Although this definition encompasses an element of uncertainty over continuing work, precarious employment in this understanding is not treated synonymously with "contingent" or "non-standard" work. Rather, precarious employment can transcend the standard/non-standard work distinction such that forms of employment that are technically full-time or part-time, permanent or temporary, may be characterized by precariousness. In other words, this definition recognizes that some "non-standard work" is highly paid, secure and not precarious, while some "standard" or full-time permanent work is poorly paid and is precarious. Without equating the concept of non-standard jobs to precarious jobs, our Terms of Reference recognize a correlation – that is, that the growth of non-standard work has put many workers in more precarious circumstances.

"Vulnerable workers" describes people, not work or jobs. It is used in many contexts to denote social groups who are defined by their "social location," that is, by their ethnicity, race, sex, ability, age and/or immigration status. In other contexts, however, the term "vulnerable workers" denote groups of workers who have greater exposure to certain risks than other groups, regardless of their social location. In the latter context, the term "vulnerable" describes all those (regardless of the social group(s) to which they belong) whose conditions of employment make it difficult to earn a decent income and thereby puts them at risk in materials ways including all the undesirable aspects of life that go hand-in-hand with insecurity, poverty and lower incomes. We believe that our Terms of Reference in describing the objective of this Review as improving the security and opportunity of vulnerable workers, is intended to have us consider the position of all vulnerable workers in this latter sense.

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18 Leah Vosko, *Managing the Margins: Gender, Citizenship and the International Regulation of Precarious Employment* (New York: Oxford University Press, 2010), 2.

We understand that our mandate requires us to consider all workers in Ontario whose employment:

- makes it difficult to earn a decent income;
- interferes with their opportunities to enjoy decent working conditions; and/or
- puts them at risk in material ways.

This mandate thus includes many workers whose employment is uncertain (or temporary) but also workers, such as those in full-time permanent low-paid employment, many without benefits, who would not be counted in the non-standard employment category, and thus might not be considered by some to be employed in precarious jobs. Indeed, we do not think it would make public policy sense to limit our inquiry to only non-standard employment, and not to ask whether, and how, the changing workplace has affected vulnerable employees working in jobs that are considered to be standard employment.

Introduction

This Chapter discusses the inter-related factors that have contributed to the changing workplace, and identifies the vulnerable workers in precarious jobs who are the subject matter of this Review.

The starting point is to recognize that the basic structural and conceptual framework for the two Acts we are reviewing was set decades ago. While these Acts have been significantly amended over the years, the basic conceptual frameworks and approach for each of them has remained. Accordingly, we must evaluate how well they are operating to meet the needs of vulnerable workers today, and potentially develop new approaches that may be required in light of workplaces that have changed over a long period and continue to change.

If this Review must re-evaluate the laws and regulations that were designed for an earlier time, it must be recognized that the existing framework of both Acts was designed largely for an economy dominated by large fixed-location worksites, where the work was male-dominated and blue-collar, especially in manufacturing. In that sector, large employers were often protected by tariffs and limited competition, and union coverage was far higher. Today the economic landscape is vastly different for both employers and employees; over many years the manufacturing sector in Ontario has shrunk significantly, while the service sector has grown significantly.

Pressures Affecting Employers and the Demand for Labour

Globalization

Markets for products and services are increasingly globalized and are often outsourced to foreign firms. Tariff reductions, free-trade agreements and reductions in transportation and communication costs have encouraged this trend. Companies in some sectors, notably manufacturing, previously protected by tariffs, are now subject to intense international competition, especially from imports from low-wage developing countries.

A related pressure is the trend to offshore outsourcing of business services, which is now made possible by the internet, computer technology, and software for global networking. Businesses can send their requests at the end of their business day to another time zone and have the responses the next day. Within business services, the trend has been to outsourcing increasingly sophisticated services.

In addition to global competitive pressures, Canada has experienced a re-orientation from east-west trade within Canada towards north-south trade between Canada and the United States as well as Mexico, largely as a result of free trade agreements. New trade agreements with Europe and/or with Asia (which include the United States and Mexico, such as the Trans-Pacific Partnership) are likely, if ratified, to further diminish the importance of internal east-west trade. The reorientation to external trade (much of it north-south) makes it likely that Canadian business will increasingly compete with United States businesses, which tend to have fewer labour regulations and restrictions.

With the increasing mobility of capital, some firms may have a credible threat to relocate their plants and investments into jurisdictions that have lower regulatory costs. One significant concern is that such competition for investment will lead to a "race to the bottom" or "harmonization to the lowest common denominator" in employment and labour relations law, and that this would discourage any efforts to improve conditions for Ontario workers.

The fear of workers, their communities, and policy makers of losing new investments or having plants relocate out of the province is real. The evidence of what actually influences business on this issue, however, tends to be inconclusive and controversial as shown in the research commissioned for this Review.[19]

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19 Anil Verma, *Labour Regulation and Jurisdictional Competitiveness, Investment, and Business Formation: A Review of the Mechanisms and Evidence* (Toronto: Ontario Ministry of Labour, 2016).

Many businesses in Ontario are not affected by these considerations because their businesses are in non-tradable services. Moreover, many employers will not follow a strategy of relocation or investing in the lowest-wage or least-regulated jurisdiction because there are a host of factors that inform these decisions and make Ontario attractive – positive factors such as its educated, skilled and reliable workforce, its tax structure, the public funding of its health care system, and many others. However, Ontario must consider the effect of its polices on business costs and competitiveness, especially in light of increased competitive global pressures, the north-south re-orientation and the increased mobility of capital. There is a need for "smart regulation" that can foster not only equity and fairness, but also conditions that support business.

Technological Change

Skill-based technological change and the transformation to the knowledge economy have had profound effects on the kind of workforce that is needed today and has facilitated many other trends, including global networking and trade, and offshore outsourcing (including the outsourcing of business services). These changes associated with the computer and the internet, are facilitating changes in manufacturing and distribution such as just-in-time-delivery systems, robotics, 3-D manufacturing, movie streaming, bar-code scanning systems and the new so called "sharing economy" manifested by such companies as Uber or Airbnb.

Changing from Manufacturing to Services

One of the major consequences of these competitive global pressures, along with the industrial restructuring that has taken place in Ontario, is the shift from manufacturing to services. From 1976 to 2015, for example, manufacturing's share of total employment fell from 23.2% to 10.8%, a decrease of 12.4 percentage points. Over that same period, the service sector's share increased from 64.5% to 79.8%, an increase of 15.3 percentage points. The increase in the service sector, however, was polarized, with the largest increases occurring in higher paying professional, scientific, technical and business services combined (from 4.6% to 13.2%) and lower paying accommodation and food services (from 3.9% to 6.4%).[20] Together with other factors, this has had a profound impact on Ontario workplaces.

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20 Statistics Canada, *CANSIM Table 282-0008 – Labour Force Survey Estimates, by North American Industry Classification System, Sex and Age Group* (Ottawa: Statistics Canada, 2016). These are calculations made by the Ontario Ministry of Labour based on data from Statistics Canada's Labour Force Survey.

This shift in the labour market has resulted in a "hollowing out" or "disappearing middle" of the skill and wage distribution, often involving job losses for older workers in relatively well-paid, blue-collar jobs in manufacturing. These displaced workers generally do not have the specific skills to move up to the growing number of higher-end jobs in business, financial and professional services. Their skills are often industry-specific (e.g., steel, auto manufacturing, pulp-and-paper) and not transferable to other industries. Many are middle-age workers who are often regarded as too old to retrain or relocate, but too young to retire. They often wind up in low-wage, non-union jobs in personal services. The "disappearing middle" of the occupational distribution also means that it is more difficult for persons at the bottom of the distribution to train and move up the occupational ladder since those "middle steps" are now missing. They are often trapped at the bottom with little or no opportunity for upward occupational mobility.

These developments are an obvious source of growing wage and income inequality.

Changes in Business Strategy and Organization: Fissured Workplaces

In an effort to explain how, in the last twenty-or-so years, workplaces have fundamentally (in his view) worsened, David Weil described the "fissuring" process where lead companies in many industries reduced their own large workforces in favour of a complicated network of smaller employers.[21] New businesses are also being built on this same model. Weil describes the American economy, but the application to many countries around the world has been noted and commented upon in the academic literature. To some extent this trend has contributed to the labour market that we find today in Ontario.

In his book, Weil describes how lead companies, through contracting and outsourcing, reduce costs and place themselves in a position where they are not responsible for the indirect employment they create as they shift liability and cost to others. He describes how this shift to smaller companies that provide lead companies with products and services is a deliberate strategy to create intense competition at the level of employers below the lead company, and causes significant downward pressure on compensation while shifting responsibility for working conditions to third parties. Weil shows how this has created increasingly

21 David Weil, *The Fissured Workplace: Why Work Became So Bad for So Many and What Can Be Done to Improve It* (Cambridge, MA: Harvard University Press, 2014).

precarious jobs for employees who perform work for contractors and often for many levels of subcontractors.

Fissuring has occurred, in Weil's view, as a result of operationalizing several distinct business strategies, one focused on revenue, another on costs and a third, which he describes as "the glue" which binds these strategies together. On the revenue side, a lead company will focus on building its brand and creating important new and innovative goods and services, while also coordinating the supply chains that make these possible. On the cost side, lead companies contract out or outsource activities that used to be done internally, creating intense competition among potential suppliers and contractors to provide the lead company with products or services.

The critical factor which allows the revenue and costs strategies to be integrated and which makes the overall business strategy successful is that the lead company can control the product and services provided by the contractors and subcontractors through new information and communication technology. That technology makes possible the creation of detailed complex standards to which contractors must abide, and also makes it possible for the lead companies to control and enforce all the standards on product quality, delivery, and other services that the contractors and subcontractors provide. Thus, contractors of the lead company, often in fierce competition with other similar companies, must comply with the rigorous supervision of the lead company. Under this strategy, the lead company avoids the legal responsibility that goes with directly employing the employees of the contractors and subcontractors, and any statutory or bargaining responsibility that goes with it. The smaller employers are therefore less stable themselves and often have more uncertain relationships with their own workers.

Franchising in some industries is another example of a business strategy where the lead company, as franchisor, avoids liability for the employees involved in the execution of the strategy and direct selling of the product, which is the core of its brand. The franchisor at the top of the supply chain may or may not be removed from the everyday operation of the business where issues of compliance with employment standards arise. However, most franchisors write and enforce detailed contracts, including legally binding manuals for franchisees that are constantly changing and relate to virtually every aspect of the business. Regulating the contractors and small companies that compete in various industries for the work of the lead companies can be difficult. The business model set up by the franchisor

may squeeze profit margins, putting pressure on franchisees not to comply with minimum standards. Moreover, unlike larger companies, these smaller businesses generally do not have a sophisticated human resource department that will ensure compliance with the law.

Clearly, the resources of government to monitor compliance are stretched in any event, and stretched even further by the number of small employers, especially if a meaningful number of small employers do not comply with employment standards. The low risk of complaints from employees, particularly from those with little or no bargaining power, combined with the low risk of inspection and low penalties by the government, makes noncompliance for some small employers simply a part of a business strategy.

In any event, fissuring is a worldwide phenomenon, and jurisdictions everywhere are struggling to find mechanisms as to how the law can respond effectively and appropriately. Our jurisdiction is no exception.

Changing Workplaces as a Result of a Changing Workforce

Changing pressures have also arisen from changing demographics and the changing nature of the workforce. The workforce in Ontario has become much more diverse with more women, visible minorities, new immigrants, Aboriginal persons and people with disabilities. Many workers in these groups are likely to be vulnerable and to live in persistent poverty.

Although it has levelled off in recent years, there has been a dramatic increase in the labour force participation of women (and particularly married women, including those with children). The participation of women in the workforce is now close to that of men. The two-earner family is now the norm and not the exception. There are also many single parents with child-care responsibilities. This has led to very important issues of work-life balance, and has important implications with respect to many workplace issues, including gender inequality in compensation, compensation for part-time work as compared to full-time work, irregular work scheduling, and the right to refuse overtime.

In addition, the workforce in Canada is both ageing and living longer and the trend towards earlier retirement reversed in the later 1990s, especially for males. As

larger portions of the workforce will be older, there will be higher age-related costs such as pensions and health related benefits as well as difficulties in retraining older workers for new jobs if the old jobs become obsolete. Many older workers who retire will later return to the labour force to non-standard jobs. Some will choose do so because they want the flexibility, especially if they already have a pension, but many will do so out of necessity because that is all that is available.

Immigration is especially important to Ontario where the majority of immigrants to Canada settle. Unfortunately, there is difficulty in integrating immigrants into the Canadian labour market in the sense that immigrants are unlikely to catch-up to the earnings of domestic-born workers who otherwise are similarly situated. The problem is getting more difficult for the more recent cohorts of immigrants who may never expect to fully catch up to the earnings of their comparable Canadian born workers. This has contributed to the increasing poverty rate amongst newly-arrived immigrants.

New immigrants are particularly likely to be vulnerable in the workplace because language barriers may keep them from knowing and exercising their rights. New immigrants may be less likely to complain about employment standards violations because they are economically vulnerable and fear reprisals. They are also less likely to work in unionized industries where the working conditions tend to be better and to be policed.

There continues to be a problem in Canada of students transitioning from school to work. Many students drop-out and this often has very negative implications for their employability and earnings. This has been especially true for Aboriginal youth. The problem of youth finding it difficult to successfully transition from school to work is compounded by the fact that the initial negative experience of not being able to get a job when first leaving school can lead to a longer run legacy of permanent negative “scarring” effects which can lead to lower lifetime earnings. Young people may react negatively to a society and labour market that will not accommodate them, and employers react negatively to the prospect of hiring young people who have a large gap in employment between their leaving school and their first job.

The Decline of Unions in the Private Sector

Union coverage rates have declined in Ontario from 29.9% in 1997 to 26.8% in 2015 for the public and private sectors combined.[22] The decline in union coverage in the private sector has been particularly pronounced, falling from 19.2% in 1997 to 14.3% in 2015, whereas union coverage in the public sector has remained substantially higher and more stable (69.7% in 1997 and 70.7% in 2015). In Ontario's private sector, the decline in union coverage has occurred primarily for men – it fell from 23.8% in 1997 to 16.0% in 2015; for women, there has been a smaller decline in union coverage, from 13.7% in 1997 to 12.3% in 2015. The decline in union coverage and density in the province is consistent with trends across all provinces. It has also occurred across all developed economies; in fact, the decline in Canada has been small relative to many other developed countries and especially the United States.

Much of the decline in the private sector is attributed to the movement of jobs away from industries and occupations with high union density (e.g., blue-collar work in manufacturing) to ones of low union density such as white-collar work (e.g., professional, technical and administrative) and service jobs. Some of the other alleged causes of the decline were the subject of many of the submissions to us. Some saw the decline as a result of greater employer resistance to unions, some as the result of specific changes to labour legislation that were detrimental to organizing, some as due to the union movement's failure to modernize, adapt, and communicate effectively, while many others, especially in the academic community, point to the current law and the industrial relations system itself, which is based essentially on a *"Wagner Act"* model of bargaining and union organization by workplace. This model is criticized as largely irrelevant to the workplaces of the very large number of small employers which makes organizing, bargaining, and administering a collective agreement at the individual employer unit level not only inefficient but virtually impossible to effect.

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22 Statistics Canada, *CANSIM Table 279-0025 – Number of Unionized Workers, Employees and Union Density, by Sex and Province* (Ottawa: Statistics Canada, 2016); Statistics Canada, *CANSIM Table 282-0078 – Labour Force Survey Estimates, Employees by Union Coverage, North American Industry Classification System, Sex and Age Group* (Ottawa: Statistics Canada, 2016); Statistics Canada, *CANSIM Table 282-0220 – Labour Force Survey Estimates, Employees by Union Status, Sex and Age Group, Canada and Provinces* (Ottawa: Statistics Canada, 2016). These are calculations made by the Ontario Ministry of Labour based on data from Statistics Canada's Labour Force Survey. Union *density* refers to the proportion of employed workers who are union members, whereas union *coverage* includes both employees who are union members *and* employees who are not members of a union but who are covered by a collective agreement or a union contract. Overall union coverage rates are about two percentage points higher than union density rates.

In 2015, 87% of workplaces (defined as business establishments with employees) in Ontario had fewer than 20 employees and around 30% of all employees worked in such establishments.[23] To the extent that it is impractical to organize, administer and bargain a collective agreement for so many small units of fewer than 20 employees (union coverage in such establishments in the private sector was only 7.2% in 2015), this means that about 87% of workplaces and almost 30% of the workforce are practically ineligible for unionization (not including construction).[24]

The decline in the number of unionized employees and in the role of unions in the private sector makes the employment standards regime even more important for the future, as that is the regime that applies minimum standards today to 86% of workers in the private sector. This is even more the case if in the future there is a lack of practical possibility of union representation for many employees.

We must also consider whether the decline means that the structure of the industrial relations system has to be revised or rethought, including the rules governing organizing and the rules regarding the certification of unions. We must consider whether the existing system makes the expression of freedom of association through collective bargaining a meaningful possibility for very large numbers of private sector employees, or whether broader bargaining structures need to be considered.

Finally, we have to consider whether forms of employee voice other than unionization should be structured or made possible in the new workplaces of today.

Who are the Vulnerable Workers and Where do They Work?

Studies use the terms “precarious” and “vulnerable” in different ways. For example, the Law Commission of Ontario (LCO), which studied the need for reform of the ESA, used the term “vulnerable” to mean “those whose work can be described as ‘precarious’ and whose vulnerability is underlined by their ‘social location’ (that is, by their ethnicity, race, sex, ability and immigration status”). In other words, the

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23 Statistics Canada, *CANSIM Table 282-0076 – Labour Force Survey Estimates, Employees by Establishment Size, North American Industry Classification System, Sex and Age Group* (Ottawa: Statistics Canada, 2016); Statistics Canada, *CANSIM Table 552-0003 – Canadian Business Counts, Location Counts with Employees, by Employment Size and North American Industry Classification System, Canada and Provinces, December 2015 Semi-Annual* (Ottawa: Statistics Canada, 2016). These are calculations made by the Ontario Ministry of Labour based on data from Statistics Canada’s Labour Force Survey. Note that the Statistics Canada Business Counts database does not differentiate between public and private workplaces and includes both sectors.

24 Data on union coverage by establishment size was derived from Statistics Canada’s Labour Force Survey, upon special request by Ontario Ministry of Labour.

LCO restricted the use of the term "vulnerable" to a subcategory of precarious workers with particular characteristics determined by their social location.

While we do not criticize the LCO for their use of the term "vulnerable," we also do not believe that the word "vulnerable" was used in our Terms of Reference in any such narrow sense. Indeed, we think "vulnerable" is used in our Terms of Reference to include workers who are, for example, low paid, full-time, without benefits and whose vulnerable status is not at all associated with their social condition. We think the term potentially includes low wage, full-time, non-ethnic, non-racialized, male, Canadian-born workers, who have no disability.

We understand that technically, for some, "precarious" employment means all work that has an element of contingency, and therefore it includes employees who are well paid, sometimes precisely because of the uncertainty inherent in their work. However, the LCO did not use the term in that way, and excluded from the category of "precarious" workers those who performed temporary work and were high earners, and did not exclude those who were full-time or voluntary part-time if they were in precarious employment by virtue of other factors such as low pay without benefits.

We agree with the LCO that, for our purposes, the term "precarious" should be restricted to include only those whose work is low paid. We agree with the LCO that low wages are a necessary condition for those who are considered precarious for the purposes of needing protection and we agree that we must include some employees in standard employment categories.

We believe that the lack of security inherent in a poorly paid full-time non-union minimum wage job without benefits often creates uncertainty and insecurity for the worker that justifies calling it precarious employment. Accordingly, we find that vulnerable workers for the purposes of this Review include those who are:

- working full-time for low wages, with minimal or no benefits, (such as no pension plan); or
- working for low wages without any or minimal benefits such as without a pension plan; and who:
  - work part-time involuntarily because they want more hours – about 30% of all part-timers;[25] (referred to in the literature as involuntary part-time);

25 These are calculations made by the Ontario Ministry of Finance based on data from Statistics Canada's Labour Force Survey.

- work part-time voluntarily, in the sense that they do not want, or cannot avail themselves of, more hours;
- work for temporary help agencies or on a temporary basis directly for employers;
- work on term or contract;
- are seasonal workers or casual workers;
- are solo self-employed with no employees;
- are multiple jobs holders where the primary job pays less than the median hourly rate.

We have not yet attempted to quantify the number of workers in these categories, nor have we defined "low wages," although we will attempt to do both before we issue our Final Report. However, we have no difficulty in concluding that there is a substantial number of vulnerable workers in precarious jobs in Ontario in need of protection.

What Social Groups are Overrepresented Among Vulnerable Workers?

A study for the LCO based on 2008 data identified social groups more likely to be found in precarious jobs in Ontario.[26] It identified the relative proportions of precarious workers in different populations. Although that study used different definitions to determine who was precarious, we find that its results were in keeping with the literature, and more important, the general picture it paints is useful for us for policy purposes in broadly identifying the populations that most concern us.

The populations that are overrepresented in precarious jobs, in descending order, relative to the overall average of 33.1% according to Noack and Vosko's definition of precarious jobs are:

- workers with less than high school diploma (61.4%);
- single parents with children under 25 (51.7%);
- recent immigrants (40.7%);
- women (39.1%);
- visible minorities (34.4%).[27]

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26 Andrea Noack and Leah Vosko, *Precarious Jobs in Ontario: Mapping Dimensions of Labour Market Insecurity by Workers' Social Location and Context* (Toronto: Law Commission of Ontario, 2011), 27.
27 Ibid., 28.

Non-standard Employment

Non-standard employment as a category does not take into account aspects of precariousness or labour market insecurity such as low income, control over the labour process, and limited access to regulatory protection. However, there is an obvious correlation between the two, and non-standard employment as a category of employment is what is often written about and measured when precarious jobs are discussed and analysed. It is useful, therefore, to consider the nature and size in Ontario of non-standard employment and its component forms.

Components of non-standard work used in the literature, often in different combinations, include: temporary work (including term/contract, seasonal, and casual/other), solo self-employment (i.e., without paid help), part-time work, and/or multiple jobholding. Sometimes measures of non-standard employment involve a low-wage cut-off (e.g., encompass only those earning less than the median wage). At other times, they include persons at all pay levels. Some commentators include in the definition both those who work in part-time jobs voluntarily and those who involuntarily occupy such jobs because they want more hours or full-time work. Other commentators exclude voluntary part-timers, often acknowledging that the voluntary/involuntary distinction is murky as when people are constrained by pressures such as family responsibilities for childcare or eldercare.[28]

Some non-standard work is well paid, sometimes to compensate for the uncertainty of the work. Some workers prefer higher cash wages to fringe benefits since they already receive fringe benefits as the children or spouses of other workers. Some non-standard jobs are temporary stepping stones into more permanent jobs.

These differences and different analytical approaches to the definition of non-standard employment make it difficult to determine the exact extent of the phenomenon and the extent to which it has changed over time.

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28 The distinction between voluntary and involuntary part-time work and whether it is meaningful is important in some contexts because involuntary part-time employment is often counted as part of non-standard work and voluntary part-time employment is often counted as part of standard employment. This distinction is not particularly relevant for us, however, since our conceptual approach to vulnerable workers in precarious jobs transcends that distinction.

Take for example two "voluntary" regularly scheduled part-timers, both single mothers, with eldercare family responsibilities. One is a tenured professional of eight years of service working in a unionized workplace 28 hours a week at an hourly rate over $44.00 plus pay in lieu of benefits of 15%. The second mother in equivalent circumstances works regularly 28 hours a week at a minimum wage job with no benefits. Both are working voluntarily in their jobs because of their childcare and eldercare responsibilities, but one is clearly vulnerable while the other is not. In this example the voluntariness or involuntariness of the employment is not particularly relevant.

In the literature the negative aspects of non-standard employment are well-documented. Such employment is generally characterized by low pay and low fringe benefits, little or no job security, limited training, few opportunities for career development and advancement, little control over one's work environment, uncertainty over work scheduling, and little or no protection through unions. It can include large numbers of people who are recently unemployed, women, and members of visible minority groups, immigrants and youth. Also, some secure non-standard forms of employment also have a negative aspect such as, for example, poorly paid permanent part-time work.

Non-standard employment in Ontario constitutes more than a quarter of Ontario's workforce: 26.6% in 2015.[29] This type of employment comprises temporary employees (including term/contract, seasonal, and casual/other), solo self-employment (i.e., without paid help), involuntary part-time employees (i.e., part-time workers who say that they want full-time work, and/or multiple job-holding (where the main job pays less than the median wage).

Non-standard employment has grown over time, rising from 23.1% in 1997 to 26.6% in 2015.

From 1997 to 2015, non-standard employment grew at an average annual rate of 2.3% per year, nearly twice as fast as standard employment (1.2%).

Temporary employment grew at an annual rate of 3.5% from 1997 to 2015 – faster than the other component of non-standard employment.

Compared to workers in standard employment, those with non-standard jobs tend to have lower wages, lower job tenure, higher poverty rates, less education and fewer workplace benefits.

Poverty rates of workers in non-standard employment are two to three times higher than the poverty rates of workers in standard employment.

Real median hourly wages were about $24 for workers in standard employment relationships and $15 for workers in non-standard forms of employment in 2015.

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29 These are calculations made by the Ontario Ministry of Finance based on data from Statistics Canada's Labour Force Survey, unless otherwise stated.

In 2011 most workers in standard employment had medical insurance (74.3%), dental coverage (75.7%), and life or disability insurance (68.1%), or a pension plan (53.8%). In comparison, less than one-quarter of workers in non-standard employment relationships had job benefits such as medical insurance (23.0%) or dental coverage (22.8%), while only 17.5% were covered by life and/or disability insurance or had an employer pension plan (16.6%).

In 2015, the median job tenure in non-standard employment was 32 months, less than half the tenure of standard jobs (79 months). The median length of time in temporary jobs was 13 months in 2014.

The industries with the highest incidence or concentration of workers in non-standard employment, in descending order of the percentage of employment in the industry in non-standard employment (relative to the average incidence of 26.6%) are:

- arts, entertainment and recreation (57.7%);
- agriculture (48.9%);
- real estate and rental and leasing (42.9%);
- business, building and other support services (40.0%);
- social assistance (35.7%);
- construction (33.8%);
- professional, scientific and technical services (32.9%);
- other services (32.6%);
- educational services (31.3%);
- accommodation and food services (30.2%);
- transportation and warehousing (28.6%); and
- retail trade (26.9%).

The distribution or share of non-standard employment by industry in descending order for 2015 is:

- retail trade (11.1%);
- professional, scientific and technical services (10.4%);

- construction (8.9%);
- educational services (8.7%);
- health care (8.4%);
- accommodation and food services (7.3%);
- business, building and other support services (7.2%);
- transportation and warehousing (5.0%);
- arts, entertainment and recreation (5.0%).[30]

We now turn to consider in detail some specific aspects of non-standard employment and their characteristics in Ontario.

Part-time Work

It has long been the case that the standard five-day work week and permanent 35 to 40 hour job is not as common as it once was. For many years, businesses have been expected to be open longer and sometimes around the clock as they have to meet the demand for goods and services. Employers need part-time workers to staff business that have peaks and valleys of demand for goods and services. Part-time work is often sought by those who need to balance work with family responsibilities, or students going to school or older workers who want to remain active labour force participants or may not have enough money to live comfortably in retirement.

Between 1976 and 2015 part-time's share of total employment increased from 13.5% to nearly 20% (19%) with almost all of that increase occurring in the earlier period between 1976 and 1993.[31] A little under a third of these (30% of part-time employees and 5.6% of all employees), referred to as involuntary part-time employees, had to compromise and to accept part-time jobs because they could not find the full-time positions they wanted. Part-time work is highly concentrated in the retail trades and accommodation and food services industries.

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30 The distribution or share of non-standard employment refers to how non-standard employment is distributed across different industries. It reflects both the incidence of non-standard employment as well as the size of the industry. The arts, entertainment and recreation industry, for example, has the highest incidence of non-standard employment (57.7%) but because it is a small industry, it has a small share of non-standard employment (5%).

31 These are calculations made by the Ontario Ministry of Finance based on data from Statistics Canada's Labour Force Survey.

There are now many more women in the workplace and work-life balance issues are of great importance especially to those with child and family responsibilities. While this affects many men as well, women comprise two-thirds of the part-time workforce and are therefore disproportionately affected by any negative impacts that arise from part-time work and scheduling issues.[32] In 2015, median hourly rates for part-timers were $12.50, which is only slightly more than half of the $24.04 for full-timers, although these are not comparisons between workers in the same job and same establishment (we lack the relevant data).[33]

This wage difference does not take into account that health and other benefits (which are mostly non-taxable compensation), that are often not available to part-time employees where they are available to full-time employees in the same establishment.

The dramatic inequality in rates of pay between full-time and part-time employees, especially when they do similar work in the same establishment, together with the lack of benefits available to part-timers have also created policy issues we must consider carefully.

Today, employers' need for part-time workers to deal with fluctuating demand dovetails with the preference of many in the workforce for that type of work. However, the employers' need to schedule work according to fluctuations in demand often conflicts with the need of employees for predictability in their work lives. There is tension between the employer need for flexibility and the employee need for predictability, including those having to work on-call or who are subject to last minute changes in work schedules. There is also a need to consider the employer need for flexibility and part-time employees with the employee need for flexibility in being able to move more easily from one status to another. All these issues need to be examined in our Review.

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32 Statistics Canada, *CANSIM Table 282-0008 – Labour Force Survey Estimates, by North American Industry Classification System, Sex and Age Group* (Ottawa: Statistics Canada, 2016). These are calculations made by the Ontario Ministry of Labour based on data from Statistics Canada's Labour Force Survey.

33 Statistics Canada, *CANSIM Table 282-0152 – Labour Force Survey Estimates, Wages of Employees by Type of Work, National Occupation Classification, Sex and Age Group* (Ottawa: Statistics Canada, 2016).

Temporary, Casual and Seasonal Work

The share of temporary employment in Ontario in 2015 was 10.8%, more than doubling from just under 5% in 1989.[34] Temporary employment, including limited-term contracts, has been the fastest growing component of non-standard employment, expanding at an annual rate of 3.5% between 1997 and 2015.[35]

Issues have been raised around the insecurity of limited-term contracts. Sometimes there is no issue regarding renewal because the contracts are genuinely for short duration, as in the case of a single project. Often they are renewed (sometimes automatically or consistently) over many years so that they appear to be almost permanent. Nevertheless, in many situations there is uncertainty and anxiety about whether there will be renewal, and in some professions and disciplines, permanent employment with the salaries, benefits, and security that come with it seems remote and impossible to attain.

Over the last twenty or more years in Ontario, temporary help agencies which provide staffing services and "assignment workers" to clients have become ubiquitous, giving rise to a host of concerns, among them the phenomenon of "permatemps," and sometimes even situations where the entire workforce of a particular business is composed of "temporary" assignment workers.[36] There have been concerns identified over the economic incentives for clients to use temporary workers for more dangerous work, and the lack of meaningful requirements to reintegrate those injured workers into the workplace. Indeed, this category of workers are part of an inherently insecure triangular relationship between agencies, clients and the assignment workers where they generally receive lower pay than others performing the same work, face immediate removal from the workplace, and constant uncertainty. Although Ontario made legislative changes in 2009 to regulate temporary help agencies, many important issues and problems remain.

There has always been a segment of the work force that has provided their services on a casual basis, and issues of pay and scheduling are raised for

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34 Statistics Canada, *CANSIM Table 282-0080 – Labour Force Survey Estimates, Employees by Job Permanency, North American Industry Classification System, Sex and Age Group* (Ottawa: Statistics Canada, 2016). These are calculations made by the Ontario Ministry of Labour based on data from Statistics Canada's Labour Force Survey. Additional calculations were made by the Ontario Ministry of Finance based on data from the General Social Survey of 1989.

35 Statistics Canada, *CANSIM Table 282-0080 – Labour Force Survey Estimates, Employees by Job Permanency, North American Industry Classification System, Sex and Age Group* (Ottawa: Statistics Canada, 2016).

36 The available data does not enable separating out temporary agency assignment workers from temporary, casual, and seasonal workers in general.

this group as they are for part-timers. Also, there has always been a part of the workforce that works on a seasonal basis in certain industries such as construction and agriculture where precarious work and vulnerable workers are often found.

Finally, there are also workers holding multiple jobs, often because their main job does not pay sufficient wages. The number of multiple job holders accounts for about 5.3% of the workforce in 2014, up from 2.2% in 1976. Three out of every five multiple job holders (62%) report earnings below the median hourly wage. Women are more likely than men to be in multiple jobs (59.3%) and in jobs with multiple non-standard characteristics (58.4%).[37]

Self-employment

There are two categories of self-employment, one category of workers who have their own paid help and the other category where the person has no paid help. The entire category grew from 10.5% in 1976 to 16.1% in 1997 remaining roughly constant to 15.7% by 2015. Most of the growth was in self-employment without paid help, and that group was 6% of the workforce in 1976, 10.6% in 1997, and 10.9% in 2015. Self-employment with paid help has been fairly constant over the full period, increasing slightly from 4.4% in 1976 to 5.5% in 1997, then declining slightly to 4.8% in 2015.[38]

Solo self-employment is classified as non-standard employment; self-employment with paid help is categorized as standard employment. Some of this growth is genuinely a result of entrepreneurial efforts by persons who start small business and employ others, while many are genuine entrepreneurial efforts by solo consultants and "freelancers." Many workers now work from home or remotely, and/or are deemed by those to whom they provide services to be independent contractors; therefore they do not have access to benefit plans, or statutory benefits like maternity and paternity leave.

Some of the growth in self-employment is tied to the growth in project work, or to a growth in technological expertise by individuals who can provide their specialized

37 These are calculations made by the Ontario Ministry of Finance based on data from Statistics Canada's Labour Force Survey for 2014.

38 Statistics Canada, *CANSIM Table 282-0012 – Labour Force Survey Estimates, Employment by Class of Worker, North American Industry Classification System and Sex* (Ottawa: Statistics Canada, 2016). These are calculations made by the Ontario Ministry of Labour based on Statistics Canada's Labour Force Survey. The self-employed without paid help category includes unpaid family workers.

services to many businesses. Some of the growth is the result of the fact that many employers do not want to make permanent commitments to employees. Some of the growth is the result of cyclical tough economic times and represents for many of the self-employed a poor second choice reflecting the absence of good employment opportunities. Some of the growth also represents a natural change in practices in some industries where people can now work online at home, and "freelance."

In contrast, some of the growth in self-employment is the result of deliberate misclassification by businesses that do not wish to incur liability for employees and wish to shed liability for mandatory deductions and contributions to public pensions, employment insurance, and workers compensation schemes, together with shedding responsibility for employment standards such as maternity and parental leaves. Also, some of the growth is from a genuine desire by the providers of the service to get tax advantages that might not be available if they operated as employees, despite the fact that the dependency inherent in the relationship makes the providers of the service much closer to being employees than to being really in business for themselves. Some of this growth is highly controversial with changes in industry practice (such as the change from employed taxi drivers to allegedly independent providers who provide services to Uber).

Tenure of Employment in the New Workplace

Expected long tenure with one employer may be high for incumbent older workers, but many new entrants to the workforce cannot expect to have "lifetime" long-tenured jobs and a semblance of job stability with the same, often unionized, employer as did earlier generations. Younger workers can expect to start off in limited-term contracts or in internships (sometimes unpaid), or self-employment, and can expect to change careers often working for different employers.

Conclusions

Clearly there is a wide array of pressures and trends that are affecting the workplace. These were articulated to us in the various hearings and submissions provided across the province and in the research commissioned for this Review.

In many cases these pressures conflict, as when employer needs for flexibility in work scheduling conflicts with employee needs for some certainty in scheduling to facilitate work-life balance. In other cases, the pressures had the potential to benefit both employers and employees, as when some elements of non-standard

employment met the needs of employers for flexibility and the needs of some workers to balance work and other personal or family commitments.

These various trends and pressures on the workplace highlight the need for reform of employment standards and labour relations legislation and especially to provide protection to vulnerable workers and those in precarious work situations. But they also highlight the complex trade-offs that are involved and the difficulties in navigating them.

04 | Labour Relations

Purpose of the Labour Relations Act

The Supreme Court of Canada has often noted that freedom of association protects the rights of employees to associate for the meaningful pursuit of collective workplace goals. The purpose of freedom of association in the workplace is "to preserve collective employee autonomy against the superior power of management and to maintain equilibrium between the parties."[39]

The *Labour Relations Act, 1995* (LRA) is the primary statute regulating labour relations for most Ontario private and public sector workplaces. The LRA contains provisions pertaining to:

- the certification and decertification of unions;
- the negotiation, content and operation of collective agreements; and
- the regulation of legal strikes and lock-outs.

These issues are important both to the parties directly involved in collective bargaining and to the public.

4.1 Legislative History of the LRA

The North American model of labour relations is based on the *National Labor Relations Act* (NLRA), better known as the *"Wagner Act"*, enacted in the United States in 1935. The essential features of the *Wagner Act* model have been described as follows:

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39 *Mounted Police Association of Ontario v. Canada (Attorney General),* (2015) SCC 4, para 82.

> *The Wagner Act model of labour relations permits a sufficiently large sector of employees to choose to associate themselves with a particular trade union and, if necessary, to decertify a union that fails to serve their needs. The principles of majoritarianism and exclusivity, the mechanism of "bargaining units" and the processes of certification and decertification – all under the supervision of an independent labour relations board – ensure that an employer deals with the association most representative of its employees.*[40]

In 1943, Ontario enacted the *Collective Bargaining Act*, which adopted certain *Wagner Act* features (such as a process for union certification). The *Collective Bargaining Act* was in effect for only six months before being displaced by the federal *Wartime Labour Relations Regulations* – Order in Council P.C. 1003 – which was introduced in early 1944 under the *War Measures Act*. This federal cabinet order contained a comprehensive framework for recognizing unions, which informs our laws to this day. Influenced by the *Wagner Act*, the central features of this framework were the following:

- non-managerial employees (other than excluded categories) were given the right to form and join unions;
- actions by employers against employees exercising the right to unionize were prohibited;
- labour boards, not courts, were authorized to certify unions as bargaining representatives for appropriate bargaining units, on proof of majority support;
- once certified, a union became the exclusive bargaining representative of all employees in the bargaining unit, whether or not they were union members;
- employers had to bargain in good faith;
- before resorting to economic sanctions, the parties were required to participate in government-sponsored conciliation; and
- during the term of a collective agreement, the parties could not engage in strikes or lock-outs, but instead were required to submit differences arising under the collective agreement to a neutral third party for grievance arbitration.

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40 *Mounted Police Association of Ontario v. Canada (Attorney General),* (2015) SCC 4, para 94.

Following WWII, each province introduced its own legislation, based on the P.C. 1003 model. In 1950, Ontario introduced the *Labour Relations Act*. This legislation, building on P.C. 1003, established the legal foundation for collective bargaining in the province.

Post-war, labour relations in Canada tried to balance the interests of capital and labour within a free market system. The resulting legal compromises, sometimes controversial, provided the foundation for expanded workers' rights. Generally the approach after 1950 featured incremental changes.

Initially, the Ontario Labour Relations Board (OLRB) had no enforcement mechanism, other than to grant consent to prosecute. In 1960, however, amendments to the Act gave the OLRB authority to order the reinstatement of employees terminated as a result of unfair labour practices. In 1970, further reforms included the union's duty of fair representation and the OLRB's accompanying remedial power to respond to complaints that a union had breached this duty. The level of support required for unions to obtain certification without a vote was increased at this time from 55% to 65%.

In 1975, legislative amendments included:

- a reduction in the membership evidence requirements for card-based certification (to 55% from 65%);
- provision for interim certification;
- the reversal of the legal onus in unfair labour practice complaints;
- the reversal of the evidentiary onus in successor and related employer applications;
- an expansion of the OLRB's remedial authority in dealing with unfair labour practices and unlawful work stoppages; and
- an extension of bargaining rights to dependent contractors.

In the early 1990s, a former Chair of the OLRB observed that up to then "Ontario [had] never been the leader of labour law reform and has been content to let other jurisdictions do the experimentation. On the other hand, once it was clear that such experiments did not result in industrial chaos, Ontario was prepared to move reasonably quickly to adopt such reforms."[41]

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41 Donald D. Carter. *Labour Law Reform: Radical Departure or Natural Evolution?* (Kingston: Industrial Relations Centre, Queen's University, 1992), 6.

Although prior to 1993, there were occasional amendments addressing specific issues,[42] major changes to the LRA were introduced in 1993 and 1995 and, most recently, in 2005. Over this period, the most significant changes to the legislation have accompanied changes in the governing political party.

1993 Amendments

Following the 1990 election, the Ontario government announced that it planned to reform labour legislation to "ensure that workers can freely exercise their right to organize". An outside committee of advisors representing management and labour, and chaired by a neutral arbitrator, was formed. The committee was asked to consider a number of issues within a one-month time frame. The management and labour representatives on the committee were not able to reach consensus. As a result, separate reports were filed. Subsequently, the government released a Discussion Paper on labour law reform, which included 41 preferred options for reform, as well as additional options that were set out for discussion, without indicating a preferred position. The Minister of Labour then held hearings in 11 cities, meeting over 300 groups and receiving 447 written briefs. Legislation was introduced in June 1992 and took effect in January 1993.

In the 1993 amendments, the key features were:

- the LRA's coverage was expanded to include domestic workers and certain professionals (e.g., lawyers, architects, dentists);
- full- and part-time employees were to be included in the same bargaining unit at the time of certification;
- the OLRB was given the power to consolidate bargaining units of the same employer represented by the same union;
- expedited hearings were provided for complaints arising from discipline or discharge during organizing campaigns, and the OLRB was given the power to issue interim orders;
- limited access to third party property (e.g., shopping malls, industrial parks) for organizing and picketing purposes;
- access to remedial certification was expanded, whereby the union no longer had to demonstrate adequate collective bargaining support in

42 For example, amendments were introduced providing for expedited arbitration (1979), compulsory check-off of union dues and employer initiated last-offer votes (1980), the prohibition of professional strike breakers (1983), and first agreement arbitration (1986).

order to trigger the remedy in circumstances where the employer, through a violation of the Act, had made it unlikely that the true wishes of the employees could be ascertained;

- the use of replacement workers was prohibited;
- employees were given just cause protection in cases of disciplinary action or dismissal before the effective date of a first collective agreement following certification;
- employees were given just cause protection during strikes, lock-outs, or the open period until a renewal collective agreement was in operation or until the union was decertified;
- employers and unions were required to bargain an adjustment plan in cases of mass terminations or plant closures; and
- after a strike, employers were required to reinstate returning employees to their former positions, giving striking employees priority over anyone who performed the work during the strike.

1995 Amendments

Following the change in government in 1995, the LRA was again extensively revised. A letter was sent to union and employer stakeholders asking them to respond in writing to a limited number of issues. Subsequent legislation repealed all of the substantive changes introduced in 1993 and introduced significant amendments including:

- replacing the card-based certification process by compulsory certification votes;
- lowering the threshold for employees to apply to decertify a bargaining agent;
- introducing requirements for strike and ratification votes; and
- removing successor rights for crown employees (restored in 2006).

Further Amendments in 1998 and 2000

In 1998, additional changes were made that:

- removed the OLRB's power to grant remedial certification and remedial dismissal and added the power to order a second representation vote;

- permitted employers, in an application for certification, to challenge a union's estimate of the number of employees in a proposed bargaining unit; and
- amended the OLRB's interim order powers to oust the application of the *Statutory Powers and Procedure Act*.

In 2000, changes to the LRA were made that:

- required employers to post and distribute information on the decertification process;
- introduced union salary disclosure for all union officials and employees earning more than $100,000 annually;
- created a mandatory certification bar of one year, applicable to any union, with respect to the same jobs or positions;
- extended the "open period" for decertification;
- required the OLRB to deal with decertification applications before dealing with, or continuing to deal with, applications for first contract arbitration; and
- required separate strike and ratification votes in first contract situations.

2005 Amendments

After a change in government, amendments to the LRA in 2005 included:

- reintroducing the OLRB's power to certify a union where an employer has violated the LRA during a union organizing campaign;
- reintroducing the OLRB's power to make certain types of substantive interim orders; and
- repealing the union salary disclosure provisions of the LRA and the requirement that unionized employers post and distribute information on the decertification process to their employees.

4.2 Scope and Coverage of the LRA

4.2.1 Coverage and Exclusions

Background

The LRA does not apply to:

- a domestic worker employed in a private home;
- a person employed in hunting or trapping;
- an agricultural employee (covered by the *Agricultural Employees Protection Act, 2002*);
- a person employed in horticulture (subject to certain conditions and exceptions);
- a provincial judge; or
- a person employed as a labour mediator or labour conciliator.

In addition, the LRA provides that no person shall be deemed to be an employee:

- who is a member of the architectural, dental, land surveying, legal or medical profession entitled to practice in Ontario and employed in a professional capacity; or
- who, in the opinion of the OLRB, exercises managerial functions or is employed in a confidential capacity in matters relating to labour relations.

Finally, the LRA either does not apply at all to, or its application is modified for, certain groups of employees in the public sector who are covered by specialized legislation. In particular:

- police (covered by the *Police Services Act and the Ontario Provincial Police Collective Bargaining Act, 2006*);
- professional firefighters (covered by the *Fire Protection and Prevention Act, 1997*);
- employees of colleges of applied arts and technology (covered by the *Colleges Collective Bargaining Act, 2008*);
- employees in teacher bargaining units (covered by the *School Boards Collective Bargaining Act, 2014*); and
- crown employees (covered by the *Crown Employees Collective Bargaining Act, 1993*).

These public sector employees have separate labour relations legislation falling outside the scope of this Review.

The issues related to agricultural and horticultural employees are addressed separately, below.

In the late 1960s, the Task Force on Labour Relations (better known as the Woods Task Force) reviewed the exclusions that then existed under the federal legislation (broadly similar to what exists in the LRA today) and could find no justification for any of them when measured against the principle of freedom of association.[43] The Woods Task Force recommended that the statutory right to bargain collectively should be extended to:

- supervisory and junior managerial employees;
- employees working in a confidential capacity in matters relating to labour relations;
- licensed professionals;
- dependent contractors[44];
- agricultural workers; and
- domestic workers.

When the *Canada Labour Code* was subsequently enacted in 1973, it generally reflected this advice, providing an expansive definition of "employee".

In 1993, the *Ontario Labour Relations Act* was amended and the list of exclusions under the legislation was revised. The new law allowed architects, dentists, land surveyors, legal professionals and some doctors[45] to apply for certification. A bargaining unit consisting solely of employees who were members of the same profession was deemed to be appropriate for collective bargaining, but the OLRB could include professionals in a bargaining unit with other employees if it was satisfied that a majority wished to be included in a broader unit. The 1993 amendments also repealed the exclusion of domestic workers from the Act. The amendments did not change the requirement that in order to be certified, a union

43 Task Force on Labour Relations, *Canadian Industrial Relations: The Report of Task Force on Labour Relations* (Ottawa: Government of Canada, 1968).
44 Note that dependent contractors are covered as employees under the LRA.
45 With respect to doctors, the 1993 amendment did not apply to a physician subject to the *Ontario Medical Association Dues Act, 1991* or to an intern or resident as defined in that Act.

must represent a bargaining unit of more than one person working for a single employer.

In addition, changes to the law in 1993 and 1994 addressed labour relations for agricultural workers, as discussed in more detail, below.

In 1995, the law was changed again, and the previously existing exclusions, including those for professionals and domestic workers, were reintroduced.

In reviewing the exclusions within the LRA, the circumstances with respect to each group need to be carefully considered. For example, the situation of domestic workers is unique. That workforce is overwhelmingly female, comprising many women who have come to Canada from low-income regions, and who face inherent vulnerability in the labour market. The historical exclusion of this group was apparently based on the belief that domestic workers formed an intimate social bond with the private households they worked for, and that the possibility of unionization would be an inappropriate barrier to this necessary bond.[46]

The situation of professionals such as doctors and lawyers is quite different. Professionals were seen as having adequate protection through their self-regulated professional bodies. As well, their exclusion seemed appropriate given the conflict between a professional's continuing duty and obligation to his or her patients or clients and the right to strike.

Certainly, many question whether the historical rationales for excluding these groups from the LRA continue to be relevant. There are, for example, 19 non-health professions and 27 regulated health professions in Ontario; however, only architectural, dental, land surveying, legal and medical professions are excluded under the LRA.

In the case of managerial employees, different issues and considerations arise. The traditional and prevailing reason for excluding this group of employees from collective bargaining has been to ensure that the employer can effectively direct the functions of the enterprise. Managers, who have responsibility to direct and control employees, would have a conflict of interest if included in bargaining units. For bargaining unit employees, the exclusion of managers ensures that the union remains independent of employer influence.

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46 A. Macklin, "On the Inside Looking In: Foreign Domestic Workers in Canada," in *Maid in the Market: Women's Paid Domestic Labour,* eds. W. Giles & S. Arat-Koc (Halifax: Fernwood Publishing, 1994), 32.

In 1993, no changes were made to the managerial exclusion notwithstanding that a Ministry of Labour Discussion Paper released in 1991 had proposed an amendment to permit supervisory employees to bargain collectively in bargaining units separate from those of other employees.

The exclusion of "persons employed in a confidential capacity in matters relating to labour relations" has attracted little commentary.

Other Jurisdictions

All Canadian jurisdictions exempt those performing management functions or those employed in a confidential capacity in matters relating to labour relations from the definition of "employee" under their respective labour legislation (although there is some variation in the scope of the managerial exclusion).

The exclusion of hunters and trappers is unique to Ontario; the reason for this is unclear. The exclusion of land surveyors is also unique to Ontario. In other Canadian provinces, only Alberta, Nova Scotia and Prince Edward Island exclude regulated professions in a manner similar to Ontario,[47] and only Alberta and New Brunswick exclude domestic workers.

Submissions

Any review of current exclusions must be informed by the recent jurisprudence from the Supreme Court of Canada regarding freedom of association under the Charter (described in more detail in the Chapter on Guiding Principles, Values and Objectives). Suffice it to say that in *Mounted Police Association of Ontario v. Canada (Attorney General)*,[48] the Court made it clear that freedom of association protects:

- the right to join with others and form associations;
- the right to join with others in the pursuit of other constitutional rights; and
- the right to join with others to meet the power and strength of other groups or entities on more equal terms.

In the context of labour relations, the Court made it clear that these principles apply to all individuals and operate to guarantee the right of employees to

47 Legal professionals are excluded in Quebec. Alberta also excludes nurse practitioners.
48 *Mounted Police Association of Ontario v. Canada (Attorney General),* (2015) 1 SCR 3, paras 66-67.

associate meaningfully in pursuit of collective workplace goals, including collective bargaining.

With the exception of agricultural and horticultural workers (see below), the LRA exclusions have not been a dominant issue in our consultations.

The submissions received regarding the LRA exclusions can be summarized as follows:

- some lawyers working for Legal Aid Ontario would like to have the ability to bargain collectively with their employer;
- several labour organizations were of the opinion that the exclusions in the LRA, not already subject to a separate collective bargaining regime, should be abolished;
- a number of stakeholders suggested removing the exclusion of domestic workers from the LRA; and
- labour organizations would generally support expanding the coverage of the LRA but agree that managers and persons employed in a confidential capacity in matters related to labour relations ought to remain excluded.

Options:

1. Maintain the status quo.
2. Eliminate some or most of the current exclusions in order to provide the broadest possible spectrum of employees access to collective bargaining by, for example:
   a) permitting access to collective bargaining by employees who are members of the architectural, dental, land surveying, legal or medical profession entitled to practise in Ontario and employed in a professional capacity; and
   b) permitting access to collective bargaining by domestic workers employed in a private home.[49]

49 It is understood that for domestic workers, a collective bargaining model that is different than the *Wagner Act* model may have to be put in place to give them meaningful access to collective bargaining. There is some discussion of other models in the section below on broader-based bargaining.

4.2.1.1 Agricultural and Horticultural Employees

Background

The LRA does not apply to:

- agricultural employees within the meaning of the *Agricultural Employees Protection Act, 2002*; or
- a person who is employed in horticulture by an employer whose primary business is agriculture or horticulture.[50] ("Horticulture" is not defined in the LRA, but has been interpreted by the OLRB to include activities such as gardening, landscaping, nurseries, growing trees, etc.)

The Agricultural Labour Relations Act, 1994

Until 1994, agricultural and horticultural workers were excluded from Ontario's labour relations regime. In 1994, the *Agricultural Labour Relations Act, 1994* (ALRA), was enacted by the government following the recommendations in the reports of the Task Force on Agricultural Labour Relations, namely, the Report to the Minister of Labour (June 1992) and the Second Report to the Minister of Labour (November 1992).

The government adopted most of the Task Force's recommendations in developing the ALRA. Provisions of the ALRA included:

- a preamble indicating that it was in the public interest to extend collective bargaining rights to the sector and that agriculture and horticulture sectors have certain "unique characteristics" (e.g., seasonal production, climate and time sensitivity, perishable nature of agricultural and horticultural products, the need to maintain continuous processes to ensure the care and survival of animal and plant life);
- a prohibition against work stoppages (bargaining disputes that could not be resolved in bargaining or mediation were referred to final offer selection or, with the agreement of the parties, to voluntary interest arbitration);
- incorporation by reference of many key provisions of the LRA (subject to certain modifications), including provisions relating to:
  - certification and decertification of bargaining agents;

50 This exclusion does not capture horticultural employees who are employed by a municipality or who are employed in silviculture.

  - duty to bargain in good faith;
  - successor rights;
  - unfair labour practices; and
  - enforcement by a special agriculture industry division of the OLRB;
- restrictions on the certification of bargaining units containing seasonal workers (such bargaining units could be certified only if a regulation allowed it and the unit contained only seasonal employees); and
- protections to ensure that family members could perform work for the employer, despite any provisions in a collective agreement, a union constitution, the ALRA, or the LRA, as it then was.

The ALRA was in effect from June 1994 to November 1995. During that period, the United Food and Commercial Workers Union was certified as the bargaining agent for a single bargaining unit in Leamington, Ontario, and filed two other certification applications.

In 1995, the ALRA was repealed in its entirety and the *Labour Relations and Employment Statute Law Amendment Act* (Bill 7) was enacted. In addition to terminating any agreements reached under the ALRA, Bill 7 terminated any certification rights of unions. Bill 7 was enacted pursuant to an initiative of the government and repealed the only statute ever to extend union and collective bargaining rights to Ontario's agricultural workers. The net effect of Bill 7 was that agricultural and horticultural workers were again excluded.

Constitutionality of Agricultural Exclusion – Dunmore v. Ontario (Attorney General)

In *Dunmore v. Ontario (Attorney General)*,[51] the Supreme Court of Canada considered the constitutionality of the exclusion of agricultural workers from the LRA. In *Dunmore*, farm workers challenged the exclusion as a violation of their freedom of association under the *Canadian Charter of Rights and Freedoms*. They argued that Bill 7, combined with section 3(b) of the LRA, prevented them from establishing, joining and participating in the lawful activities of a union, denying them a statutory protection enjoyed by most occupational groups in Ontario.

51 *Dunmore v. Ontario (Attorney General),* (2001) 3 SCR 1016.

The Court quoted from the lower court decision in which Justice Sharpe stated that the government of Ontario has:

> *…"a very different perspective from that of its predecessor on appropriate economic and labour policy" and, indeed, rejects any attempt to include agricultural workers in its labour relations regime. Moreover, the affidavit evidence in this case "presents in stark contrast two conflicting views of an appropriate labour relations regime for agricultural workers in Ontario," one denying the existence of any "industrial relations rationale" for the current exclusion, and the other maintaining that the collective bargaining model of the ALRA or the LRA would unduly threaten the province's farm economy (pages 201-2). This latter view is evidently shared by the Legislature of Alberta, which is the only other Canadian province to exclude agricultural workers from its labour relations regime.*

In *Dunmore*, in discussing the scope of state responsibility with respect to freedom of association, the Court asked whether:

> *…in order to make the freedom to organize meaningful, section 2(d) of the Charter imposes a positive obligation on the state to extend protective legislation to unprotected groups. More broadly, it may be asked whether the distinction between positive and negative state obligations ought to be nuanced in the context of labour relations, in the sense that excluding agricultural workers from a protective regime substantially contributes to the violation of protected freedoms. (See paragraphs 19-20).*

The answer to the question of whether excluding agricultural workers from the LRA contributed to the violation of protected freedoms was unequivocal. At paragraph 48, the Court stated:

> *…it is reasonable to conclude that the exclusion of agricultural workers from the LRA substantially interferes with their fundamental freedom to organize. The inherent difficulties of organizing farm workers, combined with the threats of economic reprisal from employers, form only part of the reason why association is all but impossible in the agricultural sector in Ontario. Equally important is the message sent by section 3(b) of the LRA, which delegitimizes associational activity and thereby ensures its ultimate failure. Given these known and foreseeable effects of section 3(b), I conclude that the provision infringes the freedom to organize and thus violates section 2(d) of the Charter.*

The Court declared the exclusion of agricultural workers from the LRA to be invalid and gave the government eighteen months to implement amending legislation if the government saw fit to do so. In providing this remedy, the Court neither required nor forbade the inclusion of agricultural workers in a full collective bargaining regime, whether in the LRA or a special regime applicable only to agricultural workers such as the ALRA. In deferring to the Legislature, the Court stated that the "question of whether agricultural workers have the right to strike is one better left to the legislature, especially given that this right was withheld in the ALRA." (See paragraph 68).

In 2002, in response to *Dunmore*, the Ontario Legislature enacted the *Agricultural Employees Protection Act, 2002* that came into force on June 17, 2003.

The Agricultural Employees Protection Act, 2002

Employees employed in agriculture are covered by the *Agricultural Employees Protection Act, 2002* (AEPA). Horticultural workers remain excluded from the LRA but have no separate labour relations regime.

Agriculture is defined in the AEPA as including:

> *…farming in all its branches, including dairying, beekeeping, aquaculture, the raising of livestock including non-traditional livestock, furbearing animals and poultry, the production, cultivation, growing and harvesting of agricultural commodities, including eggs, maple products, mushrooms and tobacco, and any practices performed as an integral part of an agricultural operation, but does not include anything that was not or would not have been determined to be agriculture under section 2 of the predecessor to the LRA as it read on June 22, 1994.*

An employer under the AEPA is defined as "(a) the employer of an employee, and (b) any other person who, acting on behalf of the employer, has control or direction of, or is directly or indirectly responsible for, the employment of the employee."

The AEPA creates a separate labour relations regime for agricultural workers. The AEPA grants agricultural workers the right to form and join an employees' association, to participate in its activities, to assemble, to make representations to their employers through their association on their terms and conditions of employment and the right to be protected against interference, coercion and discrimination in the exercise of their rights. The employer must give an association

the opportunity to make representations respecting terms and conditions of employment and the employer must listen to those representations or read them. Complaints under the AEPA can be filed with the Agriculture, Food and Rural Affairs Appeals Tribunal. The Act falls under the purview of the Ministry of Agriculture, Food and Rural Affairs.

The AEPA does not contain a statutory requirement for the employer to bargain in good faith with an employees' association. However, it should be noted that in *Ontario (Attorney General) v. Fraser*, a majority of the Supreme Court of Canada held that section 5 of the AEPA, correctly interpreted, protects not only the right of employees to make submissions to employers on workplace matters, but also the right to have those submissions considered in good faith by the employer.[52] The AEPA does not provide for strikes, lock-outs or for any other dispute resolution mechanism.

Constitutionality of the AEPA – Ontario (Attorney General) v. Fraser

The constitutionality of the AEPA was upheld by the Supreme Court of Canada in *Fraser*. In doing so, the Court noted that no effort had been made to resort to the Agriculture, Food and Rural Affairs Appeals Tribunal and that the Tribunal "should be given a fair opportunity to demonstrate its ability to appropriately handle the function given to it by the AEPA." At paragraph 112, the Court stated:

> *Section 11 of the AEPA specifically empowers the Tribunal to make a determination that there has been a contravention of the Act, and to grant an order or remedy with respect to that contravention. The Tribunal may be expected to interpret its powers, in accordance with its mandate, purposively, in an effective and meaningful way.*

In *Fraser*, the Court reaffirmed that section 2(d) of the *Charter* confers the right to a meaningful process of collective bargaining, understood as meaningful association in pursuit of workplace goals, and explained that such a process includes the employees' rights to join together, to make collective representations to the employer, and to have those representations considered in good faith.

The Court also reaffirmed that a meaningful process of collective bargaining guarantees a process rather than an outcome or access to a particular model of labour relations. In other words, the *Wagner Act* is a particular model of collective

52 *Ontario (Attorney General) v. Fraser,* (2011) 2 SCR 3, paras 102-106.

bargaining but not a necessary model, to ensure the right of employees to meaningfully associate in pursuit of collective workplace goals.

Right to Strike – Saskatchewan Federation of Labour v. Saskatchewan

In *Saskatchewan Federation of Labour v. Saskatchewan*,[53] the Supreme Court of Canada further elaborated on what is meant by the *Charter* guarantee in section 2(d) to a meaningful process of collective bargaining.

The Court was required to deal with the question of whether designated employees could be prohibited by legislation from striking. In deciding this issue, the Court relied on numerous international obligations including Canada's international human rights obligations, about which the court stated, at paragraph 62:

> *Canada's international human rights obligations also mandate protecting the right to strike as part of a meaningful process of collective bargaining. These obligations led Dickson C.J. to observe that:*
>
> > *…there is a clear consensus amongst the [International Labour Organization] adjudicative bodies that [Convention (No. 87) concerning freedom of association and protection of the right to organize (68 U.N.T.S. 17 (1948)] goes beyond merely protecting the formation of labour unions and provides protection of their essential activities – that is of collective bargaining and the freedom to strike. [Alberta Reference, at page 359].*

The Court held that the right to strike is an essential part of meaningful collective bargaining and concluded that while public sector employees who provide essential services may perform functions which, arguably, should be afforded a less disruptive mechanism for the resolution of collective-bargaining disputes, because the Legislature abrogated the right to strike and provided no alternate dispute resolution mechanism, the prohibition was unconstitutional. At paragraphs 25 and 81, the Court stated:

> *Where strike action is limited in a way that substantially interferes with a meaningful process of collective bargaining, it must be replaced by one of the meaningful dispute resolution mechanisms commonly used in labour relations. Where essential services legislation provides such an alternative*

53 *Saskatchewan Federation of Labour v. Saskatchewan,* (2015) SCC 4.

mechanism, it would more likely be justified under s. 1 of the Charter. In my view, the failure of any such mechanism in the PSESA is what ultimately renders its limitations constitutionally impermissible.

The trial judge concluded that the provisions of the PSESA "go beyond what is reasonably required to ensure the uninterrupted delivery of essential services during a strike". I agree. The unilateral authority of public employers to determine whether and how essential services are to be maintained during a work stoppage with no adequate review mechanism, and the absence of a meaningful dispute resolution mechanism to resolve bargaining impasses, justify the trial judge's conclusion that the PSESA impairs the section 2(d) rights more than is necessary [Emphasis in original].

Right to Strike – Post Saskatchewan Federation of Labour v. Saskatchewan

The AEPA neither prohibits nor provides a right for agricultural workers to strike and does not provide for any alternate dispute resolution if their "discussions" reach an impasse.

It is obvious that strikes by agricultural workers could have significant adverse impact on planting, growing and harvesting, on animal health and safety, on bio-security and on a host of other important interests. In *Dunmore*, it will be recalled that the Supreme Court of Canada stated: "the question of whether agricultural workers have the right to strike is one better left to the legislature…" (See paragraph 68).

Other Jurisdictions

For the most part, other Canadian jurisdictions include agricultural and horticultural workers under their general labour relations statutes.

Alberta has recently passed legislation that will extend labour relations coverage to agricultural workers (these changes are not yet in effect). Our understanding is that the Alberta government intends to consult with stakeholders in the sector with a view to developing sector-specific regulations.

Before 2014, Quebec's *Labour Code* provided, in section 21, that: "Persons employed in the operation of a farm shall not be deemed to be employees for the purposes of this division unless at least three of such persons are ordinarily and continuously so employed." The alleged purpose of this provision was to exempt

small farms from the provisions of the Code. However, the effect of section 21 of the Code was that, on a farm that employed two full-time workers and many seasonal employees, the seasonal workers were not covered by the provisions of the Code and, therefore, were effectively denied the benefits of organizing and of collective bargaining. Section 21 of the Code was challenged in the Quebec Superior Court and was found to be unconstitutional.

In response to the Superior Court decision, in 2014, the current government amended the Code implementing "Special Provisions Applicable to Farming Businesses". The Special Provisions are modeled after the Ontario AEPA. They are applicable to agriculture operations where fewer than three full-time employees are ordinarily and continuously employed. The Special Provisions require an employer to give an association of employees of the farming business a reasonable opportunity to make representations about the conditions of employment of its members. The employer must examine the representations and discuss them with the association's representatives. If representations are made in writing, the employer must give the association of employees a written acknowledgement of having read them. Diligence and good faith must govern the parties' conduct at all times. As with the AEPA, there are no provisions for a strike or lock-out and no other dispute resolution mechanism is provided.

In farming businesses where three or more employees are ordinarily and continuously employed, the general provisions of the *Labour Code* apply allowing for certification of bargaining agents and collective bargaining. As with the former section 21 of the Code, the fact that many seasonal workers may be employed in a farm business does not trigger the application of the general provisions of the Code relating to the rights of employees to join a union and engage in collective bargaining. Those rights are triggered only where three full-time employees are ordinarily and continuously employed.

Submissions

The exclusion of agricultural employees from the LRA was the focus of significant attention during the consultations.

Labour and employee advocacy groups contend that the AEPA is ineffective and that agricultural employees should be covered by the LRA. They contend that access to traditional collective bargaining is necessary to give meaning to their constitutional rights under section 2(d) of the *Charter*. Unions and worker advocates assert that access to collective bargaining is essential if working

conditions for vulnerable agricultural employees are to improve. Some groups also recommended that the exclusion of horticultural employees from the LRA should be eliminated.

We heard from employers that the status quo should be maintained. They argue that the Supreme Court of Canada in *Fraser* upheld the constitutionality of the AEPA and that there is no reason to change that model for agricultural employees. They contend that the LRA model of collective bargaining, with the right to strike, should not be applied to the agricultural sector whose unique characteristics remain constant. As outlined in the ALRA, 1994, these unique characteristics include:

- seasonal production;
- climate and time sensitivity;
- the perishable nature of agricultural and horticultural products; and
- the need to maintain continuous processes to ensure the care and survival of animal and plant life.

Given the unique nature of the agricultural business, some employer stakeholders expressed that extending LRA coverage to employees in the sector would tip the balance of power in favour of employees and unions at the expense of employers who are uniquely vulnerable to strike action. Employers asserted that farmers are price-takers, not price-makers and that competition from outside Canada is already a threat to Canadian farmers and to the economic viability of farming operations in Ontario. Employers submit that extended coverage under the LRA for agricultural workers will worsen their competitiveness and unduly threaten Ontario's important farm economy.

Options:

1. Maintain the status quo by leaving the existing LRA exemption for agricultural and horticultural employees in place and maintaining the AEPA for agricultural workers.
2. Eliminate the LRA exclusions for agricultural and horticultural sectors under the LRA and repeal the AEPA for agricultural workers.
3. Enact new legislation, perhaps like the ALRA, for agricultural workers.
4. Include horticultural workers in any legislation covering agricultural workers.

4.2.2 Related and Joint Employers

Background

In an increasing range of circumstances, it has become important to determine, for the purposes of the LRA:

- which of two entities is the employer;
- whether a number of entities are a related employer; or
- whether entities are joint employers.

Increasingly, organizations do not always operate as a single employer that directly hires its workforce and controls all aspects of its business. For example, it is common for businesses to supplement, and even replace, some or all of their regular workforces by engaging workers from a temporary help agency (THA) or labour broker.

Businesses may subcontract supervision for particular parts of an operation to a contractor together with the staffing responsibility for that part of the operation. Or an enterprise may be organized in such a way that different entities have responsibility for different facets of the business. It may not be clear who the employer is. An entity with real influence and control on the terms and conditions of employment may appear not to be an employer at all.

Similarly, franchisees must comply with the franchise agreement and the requirements of a franchisor, which could affect the manner in which they manage their workforce or operate their business. Some franchisors may exert more control or less control over the business of a franchisee and over terms and conditions of employment.

Several policy questions arise in these situations, including whether a collective bargaining relationship can be effective or stable if parties who also impact the employment relationship are not at the bargaining table. Another question is how to distinguish between different situations where part of a business is contracted-out. For example, where the lead business has no involvement in highly specialized work performed by a subcontractor, then involving the lead business in bargaining with respect to the subcontractor and imposing employer obligations on the lead business would arguably be unfair and excessive. However, this may be different from situations where the lead business is closely involved or has ultimate authority on an on-going basis with the core work performed by a contractor or franchisee.

True Employer

Where there is more than one potential employer for a group of employees under the LRA, the OLRB will determine which employer is the "true employer" on a case-by-case basis, weighing various factors to determine which choice appears to be consistent with the statutory and labour relations framework.

The OLRB has wrestled with the issue of determining the true employer. The analysis has evolved over the years as the context has changed and as these triangular relationships have become common. Historically, the Board has considered numerous factors such as whether a party:

- exercises direction and control over the employees;
- has authority to dismiss employees;
- is perceived by the employees to be the employer; and
- whether there exists an intention to create an employer-employee relationship.[54]

The Board now emphasizes that it makes a purposive and contextual analysis.[55] There is no single factor that is determinative and no exhaustive list of factors to apply mechanically to a particular situation. The question to be asked is, "having regard to all of the facts of the specific case, which entity should the union be required to bargain with and represent the employees with so that collective bargaining can be as effective and stable as possible?"[56]

The OLRB has considered the non-exhaustive factors in determining the true employer identified by the Supreme Court of Canada in *Pointe-Claire (City) v. Québec (Labour Court)*, including: the selection process, hiring, training, discipline, evaluation, supervision, assignment of duties, remuneration and integration into the business.[57]

Accordingly, unlike the ESA, the OLRB typically does not treat assignment workers as employees of the THA. Instead, the question of who is the employer is determined on a case-by-case basis. Most often, the issue of who is the employer arises in certification applications.

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54 *Labourers' International Union of North America, Local 183 v. York Condominium Corporation Number 46,* (1977) CanLII 1008, ON LRB.
55 *Labourers' International Union of North America, Ontario Provincial District Council v Rochon Building Corporation,* (2015) CanLII 4680, ON LRB.
56 Ibid.
57 *Pointe-Claire (City) v. Québec (Labour Court),* (1997) 1 SCR 1015.

If the OLRB determines that the assignment workers are employees of the client, they may be included in a proposed bargaining unit and count for the purposes of a representation vote at the client workplace, but such workers have also been excluded on occasion at the request of the union because of the difficulty in organizing them. However, if assignment workers are found to be employees of the THA and not of the client, they would be unable to unionize at the client workplace.

Although labour relations legislation technically enables THA workers to organize at the level of the THA, there are numerous challenges, and unionization at the agency level is almost non-existent in Canada.[58]

In certification applications that involve THA workers, there is often prolonged litigation at the OLRB to determine the true employer and, most frequently, the client has been found to be the employer by the OLRB.[59] However, in at least two certification applications, the OLRB has exercised its discretion to make a related employer declaration pursuant to section 1(4) of the LRA, and the temporary help agency and client business were both found to be the employer.[60]

Related Employer

The OLRB has the power to treat related or associated businesses as a single employer for the purposes of the LRA, where they carry on associated or related activities under common control or direction. These activities need not be carried on simultaneously and there is no need to establish that the businesses were structured for anti-union purposes.

Pursuant to the related employer provision under the LRA, the OLRB may "pierce the corporate veil" where more than one legal entity carries out economic activity that gives rise to employment or collective bargaining relationships regulated by the LRA.[61] The OLRB has stated that the purpose of this provision is to prevent mischief, by protecting the bargaining rights of a union from being deliberately or inadvertently eroded by the commercial operations of related employers.[62]

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58 Timothy Bartkiw, "Unions and Temporary Help Agency Employment," *Relations Industrielles* 67, no. 3 (2012): 460-470; Gerard Notebaert, "The Impact of the Legislative Framework on Unionization Rates for Temporary Workers in Quebec and in France," R*elations Industrielles* 61, no. 2 (2006): 223-246.
59 *UFCW, Local 1000A v. Nike Canada Ltd.,* (2006) CanLII 24724, para 94, ON LRB.
60 *UFCW Canada v. PPG Canada Inc.,* (2009) CanLII 15058, ON LRB; *Teamsters Local Union No. 419 v. Metro Waste Paper Recovery Inc.,* (2009) CanLII 60617, ON LRB.
61 *Ironworkers' District Council of Ontario v. Squire,* (1980) CanLII 768, para 12, ON LRB.
62 *Carpenters and Allied Workers Local 27 v. Toronto (City),* (2000) CanLII 7860, paras 19-20, ON LRB.

As indicated above, section 1(4), the related employer section, has been applied in certification applications to find that a temporary help agency and client business were carrying on associated or related activities under common control and direction. In distinguishing between those subcontracting arrangements where section 1(4) would apply and those where it would not, the OLRB has distinguished between situations where the subcontracting was legitimate and those where it was not. In general, the OLRB would be less likely to find that two entities are related in situations where the subcontracted work was not for core functions, was less permanent, and was more subject to the control of the subcontractor.[63]

The OLRB has also been asked to treat franchisors and franchisees as related employers and, depending on the context, has done so on some occasions but not others.[64]

Other Jurisdictions

In a recent case in the United States that has attracted much attention and controversy and is currently being appealed in the courts, the National Labor Relations Board (NLRB) held that, in light of the prevalence of THA employees, its common-law joint employer standard had failed to keep pace with changes in the workplace and economic circumstances.[65]

A majority of the NLRB held that a client business and staffing agency were joint employers, and that two or more entities may be joint employers of a common workplace, if:

- both entities are employers within the meaning of the common law; and
- they share or co-determine those matters governing the essential terms and conditions of employment.

In deciding whether an employer possesses sufficient control over employees to qualify as a joint employer, the NLRB will, among other things, consider if the employer has exercised control indirectly through an intermediary, or whether it has the right to do so. It is not necessary for the control to be exercised "directly and immediately."

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63 *PPG Canada Inc., supra* note 60 at para 113; *Metro Waste Paper Recovery Inc., supra* note 60.
64 *United Brotherhood of Carpenters and Joiners of America, Local 785 v. Second Cup Ltd.,* (1993) CanLII 7903, ON LRB; *The United Food and Commercial Workers' International Union, Local 175 v. Sobeys Ontario Division of Sobeys Capital Inc.,* (2001) CanLII 10338, ON LRB.
65 *Browning-Ferris Industries of California, Inc.,* (2015) 362 NLRB 186.

Submissions

Unions have told us that the LRA needs to be amended to ensure that bargaining structures reflect who funds and controls the work, and to ensure that bargaining takes place with the real parties that have primary economic interest and ultimate control over the business. Their recommendations include:

- creating a rebuttable presumption that an entity directly benefiting from a worker's labour is the employer of that worker for the purposes of the LRA;
- deeming that any individual engaged in performing work for the benefit of an entity is an "employee" of that entity, regardless of the form of the relationship, unless the individual earns more than $150,000 per year from that entity; and
- allowing the OLRB to provide for certification of common bargaining structures across groups of franchise-based operations associated with a given parent firm operating in a specific geographic area.

In the case of THAs, the point was raised that extensive litigation at the OLRB in every case in which there are assignment workers in an enterprise puts strain on the resources of all parties and that clear rules are required.

In the case of franchise operations, it was argued that where the franchisor exercises influence or control over the operations, it should be considered the employer of the franchisee's employees. Alternatively, it was argued that regardless of the amount of actual control exercised by the franchisor over the operations of the franchisee, collective bargaining cannot be effective unless the real economic players in the enterprise are required to bargain with the employees. Accordingly, it was argued that both the franchisor and franchisee must be present at the bargaining table and be joint employers for labour relations purposes.

Employers and employer associations have told us that the current LRA provisions regarding related employers, franchises and THAs should be maintained or revised to exclude certain relationships. They emphasized the importance of certainty and noted that any changes could threaten established business models. It was argued that, by and large, franchisors have little if any authority over a franchisee's employees, and that the franchisee is the entity that exercises control over terms and conditions of employment and is the real employer in a franchise's day-to-day operation. It was argued that the franchisor should not be dragged into the labour relations world unless it takes an actual hands-on role in the franchise's operation.

Their recommendations include:

- maintaining the status quo for bargaining under the LRA;
- expressly excluding franchise relationships from the LRA;
- establishing clear statutory criteria for a related employer declaration, particularly in a franchise context; and
- requiring the OLRB to consider whether an entity exercises control over labour and employment issues before making a related employer declaration.

Many stakeholders raised issues respecting THAs and temporary workers that will be addressed under the Employment Standards Chapter of this Interim Report, which could affect collective bargaining. For example, labour and employee organizations recommended that temporary workers engaged through a THA be provided with the same wages, benefits and working conditions as workers hired directly by the client business. At least one employer association stated that temporary workers engaged through a THA should not be provided with the same working conditions as other workers, which conditions could include lay-off procedures under a collective agreement and defeat the purpose of engaging temporary workers.

Options:

1. Maintain the status quo.
2. Add a separate general provision, in addition to section 1(4), providing that the OLRB may declare two or more entities to be "joint employers" and specify the criteria that should be applied (e.g., where there are associated or related activities between two businesses and where a declaration is required in order for collective bargaining to be effective, without imposing a requirement that there be common control and direction between the businesses).
3. Amend or expand the related employer provision by:
    a) providing that the OLRB may make a related employer declaration where an entity has the power to carry on associated or related activities with another entity under common control or direction, even if that power is not actually exercised; and
    b) stating which factors should be considered when determining whether a declaration should be made.

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

    a) regarding THAs and their client businesses:

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

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

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

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

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

4.3 Access to Collective Bargaining and Maintenance of Collective Bargaining

4.3.1 The Certification Process

Background

The LRA sets out the means by which workers can organize into unions and establish bargaining rights through certification.

Generally, this process involves the union making an application to the OLRB and demonstrating at least 40% support from the appropriate bargaining unit of workers (typically in a single workplace), followed by an OLRB-supervised secret ballot vote. The LRA requires that this vote normally be conducted within five working days of the application. Unfair labour practices (such as interference or opinions on unionization expressed by employers having undue influence on employees, or intimidation by either employers or unions) in the course of this process are prohibited.

4.3.1.1 Card-based Certification

Between 1950 and 1995, all sectors covered by the LRA operated under a card-based certification system. This model allowed for automatic certification by the OLRB if more than a certain percentage of employees in the proposed bargaining unit signed membership cards. For most of this period, the threshold for card certification was 55%; however, from1970 to 1975, the threshold was 65%.

For most of this period, the practice was for the OLRB to set a "terminal date" following the certification application. Up to the terminal date, employees could submit petitions indicating opposition to, or support of, the union. So, for example, a worker who had signed a union card would have the opportunity to withdraw his or her support by signing a petition opposing the union. If there was sufficient overlap between the names on a petition and the union membership cards, the OLRB generally ordered a vote. The OLRB would hold a hearing to determine whether a petition was signed voluntarily.

Frequently, the OLRB found that petitioners were unable to prove the petitions were voluntary. The workers' signatures, both on union membership cards and on any petition opposing the union, were confidential within the OLRB process.

In 1993, Bill 40 amended the *Labour Relations Act*, requiring the OLRB to consider employee support as of the "certification application date." The OLRB was expressly prohibited from considering post-application membership evidence either for or against the union. This basically eliminated petitions in all cases and eliminated votes where the union met the threshold of 55% support.

In 1995, Bill 7 eliminated card-based certification and introduced the mandatory vote model. Certification occurs where a majority of ballots cast are in favour of the union.

In 2005, the Bill 40 model of card-based certification was essentially restored in the construction industry. The OLRB must determine an application for certification without a vote in the construction industry "as of the date the application is filed" and based only on the material filed by the union and the employer's response.

Note that recommending changes to the construction industry provisions of the LRA is beyond our mandate.

Other Jurisdictions

Card-based certification is available in Quebec, New Brunswick and Prince Edward Island, and the federal government has introduced a bill to bring it back. The threshold required to achieve certification based on membership cards ranges from over 50% to 60%. In Manitoba, a bill has been introduced to end card-based certification. In all other Canadian jurisdictions, certification votes are generally required.

We are releasing to the public, concurrent with this Interim Report, a list of research projects commissioned for this Review, including a report on collective bargaining.[66] This report assessed the research literature on the topic of certification models and noted that: "These studies consistently find that the presence of [a mandatory vote certification model rather than a card-based certification] procedure is associated with a statistically significant reduction in certification application activity, including success rates."[67] Two aspects of the vote model identified by these studies as inhibiting certification are the greater opportunity for delay and the related greater opportunity for employer unfair labour practices to occur, as compared with card-based procedures.

4.3.1.2 Electronic Membership Evidence

An issue was raised that employees should be able to "sign" membership cards online and not be required to sign paper cards.

Under the current OLRB rules, and LRA section 9.2, there is a requirement that membership cards be in writing, signed by the employee, and dated; this would appear to preclude, or at least not to contemplate, electronic membership evidence. There is no current legal requirement for someone to witness a person signing a card, although most unions follow this practice.

A union is required to file a membership declaration with the OLRB confirming to the OLRB that it has made inquiries and can declare that each card was signed by the people whose name is on the card. The person signing the declaration should be able to trace information back to someone who saw the person sign the card.

Mailed membership, where there is no witness to the signing, is permitted by the OLRB provided there is compliance with certain safeguards. For example, a

66 Sara Slinn, *Collective Bargaining* (Toronto: Ontario Ministry of Labour, 2015). Prepared for the Ontario Ministry of Labour to support the Changing Workplaces Review.
67 Ibid., 11.

union official would be expected to check with the person who mailed the card to confirm that the person signed the card and mailed it, and also, to disclose this to the OLRB in the declaration.

Submissions

The appropriate model for certification is a polarizing issue. In the course of our consultations, unions have strongly favoured card-based certification. They heavily criticize the current vote-based system as unfair because they claim there is extensive direct and indirect employer interference or undue influence in the process, particularly between the application and the holding of the vote, resulting in employee support for the union dissolving. In this era, where union coverage has declined so significantly in the private sector, it is argued that it is necessary to make it easier for employees to have access to collective bargaining and to remove measures that continue to ensure the ongoing decline.

Employer stakeholders strongly oppose card-based certification asserting that the secret ballot vote is the most democratic.

It is argued that in the current online world most transactions that previously were done in writing are now done electronically and that, not accommodating electronic transactions hinders organizing as it generally requires one-on-one personal contact. It is argued that if safeguards can be found for mailed membership evidence to assure the Board of its authenticity, similar devices or other electronic methods can be found to reassure the OLRB that electronic evidence is genuine.

On the other hand, it is argued that anything other than an actual signature raises doubt about the authenticity of the commitment and permits fraud or irregularities. Since current technology does not easily permit an actual electronic signature, it is argued that this should not be permitted.

Options:

1. Maintain the status quo.
2. Return to the card-based system in place from 1950 to 1993, possibly adjusting thresholds (e.g., to 65% from 55%).
3. Return to the Bill 40 and current construction industry model.
4. Permit some form of electronic membership evidence.

4.3.1.3 Access to Employee Lists

Background

Currently, when a union files an application for certification the employer must, in its response to the application, provide a list of employees in its proposed bargaining unit. Unions are not entitled to get a list of employees before the application is filed. Other than information they can ascertain from employees, unions do not have any other access to employer information, including the number of employees or employee contact information, such as addresses or emails. Unions have no right to campaign inside a workplace or to have access to employees inside a workplace; employees can engage in organizing activity during lunches and breaks but not during actual work time. Employers know how many employees there are, where they work, and their contact information.

It does not appear that any other Canadian jurisdiction requires that employers provide employee lists in the context of certification campaigns. In the United States, where an election in the workplaces is ordered under the NLRA, unions receive address and email information for the employees on the voters list.

Submissions

Unions have argued that it is often difficult for them to know how many employees are in a workplace and where they work, particularly if it is a large employer spread out over a large geographic area, such as a university or a large manufacturing plant with staggered shifts. Some unions say that they have spent large amounts of time and resources organizing, only to find out at the time of the application that there were many more employees than they knew about. Unions claim the practice of having workers assigned to a client by temporary help agencies compounds this problem, as the workforce fluctuates and turns over.

Unions also argue that whatever system is used for employees to express their choice, card-based or secret ballot, the union should be able to easily communicate with employees and therefore have some access to voters. It is said that the lack of practical methods of communication with employees impedes the right to organize and freedom of association.

Labour groups have proposed that where an organizing campaign is under way and the union meets the threshold of, for example, 20%, the union could apply to the OLRB for an order requiring the employer to provide a list of employees in the union's proposed bargaining unit. The lists could include names and job

information, such as which department employees work in, and/or personal information, such as home addresses or other contact information.

Regarding the proposal that they might be compelled to provide a union with employee information, employers have raised concerns about:

- employers effectively helping employees to organize;
- the privacy implications for employees;
- the potential for unions to "game the system" in order to obtain information that would help them organize;
- the union's obligation to prove that it had met a threshold;
- the OLRB's criteria for deciding whether a threshold had been met; and
- the possibility of extensive litigation over these issues.

Options:

1. Maintain the status quo.
2. Subject to certain thresholds or triggers, provide a union with access to employee lists with or without contact information (the use of the lists could be subject to rules, conditions and limitations). A right to access employee lists could also be provided with respect to applications for decertification.

4.3.1.4 Off-site, Telephone and Internet Voting

Background

Secret ballot certification votes are generally cast in person at the workplace. The OLRB conducts the vote, and both the employer and the union are entitled to have representatives present to act as "scrutineers".

Currently, the LRA does not indicate where or how representation votes must be conducted. The OLRB determines this pursuant to its general powers. The OLRB may already have the power under the current legislation to experiment with different voting techniques. Generally, it is has been acknowledged that a long interval between a vote order and the holding of the vote is usually detrimental to the union. At present, the OLRB normally conducts a vote within five working days.

Other Jurisdictions

So far in Canada, there is very limited experience with alternative methods of voting in certification applications. The Canada Industrial Relations Board, for example, has conducted several certification votes using telephone and internet methods. The practice of off-site voting also appears uncommon. Some labour boards (including the OLRB) have used mail-in ballots, but it appears that this method of voting is used only occasionally (as in cases involving a geographically dispersed workforce). Some unions use private sector providers to conduct secret ballot ratification votes via the internet or telephone.

Submissions

Labour groups have told us that having employees vote at the workplace allows for undue influence by the employer. For example, it is said that a ballot box placed outside a supervisor's office, or another non-neutral location, can discourage employees from freely expressing their will. There is a concern, particularly in smaller workplaces, that it is quite possible for the employer to deduce, or for employees to believe that the employer can deduce, who is sympathetic to the union. This, in turn, leads to ballots being cast against the union. It is said to be hard for employees to vote for the union while having to line up and vote in the employer's workplace. In short, employees are said to be intimidated by the fact of, and the circumstances surrounding, the holding of the vote in the employer's premises.

To address this concern, labour groups have proposed that certification votes be held at a neutral location, away from the employer's premises (e.g., a public library) or that votes be conducted by telephone or other electronic means.

It has been proposed, for example, that the LRA be amended to give the OLRB specific discretion to order that a certification vote take place at a "neutral" site that is not on the employer's premises, be conducted by telephone or electronic means, or be conducted through a combination of both.

In response, many employers argue that the employer's premises is the most convenient and cost-efficient location for the vote to take place and where turnout and the opportunity to vote will be the highest. It was also argued that voting at another location would reduce the number of anti-union voters, as only those most committed to voting would take the time to vote and the union would ensure its supporters went to the outside location. On the other hand, some employers supported electronic voting subject to appropriate safeguards.

Regarding telephone and internet voting, some of the issues expressed by employers are:

- the potential for fraud or misconduct;
- the method for distributing ballot information to employees;
- the criteria for employers or unions to challenge a particular employee's participation in the vote;
- the ability to maintain the secrecy of the ballot;
- the costs associated with implementing different voting methods; and
- a possible delay beyond five working days to organize electronic or telephone voting.

Options:

1. Maintain the status quo.
2. Explicitly provide for alternative voting procedures outside the workplace and/or greater use of off-site, telephone and internet voting.

4.3.1.5 Remedial Certification

Background

The OLRB can certify a union without a vote if the employer has contravened the LRA in a way that makes it unlikely that the true wishes of the employees can be ascertained.[68] The provision applies both to cases where the union was unable to attain the 40% membership support needed to trigger a representation vote or where the union loses the vote. The OLRB can certify the union only if "no other remedy would be sufficient to counter the effects of the contravention." The OLRB may consider the results of a previous representation vote and whether the union has "adequate membership support" for collective bargaining.

This provision has undergone significant legislative change over the years. The original *Labour Relations Act* enacted in Ontario in 1950 allowed the OLRB to certify a union on a remedial basis where the union had at least 50% membership.

68 The LRA also includes a parallel provision for remedial dismissal to address cases where a union has contravened the LRA such that the true wishes of the employees are not likely to be ascertained. This last provision aimed at coercive actions by unions has rarely been the subject of proceedings.

The law was criticized on the basis that the effect of the 50% membership requirement was that an employer could prevent a union from acquiring sufficient membership evidence simply by committing severe misconduct early in the organizing campaign. As a result the LRA was amended in 1975 to provide that the OLRB could exercise its discretion to certify without a vote, provided the union had adequate support for collective bargaining without stating a specific percentage figure. The rationale for maintaining the requirement for adequate support was that it was believed little purpose would be served by certifying a union that could not bargain effectively because it would have no realistic chance of getting enough support to mount an effective strike.

While the OLRB stated that there was no "minimum figure" required to constitute adequate membership support, in practice, it rarely exercised its discretion to certify the union unless there was at least 30% support. Critics then, as now, complained that unlawful conduct often paid off because, in the face of unlawful conduct by the employer, employees were discouraged from joining the union and the more egregious the misconduct, the less likely the union would be able to show adequate support.

Further amendments introduced in 1993 removed the requirement of adequate membership support, but these amendments were repealed in 1995. Under the 1995 law, the OLRB had to find that no remedy short of certification, including a second representation vote, was sufficient to counter the effects of the employer's violation.

In 1998, the LRA was amended to remove the OLRB's power to grant remedial certification altogether and replaced it with the power to order a second representation vote. Then, in 2005, amendments to the LRA restored the OLRB's power to order remedial certification, allowing the OLRB to certify the union if "no other remedy would be sufficient to counter the effects of the contravention," considering the results of a previous representation vote and whether the union has "adequate membership support" for collective bargaining.

The OLRB does not often exercise its discretion to award remedial certification.

Other Jurisdictions

Remedial certification is available in seven provinces and the federal jurisdiction. Key features of this remedy vary. In some jurisdictions, for example, remedial certification is available only where the union can establish a minimum level of membership support:

- in Newfoundland and Labrador, the majority of employees must be union members;
- in Nova Scotia, the union must have at least 40% membership support (i.e., the same level of support required to trigger a representation vote);
- in Manitoba and New Brunswick, the union must have "adequate" membership support for the purposes of collective bargaining; and
- in British Columbia and the federal jurisdiction, remedial certification requires a finding that the union would have won the representation vote if not for the contravention.

Submissions

Unions argue that the balance in the present legislation strongly favours a second representation vote over remedial certification without a vote, and that this is harmful and not genuinely remedial because once the employer breaches the LRA in such a way that the true wishes of employees cannot be ascertained, it is virtually impossible to redress the situation and make a second vote meaningful.

In essence, the argument is that ordering a second representation vote where the employer has engaged in serious intimidation and coercion is a useless remedy – like trying to unscramble an egg. In addition, including adequate membership support for bargaining as a consideration is said to reward employers who attack the union early in the organizing process, making it impossible for the union to attract support because of the employer's threats and coercion.

Some employers have criticized remedial certification (and strongly opposed its reintroduction in 2005), arguing that it threatens the principles of workplace democracy by removing the right of employees to vote on whether they wish to have a union in the workplace. Removing the requirement for adequate support for bargaining is said to merely create a weak unit that cannot accomplish anything substantive for its members.

Options:

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

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

4.3.2 First Contract Arbitration

Background

The LRA provides that parties may apply to the OLRB for a direction that a first collective agreement be resolved by binding interest arbitration. The applicant must demonstrate that collective bargaining has been unsuccessful as a result of:

- the refusal of the employer to recognize the bargaining authority of the union;
- the uncompromising nature of any bargaining position adopted by the respondent without reasonable justification;
- the failure of the respondent to make reasonable or expeditious efforts to conclude a collective agreement; and
- any other reason the OLRB considers relevant.

First contract arbitration now addresses situations in which, following certification, employers refuse to accept the right of their employees to engage in collective bargaining. It ends the immediate dispute and engages the parties in a "trial marriage" through an imposed agreement, aiming both parties to establish mature and enduring bargaining relationships. It may also act as a deterrent to bargaining in bad faith. In addition, it recognizes that first contract negotiations may be particularly difficult and anticipates that negotiations for the renewal of the agreement will likely be made easier.

First contract arbitration was introduced in 1986. In 1993, the law was amended to provide that, in addition to an application to the OLRB, a party could also apply for arbitration to the Minister of Labour where thirty days had elapsed after the parties were in a strike or lock-out position. There were no legislated factors (e.g., related to failure of bargaining) that were required to be considered.

The legislation was amended again in 1995 to restore the previous first contact arbitration provision; "automatic" access to this process (through an application to the Minister) was removed.

In 2000, further amendments made it mandatory for the OLRB to deal with decertification and displacement applications before dealing with or continuing

to deal with applications for first contract arbitration. If the decertification or displacement application is granted, the first contract arbitration application must be dismissed. This reversed previous labour relations policy where, if first contract arbitration was justified, the relationship would be allowed the opportunity to take hold before applications for decertification or applications by competing unions would be considered.

Other Jurisdictions

Access to first contract arbitration is available in the federal jurisdiction, British Columbia, Manitoba, Newfoundland and Labrador, Nova Scotia, Ontario, Quebec and Saskatchewan. Manitoba has "automatic" access to first contract arbitration, based only on undergoing the conciliation process and the passage of a certain amount of time. All the other jurisdictions require that other substantive conditions be present before first contract arbitration is ordered.

British Columbia has a unique "mediation-intensive" model, introduced in 1993, which treats first contract arbitration as part of the collective bargaining process and not as a remedy. Upon application, a mediator is appointed. If mediation-assisted bargaining does not succeed, the mediator recommends either first contract terms for the parties' consideration, or a process for settling the agreement, including one or more of: mediation-arbitration, arbitration by an arbitrator or the British Columbia Labour Relations Board, or permitting the parties to engage in a work stoppage.

Submissions

Labour organizations consistently argue in favour of "automatic" access to first contract arbitration, complaining that the existing provisions are too restrictive. They argue that effective access to first contract arbitration is required as part and parcel of policies needed to reverse the decline in private-sector union density. First contract arbitration would make unionization more attractive to workers in that they would know that a first collective agreement is achievable through arbitration and not through strike action. Accordingly, unions favour the "automatic" access model, requiring only that sufficient time has elapsed since certification and that the conciliation requirement has been met; there would be no other filtering mechanism and no need to find bargaining breakdown or fault.

Alternatively, unions favour broadening the explicit circumstances in which first contract arbitration can be ordered (e.g., where there has been a remedial

certification). Labour groups would also recommend repealing the LRA requirement that the OLRB deal with decertification and displacement applications before dealing with applications for first contract arbitration. They argue that because first contract arbitration is remedial in nature and designed to address some employer misconduct or unreasonableness, it is unfair and inappropriate to allow for decertification or an application by a different union when a first collective agreement has not had a chance to operate and there has been no opportunity to stabilize the relationship.

Many employers have historically opposed first contract arbitration, arguing that imposing contracts is contrary to the entire idea of free collective bargaining, adversely impacting employers who engage in tough, but legal, "hard bargaining". Moreover, employers argue that it creates uncertainty for businesses by putting key decisions into the hands of a third party, and that having automatic first contract arbitration available undermines any need for the union to bargain realistically, since the union can just wait for time to elapse and ask for arbitration.

Options:

1. Maintain the status quo.
2. Provide for "automatic" access to first contract arbitration upon the application of a party to the OLRB, after a defined time period (e.g., thirty days), in which the parties have been in a legal strike or lock-out position, has elapsed.
3. Provide for first contract arbitration on either an automatic or discretionary basis in circumstances where the OLRB has ordered remedial certification without a vote.
4. Introduce a "mediation-intensive" model similar to that utilized in British Columbia.
5. Not permit decertification or displacement applications while an application for first contract arbitration is pending.

4.3.3 Successor Rights

Background

The successor rights provision of the LRA protects employee and union rights where there is a sale of a business, providing that bargaining rights and collective

agreement obligations of the original employer generally flow through to the new successor employer. The term "sale" is very broadly defined and in most situations where the business is transferred, the bargaining rights and all the rights of workers under the collective agreement flow into the relationship with the new employer.

One major exception is that the section has generally not been applied to contracting out or contract tendering situations, in which a lead company contracts out its work to a subcontractor or, more typically, the contract is re-tendered and one subcontractor service provider replaces another. Examples would be where security or cleaning services are moved from one subcontractor to another by re-tendering the contract.

Currently, the bargaining rights and the obligations under the collective agreement normally do not flow from one service provider to the next. This means that the union not only loses its bargaining rights each time a new contractor is selected by the lead company but also (subject to the termination pay provisions of the ESA in the building service provider sector) the employees lose their jobs and their rights and benefits under the collective agreement and may well not be hired by the new employer. Even if the successor subcontractor hires many of the same employees to perform the same work in the same location, the union loses its bargaining rights and the employees lose whatever rights they have under the agreement. If the union can certify again, it has to start bargaining all over again with the new employer.

From 1993 to 1995, this situation changed briefly, as the scope of successor rights was extended to apply to one class of service contracts only, namely, building services contracts. The *Labour Relations Act* provided that successor rights applied where contracting out and re-tendering occurred with respect to building services (including cleaning services, food services and security services). The Act deemed that a sale of business had occurred where a building services contract was entered into by a lead company or re-tendered. The purpose of this provision was to ensure that bargaining rights and the rights of building cleaners, security staff, and food services employees were continued under successor contractors or subcontractors. This provision was repealed in 1995.

Labour relations legislation in all Canadian jurisdictions protects successor rights where there is a sale of a business. However, such legislation does not extend successor rights to contract service situations. There is one exception: the *Canada Labour Code* has provided, since 1999, that a successor employer in

one specific contract for service situation may not decrease the remuneration of the employees. This provision applies only to "pre-board security screening services" in relation to a "federal work, undertaking or business" and thus generally applies to airport security screening. It also applies to any other service that may be designated by regulation, but there has been no extension of this provision to other sectors.

Submissions

Labour groups have proposed that successor rights be extended to ensure that employee rights are maintained when a building service contract changes firms. Union stakeholders have argued that employees in the building service sectors are generally vulnerable low-wage workers and that the loss of job security and all other entitlements every time a contract is re-tendered or contracted out has potentially devastating effects on workers. Moreover, they argue that it is extremely difficult for employees to organize and maintain collective bargaining rights in sectors dominated by the practice of contract tendering. Each time the contract for services is awarded to a new contractor, additional resources are expended as unions attempt to re-organize workers and, if successful, the parties have to re-negotiate a new collective agreement and start all over again.

Unions have also suggested that successor rights in the homecare industry would improve continuity of care for patients. A transit union has asked that they be included in the protection of this provision, arguing that contracting out of transit services in some municipalities has resulted in a significant loss of jobs and rights for employees.

Employers appear generally to see all contracting out as a legitimate and necessary means of creating and maintaining efficiencies and argue that it is simply a different situation from a sale of a business, since the lead firm is not permanently divesting itself of a part of its business but is simply having a part of it performed by a specialist contractor more cheaply and/or better than it could itself. They argue that contracting out business services is no different in principle from any other contracting out and that the extension of successor rights to these situations would increase costs and undercut competitiveness and flexibility.

Options:

1. Maintain the status quo.
2. Expand coverage of the successor rights provision, similar to the law in place between 1993 and 1995, to apply, for example, to:

a) building services (e.g., security, cleaning and food services);

b) home care (e.g., housekeeping, personal support services); and

c) other services, possibly by a regulation-making authority.

3. Impose other requirements or prohibitions on the successor employer in a contract for service situation (e.g., provisions to maintain employment, employee remuneration, benefits and/or other terms of employment; a requirement that the union representing the employees under the former employer be provided with automatic access to the new employee list or other information).

4.3.4 Consolidation of Bargaining Units

Background

The OLRB has the authority to determine the appropriate bargaining unit with respect to each application for certification. Historically, the most common bargaining unit definition has comprised a single workplace of a specific employer at a particular geographic location. There are separate policies for employers with multiple locations within a municipality. There may be further subdivisions (e.g., separate bargaining units for "office" and "plant" employees). At one time, the Board certified part-time and full-time employees separately, and had various practices for determining multiple appropriate bargaining units in various sectors, such as hospitals, municipalities, universities, newspapers, etc. Over time, a single employer could wind up with many different bargaining units and many sets of collective bargaining with the same or with different unions.

The OLRB has historically taken the position that after it has issued a certificate and the parties have entered into a collective agreement, the certificate is "spent" and the OLRB has no general jurisdiction to reconsider or revise it, except where specifically authorized by the Act.[69] Thus, with minor exceptions, as bargaining units are added over time, the only way to change the configuration of bargaining units now is for parties to voluntarily agree to changes. While the parties are free to expand or to reduce the scope of bargaining units, it is an unfair labour practice to take such issues to impasse (i.e., to make such a dispute the subject of a strike or lock-out). This is an effective bar to changing the bargaining unit structure where one party resists it.

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69 As, for example, after a sale of business pursuant to s. 68(6) of the LRA, or to remedy an unfair labour practice as suggested in *Sunnylea Foods Ltd.,* (1981) CanLII 988, para 23.

The issue, therefore, is whether there ought to be an explicit power to revise, amend and consolidate bargaining units for the rationalization or modernization of bargaining unit structures in circumstances where the original bargaining structure is no longer appropriate, where bargaining units are overly fragmented, or for other industrial relations reasons.

The power to revise and revamp bargaining units involves not only the issue of the rationalization and modernization of bargaining unit structures, but also the possible tension and interplay between organizing and bargaining in areas of the economy that have been traditionally difficult to organize, such as where employers have many smaller retail locations, in which cases it may only be possible to organize in smaller units. However, a small unit is likely to have little bargaining power; viable, effective and stable bargaining may be possible only where there is a larger unit. If units can be organized on a smaller basis and then consolidated afterwards, this could make collective bargaining in those industries viable.

In some other jurisdictions, including several provinces and the federal jurisdiction, labour relations boards have a general power to amend a bargaining unit or certification order after a union has been certified.

The *Labour Relations Act*, as it was in 1993 and 1995, included a provision allowing the OLRB, upon application of either party, to consolidate separate bargaining units with respect to the same (or a related) employer represented by the same union at either the same location or in multi-location situations. This provision did not restrict either the type of units to be consolidated (e.g., office and production units) or the timing of the consolidation application. However, it did exclude the possibility of consolidating bargaining units of the same employer that were represented by different unions, which is currently permitted in other jurisdictions.

In Ontario, from 1993 to 1995, in exercising its discretion to consolidate units, the OLRB was required to consider whether the proposed consolidation would: facilitate viable and stable collective bargaining; reduce fragmentation of bargaining units; or cause serious labour relations problems. With respect to manufacturing operations, the OLRB was prohibited from combining bargaining units at geographically separate locations if the employer established that this would interfere with the employer's ability to continue significantly different methods of operation or production at each location or the employer's ability to continue to operate these places as viable and independent businesses.

This consolidation provision was repealed in 1995. In addition, bargaining units that had been consolidated were divided back into separate bargaining units, unless the employer and the union agreed in writing that the unit should not be divided.

The Commission on the Reform of Ontario's Public Services, known as the "Drummond Commission", included in its final report the recommendation that the Ontario government, "Consider expanding the authority of the OLRB to facilitate the establishment of effective and rationalized bargaining structures that support the delivery of quality and effective public services." The Drummond Commission made this recommendation as a response to what the Commission described as an overly fragmented collective bargaining structure in Ontario's broader public sector.

Other Jurisdictions

It appears that labour boards have an express, general power to redefine bargaining units (which could include consolidating existing units) in British Columbia, Alberta, New Brunswick, Newfoundland and Labrador, Prince Edward Island, Nova Scotia, and the federal jurisdiction.

The test for applications to redefine bargaining units varies among jurisdictions. For example, the power of the federal labour relations board to consolidate bargaining units was previously quite broad until the Sims Task Force[70] recommended, and Parliament accepted, that bargaining unit reviews should be restricted to situations where there are serious problems with bargaining unit structures, barring which, the employees' choice of bargaining agent should prevail. The *Canada Labour Code* was subsequently amended in 1999 to provide that, in order for a review to take place, the Board must now be satisfied that the existing bargaining unit structures are no longer appropriate for collective bargaining.

Even if the corresponding labour legislation does not expressly provide the power to amend a bargaining unit, some labour relations boards may modify the bargaining unit or certification order pursuant to their general powers. The OLRB, however, has maintained consistently that it does not have the jurisdiction to do so.

Submissions

Unions have told us that they support the introduction of a consolidation provision in the LRA like the one in place between 1993 and 1995. From the labour

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70 Human Resources Development Canada, *Seeking a Balance: Canada Labour Code, Part I* (Ottawa: Human Resources Development Canada, 1995).

movement's perspective, the goal of having a consolidation provision is to ensure that smaller units, once certified, can be combined together into more rational, long-term bargaining structures. At the same time, a structure whereby the OLRB could merge and reconfigure bargaining units, especially where different unions are involved, might be viewed as a heavy-handed, top-down approach that could force change against the wishes of a significant number of employees.

Employers opposed the previous introduction of a consolidation provision, describing its purpose as being simply to boost union bargaining power in situations where the union's presence is weak. In some cases, however, employers, too, have described the benefits of giving the OLRB the authority to restructure and rationalize bargaining units and have recognized that there is no other effective way to modernize, particularly in circumstances where the existing bargaining structure may be fragmented and antiquated.

Options:

1. Maintain the status quo.
2. Reintroduce a consolidation provision from the previous LRA where only one union is involved.
3. Introduce a consolidation provision with a narrow test (e.g., allowing it only in cases where the existing bargaining unit structure has been demonstrated to be no longer appropriate).
4. Introduce a consolidation provision with a test that is less restrictive than proving that the existing bargaining unit is no longer appropriate. This provision could be broad enough to allow for the federal labour relations board's previous practice under the *Canada Labour Code*, as it was prior to the incorporation of the amendments recommended by the Sims Task Force in Chapter 6 of "Seeking a Balance: *Canada Labour Code*, Part I" with respect to bargaining unit reviews.[71]
5. Amend section 114 of the LRA to provide the OLRB with the explicit general power to alter a bargaining unit in a certificate or in a collective agreement.

71 *Human Resources Development Canada, Seeking a Balance.*

4.4 The Bargaining Process

4.4.1 Replacement Workers

Background

The term "replacement workers" is typically understood to refer to workers hired to fulfill some or all of the functions of workers who are either engaged in a legal strike or who have been locked out by the employer.

In Ontario, the LRA, except from 1993 to 1995, has not prohibited the use of replacement workers by employers during a lawful strike or lock-out; the Act does not place any restrictions on this ability.

The vast majority (over 95%) of negotiations for a new or for a renewal collective agreement are resolved without a strike by employees or a lock-out by the employer. In addition, replacement workers are used by employers in a small minority of those labour disputes where a strike or lock-out occurs. However, it is generally accepted by labour relations experts that using replacement workers adversely affects the progress of collective bargaining and can prolong labour disputes. The use of replacement workers has been contentious in some recent labour disputes.

The use of replacement workers does not disentitle an employee who is engaged in a lawful strike from making an unconditional application to the employer to return to work within six months from the start of the lawful strike. The employer is required to reinstate such an employee in the employee's former employment on terms that the employer and employee may agree upon. The employer is prohibited from discriminating against the employee for exercising or having exercised any rights under the LRA.

Other Jurisdictions

The use of replacement workers during a legal strike is prohibited only in British Columbia and Quebec. No other jurisdictions in Canada prohibit the use of replacement workers during the course of a legal strike. The *Canada Labour Code*, while not prohibiting the use of replacement workers, provides that employers cannot use replacement workers for the "purpose of undermining a trade union's representational capacity rather than the pursuit of legitimate bargaining objectives."

Submissions

Unions generally strongly support a legislative ban on the use of replacement workers. When employees engage in a strike, a picket line is a physical assertion of the strikers' position that employees or others should not cross the picket line and work or do business with the struck employer.

The picket line serves as an expression of one of the core union values of solidarity with the strikers. When replacement workers are called in to perform the work of the bargaining unit, it is seen as fundamentally threatening the success of the strike and as a repudiation of the request for solidarity represented by the picket line. This can provoke heated interactions. In light of recent jurisprudence on freedom of association, the use of replacement workers is now also seen by unions as an inappropriate interference with the constitutional right to strike. Labour groups also argue that the use of replacement workers increases the risk of violence on picket lines, prolongs the duration of strikes and undermines the integrity of the collective bargaining process.

Employer organizations very strongly oppose a legislative ban on the use of replacement workers. Small- and medium-sized employers, in particular, assert that being able to operate during a strike is necessary to protect the viability of the enterprise, and that keeping the business going during a strike protects the jobs of striking employees. Employers argue that sometimes they have no choice but to keep operating if faced with a strike and with what they perceive to be unreasonable bargaining demands by a union.

The ability to use replacement workers is seen as a necessary counterbalance to the actual or possible imposition of economic sanctions by the union. The right to operate during a strike, using replacement workers if necessary, is seen by the employer community as a core component of the industrial relations system in Ontario.

Options:

1. Maintain the status quo.
2. Reintroduce a general prohibition on the use of replacement workers.
3. Adopt an approach similar to the *Canada Labour Code*, whereby the use of replacement workers would not be prohibited except if used for the "purpose of undermining a trade union's representational capacity."

4.4.2 Right of Striking Employees to Return to Work

Submissions have been made to the Special Advisors in support of making a change in two circumstances:

1) where an employee who is engaged in a legal strike makes an application to return to work after the expiration of the six-month period from the beginning of the strike; and

2) where the employer refuses to reinstate an employee at the end of a labour dispute and the refusal to reinstate is not an unfair labour practice.

We deal with these two points separately.

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

Background

The LRA provides, subject to certain conditions, that an employee engaging in a legal strike may make an unconditional application to return to work within six months of the commencement of the strike. If the employee does apply to return to work, the employer is required to reinstate the employee in the employee's former employment on such terms as the employer and employee may agree upon and the employer, in offering terms of employment, is prohibited from discriminating against the employee for exercising or having exercised any rights under the LRA. Practically, this means that the employee cannot be discriminated against by the employer for striking, engaging in lawful picketing activity or being engaged in any other union activities during a legal strike. The employer is not obligated to reinstate a striking employee if the employer no longer has persons engaged in work that is the same or similar to that which the employee performed before the strike, or where there has been a suspension or discontinuance for cause of an employer's operations or any part of the operations.

If the employer resumes operations, the employer is required to reinstate the employees who have made an application within the six-month period.

Striking employees who make an application to return to work typically do so when they conclude that the strike in which they are engaged is not likely to settle or where there is no end in sight. This most often occurs when an employer continues to operate during the course of a legal strike by using replacement

workers. Simply put, employees may conclude that they are unlikely to have an opportunity to return to work unless they make an application within the six-month period.

Other Jurisdictions

Legislation in the federal jurisdiction, Alberta, Manitoba, Ontario, Prince Edward Island, Quebec and Saskatchewan include provisions dealing with the reinstatement of employees following a work stoppage.

Similar to the LRA in Ontario, legislation in Alberta and Prince Edward Island provides that employers are not required to reinstate employees in circumstances where:

- the employer no longer has persons engaged in performing the same or similar work that the employee performed prior to the work stoppage; or
- the employer's operations or some part of them, have been suspended or discontinued (but if the employer resumes such operations, the employer will reinstate those employees who wish to return to their jobs).

Legislation in Manitoba and Saskatchewan requires that seniority be considered in reinstatement protocols in circumstances where no agreement respecting the reinstatement of employees is reached between the employer and the union.

The federal, Quebec and Prince Edward Island legislation also specifically gives striking employees priority over replacement workers hired during the strike.

Ontario is the only jurisdiction that mandates a time period within which a striking employee must make an application to return to work during the currency of a strike.

Submissions

We have heard submissions from unions that the six-month period should be removed from the current legislation. Elimination of the six-month period would allow a striking employee to make an application to return to work at any time during the currency of a legal strike. Unions submit that the six-month limitation on a striking employee's right to return to work undermines the effectiveness of a legal strike and may provide an incentive to employers to lengthen the strike. The right to strike is embodied in section 2(d) of the *Charter*, which also protects the

workers' right to collective bargaining. Unions assert that workers should not be threatened with job loss for exercising their constitutional right to strike and that section 80 of the LRA effectively operates as a restriction on this fundamental constitutional right by capping the right of reinstatement at six months.

No employer group raised this issue in their written submissions to the Changing Workplaces Review.

Options:

1. Maintain the status quo.
2. Remove the six-month time reference in the current LRA section but leave the provision otherwise the same.

4.4.2.2 Refusal of Employers to Reinstate Employees Following a Legal Strike or Lock-out

Background

A very contentious issue regarding the efforts to settle a labour dispute can be the refusal by the employer to reinstate certain employees. Often the refusal to reinstate is based on alleged misconduct on the picket line or other misconduct by the employee, related to the labour dispute.

Since no collective agreement is in operation during a legal strike and or lock-out, employees whom the employer wishes to terminate, or who have been terminated because of alleged misconduct during the strike and or lock-out, have no access to a grievance and arbitration procedure. When employers refuse to reinstate employees for strike-related misconduct and refuse to submit these disputes to arbitration, such as, in situations where just cause for termination is disputed by the union, this often creates a problem that is very difficult to resolve. There are often disputed facts and disagreement about whether cause for termination or other discipline exists. Typically, unions are not prepared to agree to the settlement of a labour dispute where the employer refuses to reinstate some employees and where just cause for termination is in dispute. Disagreement about reinstatement of employees may prolong a labour dispute even though the parties have agreed on all terms of a collective agreement.

Other Jurisdictions

In Manitoba, the law requires the employer, at the conclusion of a strike or lock-out, to reinstate employees in accordance with the agreement reached between the union and the employer or, where no agreement is reached, in accordance with the seniority of the employee at the time the strike or lock-out commenced. The refusal to reinstate an employee is an unfair labour practice unless the Labour Board is satisfied that the employer refused to reinstate the employee because the employee's strike- or lock-out-related conduct resulted in a conviction for an offence under the *Criminal Code* (Canada) and, in the opinion of the Board, would be considered just cause for dismissal of the employee even in the context of a strike or lock-out.

In Saskatchewan, the legislation provides that striking employees are entitled to replace replacement workers at the conclusion of the labour dispute and it provides for a return-to-work protocol in the event that the union and the employer are unable to agree. The Saskatchewan legislation also provides for arbitration of the discipline or discharge of any employee when there is no collective bargaining agreement in force after certification of the union. Since a refusal to reinstate is tantamount to a discharge, employees who are refused reinstatement have protection against unjust dismissal through arbitration.

In British Columbia, striking or locked out employees who are terminated or disciplined by the employer for activities during a strike or lock-out have access to arbitration in order to determine whether the termination or other discipline is for just cause.

Submissions

Unions submit that in the absence of an unfair labour practice, the LRA does not provide sufficient recourse for an employee whom the employer refuses to reinstate at the conclusion of a labour dispute. Generally, unions feel their members should not be vulnerable to unilateral decision-making by an employer based on alleged misconduct during a labour dispute. While it is not disputed that some misconduct may warrant termination, unions do not want to leave the decision about what is cause for dismissal to the employer, without any capacity to have that decision reviewed by a neutral third-party adjudicator. Quite apart from alleged misconduct on the picket line, unions assert that an employer should not be allowed to use a strike or a lock-out as an opportunity to "clean house" by refusing to reinstate employees it unilaterally decides should not return to the workplace.

At least one union has suggested that Ontario adopt an approach similar to that of Manitoba or Saskatchewan, both of which provide protection for employees whom the employer refuses to reinstate during the course of a legal strike.

No employer group raised this issue in their written submissions to the Changing Workplaces Review. We expect that employers generally would oppose broader legislative reinstatement provisions proposed by labour stakeholders because:

- the LRA protects employees who exercise their legal right to strike from reprisals by the employer; and
- the OLRB is in the best position to determine whether a refusal to reinstate an employee, based on alleged misconduct during the labour dispute, is an unfair labour practice.

Options:

1. Maintain the status quo.
2. Provide for arbitration:
    a) of any discipline or termination of an employee by an employer during the course of a legal strike or lock-out; or
    b) of the refusal to reinstate an employee at the conclusion of a strike or lock-out.
3. As in Manitoba, provide that the refusal to reinstate an employee at the conclusion of a legal strike or lock-out is an unfair labour practice, unless the refusal was because the employee's conduct:
    a) was related to the strike or lock-out;
    b) resulted in a conviction for an offence under the *Criminal Code* (Canada); and
    c) would, in the opinion of the OLRB, be just cause for dismissal of the employee even in the context of a strike or lock-out.
4. Adopt an approach similar to the LRA, as it was in 1993 to 1995, providing that at the end of a strike or lock-out:
    a) the employer is required to reinstate each striking employee to the position he or she held when the strike began;

b) striking employees generally have a right to displace anyone who performed the work during the strike; and

c) if there is insufficient work, the employer is required to reinstate employees as work becomes available, based on seniority.

4.4.3 Renewal Agreement Arbitration

Background

Unions and employers may, at any time following notice to bargain, agree to refer all matters remaining in dispute between them to interest arbitration. Voluntary interest arbitration is always available to the parties in any collective bargaining dispute, whether for a first collective agreement or for a renewal collective agreement.

The LRA currently provides that either party negotiating a first collective agreement may apply to the OLRB to direct the settlement or have the collective agreement settled through binding interest arbitration. The OLRB will direct settlement if the applicant can establish that collective bargaining has been unsuccessful for the reasons enumerated in the LRA.

The LRA does not allow a party to apply to the OLRB for the referral of a collective bargaining dispute to binding interest arbitration when the party is in the process of collective bargaining in relation to a renewal collective agreement.

Other Jurisdictions

Under Manitoba's *Labour Relations Act*, where a collective agreement has expired, and a strike or lock-out has commenced, either the employer or the union may bring an application requesting the Manitoba Labour Board to direct the settlement of the collective agreement by means of interest arbitration. The legislation sets out a number of conditions that must be met before an application can be made:

- the previous collective agreement must have expired;
- sixty days must have elapsed since the commencement of a strike or lock-out; and
- the parties have had the assistance of a conciliation officer or mediator for at least thirty days during that period of the strike or lock-out.

On receiving an application for subsequent renewal interest arbitration, the labour board is required to determine whether the parties are bargaining in good faith and whether they are likely to conclude a collective agreement within thirty days of continued bargaining. The labour board can delay its decision until it is satisfied that the party making the application has bargained sufficiently with respect to those provisions of the collective agreement that are in dispute.

If the board is satisfied that the parties are bargaining in good faith and are likely to conclude a collective agreement within thirty days, arbitration will not be ordered and the board may appoint a board representative, or request the minister to appoint a conciliation officer, to confer with the parties to assist them in settling the provisions of a collective agreement.

If the board determines that the party making an application is bargaining in good faith but that a new collective agreement is unlikely to be concluded within thirty days of continued bargaining, the strike or lock-out must end immediately and the terms of the collective agreement will be settled by an arbitrator or by the board. These provisions, enacted in 2000, have rarely been used.

In British Columbia, while there is no statutory provision for the referral of a dispute to interest arbitration to resolve terms and conditions of a renewal collective agreement, the *Labour Relations Code* provides for a "mediation intensive" model for the resolution of collective bargaining disputes. Under this model, mediators, special mediators and fact-finders may be appointed to confer with the parties to assist them in concluding a collective agreement. If either party requests, or if the Minister directs, a mediation officer must provide a report, which may include recommended terms of settlement. If a fact-finder is appointed, the fact-finder may report to the associate chair, setting out the matters agreed to and the matters remaining in dispute and may also include in the report, findings with respect to any matter relevant to the making of a collective agreement. The associate chair may make the report public if it is considered advisable to do so.

Submissions

Some unions have advocated amending the LRA to provide for interest arbitration in the case of bargaining for renewal collective agreements. Unions submit that even mature bargaining relationships can result in intractable disputes, resulting in lengthy strikes or lock-outs, and high human and financial costs to both sides. They argue that arbitration should be available in cases of lengthy strikes or lock-outs (e.g., perhaps six months' long). At least one union, pointing to experience under the Manitoba model, observed that the availability of interest arbitration

after a significant period of strike or lock-out appears neither to encourage long disputes in order to get access to interest arbitration nor to create a disincentive to negotiating a settlement.

Employers generally oppose interest arbitration as a dispute resolution mechanism in collective bargaining, whether for a first contract or for a renewal collective bargaining agreement.

Employers believe that a third-party arbitrator cannot be expected to understand the business and operational needs and interests of the enterprise and are not in a position to make decisions that could have a significant impact on the on-going competitiveness and viability of the business. Arbitrators cannot be expected to be knowledgeable about competitive market demands and the impact of globalization, technology and other factors that may impact employer decision-making. Arbitrators have no responsibility for, and no stake in, the success of the business.

The parties to the collective bargaining dispute, namely, the union and the employer, are, or should be, the most knowledgeable when it comes to protecting their interests and balancing them with the interests of the other party. Disagreements should not be resolved in arbitration, which is a trial-like, adversarial environment, but should be the product of good faith bargaining by both parties even if economic sanctions are imposed on one side or the other for a long time. The employer and the union should have the ultimate responsibility for making a workable collective agreement that takes into account the legitimate interests of both parties.

Employers assert that collective bargaining disputes should be resolved at the bargaining table by the parties unless they voluntarily agree to have some or all disputed matters resolved by a third-party.

Options:

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

3. Empower the OLRB to order interest arbitration as a remedy following a finding of bargaining in bad faith after the commencement of a strike or lock-out, provided that:
   a) certain conciliation and/or mediation steps have been followed;
   b) the applicant for interest arbitration has bargained in good faith; and
   c) it appears that the parties are unlikely to reach a settlement.
4. As in British Columbia, provide for a mediation-intensive dispute resolution process which does not involve interest arbitration or mediation/arbitration, unless agreed to by the parties, but does provide a number of tools to facilitate dispute resolution, including the making of recommendations by a mediator or fact finder.

4.5 Remedial Powers of the OLRB

4.5.1 Interim Orders and Expedited Hearings

Background

Before 1993, the *Labour Relations Act* expressly provided the OLRB with the power to grant interim orders in limited circumstances, such as jurisdictional disputes. Although the OLRB did not have the express power to make interim orders with respect to other substantive or procedural matters, it appears to have done so on occasion, pursuant to its general powers.

Amendments in 1993 to the LRA provided the OLRB with a broad power to make substantive interim orders. Interim relief could be requested with respect to any "pending or intended proceeding" (i.e., even if the main application had not yet been filed) and was not limited to unfair labour practice complaints in the certification context. The OLRB was empowered to consider a variety of applications seeking interim relief with respect to hiring, workplace postings, union recognition, operation of a subcontracting clause, scheduling changes, permission to choose vacation time, prohibiting work stoppages, and other matters.

The 1993 amendments also introduced a provision for expedited hearings in cases where a worker was disciplined or terminated in the context of a union organizing drive. Upon request by the union, the OLRB was required to begin its inquiry into the complaint within fifteen days of the application, and to continue hearing the

complaint on consecutive days from Mondays to Thursdays until the hearing was completed. The OLRB was then required to render its decision within two days.

In 1995, the 1993 provisions regarding interim orders and expedited hearings were repealed. The OLRB retained the power to make interim orders with respect to procedural matters, but was expressly prohibited from ordering the interim reinstatement of an employee.

In 1998, the LRA was further amended to provide that the provisions of the *Statutory Powers Procedure Act*, permitting administrative tribunals to make interim decisions and orders, did not apply to the OLRB.

In 2005, the LRA was amended to restore the OLRB's power to make interim orders where workers are terminated or disciplined during an organizing campaign. Currently, the OLRB is empowered to make interim orders requiring an employer to reinstate an employee in employment on such terms as it considers appropriate. Furthermore, the OLRB may make interim orders respecting the terms and conditions of employment of an employee whose employment has not been terminated, but whose terms and conditions of employment have been altered, or who has been subject to reprisal, penalty or discipline by the employer.

The power to make such interim orders is dependent on the OLRB being satisfied that the applicant has established:

- the circumstances giving rise to the pending proceeding occurred at a time when a campaign to establish bargaining rights was under way;
- there is a serious issue to be decided in the pending proceeding;
- the interim relief is necessary to prevent irreparable harm or is necessary to achieve other significant labour relations objectives;
- the balance of harm favours the granting of the interim relief pending a decision on the merits in the pending proceeding.

The OLRB is prohibited from exercising its powers to order interim relief if it appears that the alteration of terms and conditions, dismissal, reprisal, penalty or discipline by the employer was unrelated to the exercise of rights by an employee under the LRA.

The Chair of the OLRB also has the power to make rules for expedited proceedings where interim relief is requested.

The LRA does not impose on the OLRB a specific timeframe for commencing proceedings in relation to interim orders or for rendering a decision. However, the OLRB has issued guidelines providing for the scheduling of hearings of applications for interim relief within four to six days after filing. Additional filing requirements and timelines are set out in the OLRB's Rules of Procedure.

Other Jurisdictions

Ontario appears to have taken a unique approach by expressly setting out in the LRA the conditions in which the OLRB can make substantive interim orders. In every jurisdiction where the labour relations board or commission is expressly provided with a general power to make interim or provisional orders (i.e., Alberta, British Columbia, Manitoba, New Brunswick, Quebec, Saskatchewan and the federal jurisdiction), the test for application has been developed by the board or commission rather than set out in legislation.

With the exception of Newfoundland and Labrador, all Canadian provinces and the federal jurisdiction expressly provide that labour relations boards have the power to make interim or provisional orders. The scope of this power varies depending on the jurisdiction and is not always restricted to circumstances where workers are terminated or disciplined during an organizing campaign.

In six provinces (Alberta, British Columbia, Manitoba, New Brunswick, Quebec, and Saskatchewan) and the federal jurisdiction, labour relations boards are expressly provided with a general power to make interim or provisional orders where there has been an alleged contravention of their labour legislation or unfair labour practice, or to protect the rights of a party.

In Nova Scotia and Prince Edward Island (as well as Ontario, as described above), the power of the labour relations board to provide interim relief is expressly limited to certain circumstances. In Nova Scotia, the board may make interim orders regarding ongoing and potential work stoppages caused by unlawful lock-outs or strikes or by jurisdictional disputes. In Prince Edward Island, the board may issue an interim order regarding the assignment of work in a jurisdictional dispute.

The jurisprudence developed by boards and commissions varies by jurisdiction; some grant interim relief if the applicant meets the three-part common law test established by the Supreme Court of Canada in *RJR-MacDonald Inc. v. Canada*

(Attorney General),[72] which requires an applicant for interlocutory injunctive relief in Court to demonstrate that:

- there is a serious question to be tried;
- irreparable harm will result if the relief is not granted; and
- the balance of inconvenience favours the order.

The courts have a residual discretionary power to grant interlocutory relief, such as an injunction. This power flows both from various statutes and from the inherent jurisdiction of the courts over interlocutory matters.[73] Likewise, administrative tribunals are often granted the authority to provide interim relief, either by their enabling statutes or by virtue of section 16.1(1) of the *Statutory Powers Procedure Act* (or an equivalent statutory provision in other jurisdictions),[74] which gives certain tribunals the power to make interim decisions and orders.

Submissions

Unions argue that unfair labour practices committed by employers in the context of a union certification campaign can cause irreparable harm to the campaign and interfere with, and frustrate, the exercise of the employees' constitutional rights to join a union and engage in collective bargaining. Unions assert that, too often in organizing campaigns, they are placed at a significant disadvantage when employers "hit hard and fast" in an effort to derail the organization of its employees, including acting in ways that are currently prohibited by the LRA. Unions generally agree that too many employers are prepared to risk being found in violation of the LRA in order to achieve an immediate result. They further argue that the adverse impact of employer misconduct can be profound and that organizing efforts are further disadvantaged without expedited hearings before the OLRB.

Union stakeholders support expanding the OLRB's power to issue substantive interim orders on "such terms as the Board considers appropriate" in any case where unfair labour practices are alleged, and provided that evidence is adduced by the applicant to establish a factual foundation sufficient to meet the test for the granting of interim relief. It is argued that such interim relief power is a useful and

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72 *RJR MacDonald Inc. v. Canada (Attorney General),* (1994) 1 SCR 311.
73 *B St. Anne Nackawic Pulp & Paper Co. v. Canadian Paper Workers Union, Local 219,* (1986) 1 SCR 704, para 727; *Brotherhood of Maintenance of Way Employees Canadian Pacific System Federation v. Canadian Pacific Ltd.,* (1996) 2 SCR 495, para 5.
74 R.S.O. 1990, c. S.22.

necessary element of the OLRB's remedial toolkit that, from 1993 to 1995, was used effectively by the OLRB to stabilize the workplace, pending an adjudication of an unfair labour practice complaint.

In addition, unions have asserted that the current statutory test requiring the applicant to prove irreparable harm should be eliminated and the granting of interim relief should be decided on a less stringent legal test.

Employers tend to oppose broader substantive interim order powers on the basis that interim orders grant a remedy before a violation of the LRA has been found by the OLRB.

Options:

1. Maintain the status quo.
2. Implement one or more of the following:
    a) restore the power of the OLRB to issue interim orders and decisions pursuant to section 16.1(1) of the Statutory Powers Procedure Act;
    b) broaden the scope of the OLRB's remedial power by providing the OLRB, in cases of alleged unfair labour practices, with the ability to grant interim relief on "such terms as the Board considers appropriate";
    c) eliminate the requirement that an applicant for interim relief prove that the relief is necessary to prevent irreparable harm or is necessary to achieve other significant labour relations objectives, and/or substitute less demanding standards;
    d) eliminate statutory requirements that must be met by an applicant for interim relief and leave it to the OLRB to develop its own jurisprudence about when it will issue interim orders; and
    e) require that the OLRB expedite hearings for interim relief by establishing prescribed statutory time limits so that hearings proceed without unnecessary delays.

4.5.2 Just Cause Protection

Certification to First Collective Agreement

Background

The focus of this discussion is whether there should be protection against unjust termination of employees from the time a union is certified or voluntarily recognized until the effective date of the first collective agreement. In first contract negotiations, this protection would extend to employees who are engaged in a strike or who are locked out by the employer before implementation of the first collective agreement.

A similar issue arises after the expiry of a collective agreement, during negotiations for a renewal collective agreement, when the union is in a legal strike position and the employer is entitled to lock out employees. Under the current LRA, employees are vulnerable to termination without cause by an employer unless such termination is the result of an unfair labour practice. This issue is dealt with separately in section 4.4.2.2 of this Interim Report.

Statutory "just cause" protection for employees generally provides protection for employees from unjust discharge by an employer. Commonly, such statutory protection allows an employee who asserts that there was no cause for termination to bring a complaint of unjust dismissal before a neutral third party adjudicator with jurisdiction to determine the issue. In such proceedings, the legal burden to prove just cause falls on the employer who must prove, on a balance of probabilities, that such action was justified. The adjudicator has jurisdiction to decide whether just cause exists and the dismissal is warranted and, where no cause is proven, to order an appropriate remedy (including damages and reinstatement) or to substitute a lesser penalty if there was wrongdoing by the employee but the discipline imposed by the employer was excessive.

The goal of a just cause provision is to ensure that employees are not treated unjustly by the exercise of management's authority to terminate employees. Virtually without exception, collective agreements in Ontario contain provisions permitting the grievance and arbitration of employee discipline cases. Arbitrators may determine whether an employee has been discharged or otherwise disciplined for cause and may substitute another penalty for the discharge or discipline that the arbitrator deems just and reasonable.

Pursuant to the provisions of the LRA, an employer is prohibited from dismissing, threatening to dismiss or imposing any other penalty if the purpose is to prevent

an employee from joining a union or from exercising any rights under the Act. As a result, the OLRB has jurisdiction to protect employees from unjust discipline or discharge only if they are discharged or disciplined for exercising their rights under the LRA, (e.g., because they have joined a union or participated in other lawful activities related to organizing or certification of a union, including participating in collective bargaining). If the OLRB finds an employer has terminated or disciplined an employee because of the exercise by the employee of his or her rights under the LRA, it has jurisdiction to award damages, and to reinstate the employee in cases of termination. In such cases, the burden of proving that the employer did not act contrary to the LRA lies on the employer.

In practical terms, this means that after certification, but before a first collective agreement is in place, an employee has no protection against unjust termination by the employer unless the termination is motivated in whole or in part by the employee's exercise of rights under the LRA.

Once the first collective bargaining agreement is effective, employees will have protection against unjust dismissal or discipline because of the just cause provisions contained in virtually all collective agreements. Even after the expiry of a collective agreement, employees in the bargaining unit will have protection against unjust dismissal or discipline because the terms and conditions of employment are frozen until the union and the employer are in a position to engage in a legal strike or lock-out.

Amendments to the *Labour Relations Act*, introduced in 1993, provided that a just cause provision was deemed to be in effect during:

- the interval following certification or voluntary recognition and before a first collective agreement was entered into;
- the course of the collective agreement; and
- strikes, lock-outs, the open period before a new collective agreement was in operation, or until the union was decertified.

The legislation allowed for a lesser standard for "cause" to apply during an employee's probationary period. These provisions were repealed in 1995.

Other Jurisdictions

Three Canadian labour relations statutes contain just cause protections during periods where no collective agreement is in force. The federal jurisdiction provides

just cause protection during the period from the date of certification to the date when a first collective agreement is implemented. British Columbia's legislation provides that an employer may not discharge, suspend, transfer, lay-off or discipline an employee except for proper cause when a union is conducting a certification campaign. Saskatchewan's law states that, in circumstances where no collective agreement is in force, the board has certified a union, and an employee is terminated or suspended for a cause other than a shortage of work, an arbitrator may determine whether there is just cause for the termination.

Submissions

Unions have supported the restoration of a provision for just cause protection during the period subsequent to certification and prior to the first collective agreement. They argue that because employees do not have such protection until the collective agreement is in place, some employers "clean house" and terminate employees where cause for termination does not exist. Not only can such conduct erode the confidence of employees in the newly certified bargaining agent but it will likely also create issues that are very difficult to resolve in collective bargaining. Access to just cause protection will help to ensure stability in the workplace during the critical period following certification until implementation of a first contract.

Employers did not comment on this specific LRA issue in their written submissions with respect to this Review. However, we expect that employers would generally take the position that: the existing provisions of the LRA are sufficient to protect employees who exercise their rights under the LRA, including the right to organize and participate in collective bargaining; that before concluding the collective agreement, employers should not have their rights to manage the enterprise curtailed; and that unions are in a position to resolve issues relating to the termination of employees as part of the collective bargaining process, all while conceding that, like other collective bargaining issues, just cause issues can be very difficult to resolve.

Options:

1. Maintain the status quo.
2. Provide for protection against unjust dismissal for bargaining unit employees after certification but before the effective date of the first contract.

4.5.3 Prosecutions and Penalties

Background

In Ontario, anyone who contravenes the LRA may be subject to OLRB orders and prosecution before the provincial courts. However, it is important to evaluate whether these provisions act as a sufficient deterrent for unlawful activity.

The OLRB has broad general remedial powers to provide compensatory relief where there has been unlawful activity under the LRA. For example, the OLRB has previously ordered awards for damages, benefits, interest, organizing and negotiating costs, harassment and indignity, and prospective losses. However, the OLRB does not make orders that are primarily intended as deterrence or to punish the wrongdoer.

A prosecution for a violation of the LRA may be commenced before the Ontario Court of Justice but only with the prior written consent of the OLRB. The applicant has a heavy onus to persuade the OLRB that nothing else would resolve the issue and that prosecution is consistent with the promotion of good labour relations in the province.[75] If the OLRB grants consent, the applicant may initiate a private prosecution against the alleged wrongdoer.

Upon conviction of an offence, individuals can be fined up to $2,000 and corporations and unions can be fined up to $25,000. Each day that a contravention continues may constitute a separate offence. These maximum amounts have not changed since 1990.

Prosecutions under the LRA are very rare. In the period from 2004-2014, the OLRB dealt with thousands of unfair labour practice complaints, but only received 29 applications for consent to prosecute, and only three were granted.

Some illegal activity under the LRA could result in penal consequences, where parties are found in contempt for disobeying court orders or orders of the Board filed in court and enforced as an order of the court. For example, engaging in an illegal strike has been and is still the most serious of illegal activities in the labour law field. If unions or employees engage in illegal strikes, especially in essential services such as health care, or in sensitive areas such as transportation or education, there is a risk of severe consequences. Where public safety is threatened, the consequence for unions and their members of defying legislation or court orders prohibiting illegal strike activity or directing employees to return to work can and has resulted in fines and even imprisonment.

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75 *Ontario Hospital Assn. v. Ontario Public Service Employees' Union,* (2004) CanLII 14343, ON LRB.

Other Jurisdictions

All Canadian provinces and the federal jurisdiction have taken a similar approach. Labour relations boards or commissions have general remedial powers and offences are prosecuted before the courts. However, there are some differences. For example, the Manitoba Labour Board is expressly permitted to order monetary awards of up to $2,000 for an unfair labour practice, even where the unlawful activity has not resulted in any monetary damages or loss. Consent to prosecute is not required in British Columbia and Quebec, whereas all other jurisdictions require some form of consent unless an exemption applies.[76] The maximum fines for conviction of a general offence also vary depending on the jurisdiction, ranging from $100 to $5,000 for individuals and $500 to $100,000 for employers, corporations, and unions. Prince Edward Island also mandates minimum fines.[77] Many jurisdictions, such as Quebec, set out different fines for certain types of contraventions, such as unlawful work stoppages.

In the United States, the approach under the *National Labor Relations Act* (NLRA) is similar to Ontario. The National Labor Relations Board (NLRB) has broad remedial powers but the prosecution of offenses is before the courts. The right of an individual to initiate a private prosecution in the courts was removed following a 1981 decision by the United States Supreme Court.[78]

In 2015 in the United States, the *Workplace Action for a Growing Economy (WAGE) Act* was introduced.[79] Although the WAGE Act is unlikely to be made into law, it proposes several amendments that could deter unfair labor practices, including:

- triple back pay for workers who are unlawfully terminated or face retaliation;
- civil penalties up to a maximum of $50,000 per violation and doubled penalties (maximum $100,000) for repeat violations;
- private civil actions for workers injured by an unfair labor practice;
- personal liability for officers and directors in certain circumstances; and
- joint and several liability for employers where violations of the NLRA involve employees supplied by another employer.

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76 Depending on the jurisdiction, consent may be required from a labour relations board, Minister of Labour (or equivalent) or Attorney General. In Prince Edward Island, Nova Scotia and Manitoba, consent is not required where the prosecution is instituted by the Minister or the Attorney General. In New Brunswick, consent is not required where the prosecution is instituted by the Attorney General. The procedures for private prosecutions also vary depending on the jurisdiction.

77 The minimum fine for individuals is $100 and the minimum fine for employers, unions and employers' organizations is $500.

78 *Leeke v. Timmerman,* (1981) 454 US 83.

79 S. 2042. Available online: https://www.congress.gov/bill/114th-congress/senate-bill/2042.

Submissions

No submissions were made to us on this precise issue although a strong general theme of all the submissions to us from the worker advocate community and unions was that there was a widespread disregard for the law as evidenced by allegations of non-compliance with the ESA and LRA. Employer illegal activity during organizing campaigns and the need for effective action to stop it was a pervasive theme in the submissions of many unions.

General Options:

In the ESA sections of the Interim report, there is a discussion about the desirability of dispensing with prosecutions in the courts and giving the OLRB the authority to impose administrative monetary penalties of up to $100,000 per infraction where violations of the legislation are found to have occurred. If the OLRB were given jurisdiction to impose similar administrative monetary penalties for violations of the LRA, the same model could apply. Concurrently the ability to commence prosecutions before the courts could be removed.

The OLRB has stated that there are good reasons for the Board not being responsible for imposing penalties because if it did, it could be difficult for it to maintain its "accommodative and settlement role":

> *There is little doubt that penalties could be devised which would provide second thoughts to anyone intent on violating The Labour Relations Act. But the Legislature did not provide the Board with this role and probably with good reason. Section 85 of the Act is a section that sets out penalties for contraventions of the legislation and allocates the role of applying these penalties to the Provincial Court. … This is not to deny that effective remedies will likely have a deterrent effect, but the primary purpose of a remedy should not be punishment. If it were otherwise, the Board's accommodative and settlement role under section 79 and more generally would be a most difficult one to maintain. Offenders would be wary of compromise lest their candor be subsequently met by stiff penalties issued by the very agency that encouraged an informal and early resolution of a complaint.*[80]

80 *United Steelworkers of America v. Radio Shack,* (1979) CanLII 817, para 94, ON LRB. [References omitted.]

In one of the few cases where consent to prosecute was granted, the OLRB recognized that there is "a useful labour relations principle to be served in deterring parties from acting as if they are simply free to 'opt out' of the collective bargaining regime and the [LRA] and its provisions."[81]

Since the 1975 amendments to the LRA which gave the OLRB broad remedial powers, it appears to be a near universal consensus in labour law circles is that the approach which stresses the importance of the relationship between the parties as opposed to "punishment" is the better one. A defining feature of labour law has been that the search for appropriate remediation should trump concerns over deterrence.

In recent years, these views have been increasingly challenged. In the United States, as seen above, the general approach until now has mirrored the approach in Canada but there has been widespread criticism from organized labour (the AFL-CIO) and some members of United States Congress over the lack of penalties for employers who violate the law. A former chairman and member of the NLRB (1997-2011) has questioned the fact that there are no penalties in labour law for employers who illegally retaliate against workers, and argues that greater penalties and higher and consequential damages are required.[82]

A criticism of the existing system in Ontario is that there is no credible threat of prosecution for violations of the LRA and no real deterrence (except in the case of illegal strikes) and that, as a result, serious unfair labour practices occur too regularly. The costs of violating the LRA – legal fees, compensatory remedies and a slap on the wrist by the OLRB – could be viewed by some as a cost of doing business and a small investment in achieving the ultimate objective of being able to operate a business without a union. The same can be said about union breaches of the duty of fair representation where the consequences of not arbitrating an employee grievance can be very serious for the employee and yet carry little if any meaningful consequences for the union which fails to process the grievance properly. Absent deterrence, is breaking the law simply part of the game- like a flagrant foul in basketball or serious fighting in hockey? The policy question is whether there can be an effective system of law in any area, especially one as adversarial as labour law, without any deterrent to help ensure that conduct stays within the mandated rules.

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81 *United Food and Commercial Workers International Union (UFCW Canada) Local 102 v. Quality Hotel and Conference Centre Niagara Falls, Ontario,* (2013) CanLII 14707, para 25, ON LRB.

82 Wilma B. Liebman, "Why Congress Should Pass the Wage Act," *CNBC*, September 30, 2015. Available online: http://www.cnbc.com/2015/09/30/why-congress-should-pass-the-wage-act-commentary.html

Underpinning the architecture of the existing system may be a policy bias against the prosecution of offences by private parties. There are jurisdictions that do not permit private parties to prosecute violations of the applicable labour legislation. Indeed, if violation of the LRA could result in the imposition of significant monetary penalties and private prosecutions were permitted, then there would be a risk that unions, employees or employers would use the threat of or the initiation of prosecutions for improper purposes and not in the public interest.

If the OLRB were given the jurisdiction to impose administrative monetary penalties for violations of the LRA, it is not suggested that private parties would also have standing to ask the OLRB to impose such a penalty. Rather, complaints might be initiated or existing complaints joined by the Ministry of Labour or by the Ministry of the Attorney General whose role would be to represent the public interest. In this model, only the government would have standing before the OLRB to ask for the imposition of an administrative monetary penalty where violations are found to have occurred.

For purposes of enforcement of both the LRA and the ESA, perhaps the Province would consider the creation of a new position, a Director of Labour Enforcement, whose responsibility would be to determine if and when the state would seek the imposition of administrative monetary penalties under either statute. Unions, employees and employers could refer complaints of unlawful activity to the Director, who would determine if there is a public policy interest in achieving an outcome that would better reflect the seriousness of the violation(s) alleged.

The employer, union, employee, or other respondent would know at the outset the potential risk arising from the Ministry proceeding or participating in a hearing before the OLRB. If the Director of Enforcement were going to seek an administrative monetary penalty, over and above a remedy for the complainant(s) or other employees whose rights have been violated, the respondent would be advised not only of the details of the alleged violations but also of the amount of the administrative monetary penalty being sought by the Director.

The current complaints driven process is essentially a two-party process with the complainant and a respondent being the parties in a position to resolve their own litigation. If the Director participated in the litigation as a party, a settlement by other parties could not bar the Director from pursuing a case at the OLRB for purposes of seeking an administrative monetary penalty. In a case where the Director of Enforcement sought the imposition of an administrative monetary

penalty, the participation of the Director of Enforcement would not preclude a settlement on the question of the amount of the administrative penalty – perhaps subject always to the approval of the OLRB. The Director will be in the best position to assess the strengths and weaknesses of a case, to assess how best to serve the public interest and to take into account the views and the rights of the parties in deciding whether and on what terms to settle.

If the OLRB were to be given an expanded jurisdiction to impose significant monetary sanctions up to $100,000 per infraction, there is also reason to consider giving the OLRB jurisdiction to order an unsuccessful respondent to pay the cost of the investigation and the costs of the hearing incurred by the Director of Enforcement.

Similarly, it may be prudent to consider stipulating that revenue generated from the exercise of a power conferred or a duty imposed on the OLRB does not form part of the Consolidated Revenue Fund but could be used for various purposes including educating employees and employers about their rights and obligations under the LRA, or similar purposes.

Under this option, a Director of Enforcement could also have responsibility for ESA prosecutions, and/or for *Occupational Health and Safety Act* (OHSA) matters.

Specific Options:

1. Maintain the status quo.
2. Increase the penalties under the LRA.
3. Eliminate the requirement for consent to prosecute and allow private prosecutions for breaches of the LRA in the courts.
4. Eliminate the requirement for consent to prosecute and do not permit private prosecutions for breaches of the LRA, but only prosecution by the state.
5. Eliminate prosecutions in the court and give the OLRB the authority to impose administrative penalties as per the model of the Ontario Securities Commission.
6. Create a position of Director of Enforcement, situated in the Ministry of Labour, or in the Ministry of the Attorney General.

4.6 Other Models

4.6.1 Broader-based Bargaining Structures

Background

Many commentators have criticized the current industrial relations model set out in the LRA and administered through policies established by the OLRB.[83] It is said that the current system, based on the 1940s United States *Wagner Act* model, is unable to respond to the modern labour market, characterized by growing employment in small workplaces and non-standard work. It is said that the *Wagner Act* model limits access to collective bargaining to many thousands of workers because there is no practical way for collective bargaining to operate in much of the present economy. This is seen to affect vulnerable workers in precarious work, especially in industries where such workers feature prominently, such as in restaurants (particularly fast-food), accommodation, retail, and other service industries. While this is generally seen as a private sector problem, it is said to also to occur in the public sector (e.g., in home care).

"Broader-based bargaining" (also referred to as "sectoral bargaining") is advocated as a necessary alternative or addition to the old industrial relations model. However, detailed recommendations for new bargaining structures are often not spelled out and the application and boundaries of the concept have remained ill-defined.

Generally, labour relations in Canada are highly decentralized. While broader-based bargaining arrangements are the exception, they have nonetheless featured prominently in the past in some areas, with either formal centralized bargaining or pattern bargaining. However, the default arrangement in our system is for collective bargaining to take place between a union representing a group of employees at a particular workplace and their employer, particularly in the private sector (with the exception of the construction industry, as noted below).

The LRA vests the OLRB with the discretion to determine the appropriate bargaining unit with respect to each application for certification. The most common bargaining unit definition comprises a single workplace of a specific employer at a geographic location. There may be further subdivisions (e.g., separate bargaining units for "office" and "plant" employees).

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83 These criticisms are discussed in two background papers prepared for Ontario Ministry of Labour to support the Changing Workplaces Review: Sara Slinn, *Collective Bargaining* (2015); Rafael Gomez, *Employee Voice and Representation in the New World of Work: Issues and Options for Ontario* (2015).

Unions assert that bargaining separate individual agreements with many small employers, or separate agreements for each small location of a larger employer, is inefficient, uneconomic and burdensome. The costs of organizing (including costs of legal proceedings) and representing small units one-by-one are too high and effectively deter organization.

In the context of the *Wagner Act* model, workers have found it difficult to organize into unions in sectors characterized by small workplaces (typically also associated with high rates of part-time, temporary and contract jobs). The union coverage rate in the private sector is approximately 24% among workplaces with more than 500 employees, but below 7% in workplaces with fewer than 20 employees.[84]

Moreover, unions recognize that there is a difficult trade-off in arguing for broader bargaining units. Narrower units (e.g., individual stores in a retail chain) are easier to organize, but have little bargaining power. Broader units (e.g., all of the stores in a retail chain) will have greater bargaining leverage, but may be difficult to organize. The OLRB has recognized the dilemma of organizing smaller units and the need for flexibility in organizing and certifying "an appropriate bargaining unit" (as opposed to the most appropriate bargaining unit), particularly in industries where there is little history of organization.[85] The dimensions of this issue are also discussed above, in section 4.3.4, on Consolidation of Bargaining Units.

Under the existing law, and outside the construction industry, more centralized bargaining relationships (i.e., multi-employer bargaining) cannot be imposed by either side or by the OLRB, but can be established only by agreement between each participating employer and each participating bargaining agent.[86] This kind of sectoral bargaining has taken place in some industries such as printing, nursing homes, and hospitals. However, it is not the norm.

Even in unionized parts of the private sector economy, collective bargaining has become more decentralized. There has been a general shift away from pattern or central bargaining in various industries towards bargaining at the enterprise level. This is an international trend, and appears to be linked to a decline in union bargaining power and an emphasis on the ability of individual enterprises to pay.

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84 See trends discussed in Chapter 3, "Changing Pressures and Trends".

85 *Union of Bank Employees (Ontario), Local 2104 v. National Trust,* (1986) OLRB Rep. February 250; See also *United Steelworkers of America v. TD Canada Trust in the City of Greater Sudbury, Ontario,* (2005) CIRB No. 316, where the approach of the Canada Industrial Relations Board was reviewed.

86 There are exceptions to this in regard to the construction industry, as well as separate public sector labour relations legislative regimes relating to bargaining structure for certain groups (e.g., college employees, school board employees) that engage in centralized bargaining.

Models of Broader-based Bargaining

There are, various models for broader or sector-wide bargaining in Canada.

Construction Sector

In the construction industry, for example, reforms of the industrial relations system came at the request of employers to counter strong unions that were seen as engaging in bargaining tactics known as "whipsawing" and "leapfrogging" to advance pay and benefits. In this context, a multitude of employers with weak bargaining power as individual companies sought structural industrial relations relief to permit them to band together and force the union to bargain with one employer entity.

Multi-employer bargaining along trade lines has existed under Ontario's labour relations legislation for the construction industry since the 1970s and on a compulsory basis in the industrial, commercial and institutional (ICI) sector since 1977. The accreditation and province-wide bargaining provisions in the ICI sector were employer initiatives designed to equalize bargaining power with then-stronger unions. Unlike the general approach under the LRA, construction industry certificates include all of the operations of a single employer in either the province and/or geographic areas set by the OLRB in construction industry certification cases ("Board Area").

In the case of the ICI sector of the construction industry, the LRA imposes a system of single-trade, multi-employer, province-wide bargaining. The Minister of Labour designates employee bargaining agents and employer bargaining agents (representing all unionized employers in the province with respect to a single trade). There can be only one provincial agreement between these parties (bargaining outside the designated structures is prohibited). All provincial agreements have a common duration and a common expiry date. When a new bargaining unit is certified for a non-union employer, the parties automatically become bound to the provincial agreement.

The accreditation of a multi-employer bargaining agency is designed to offset the power of the unions and compel a union in a sector to bargain with the single employer bargaining agency rather than individual employers.

Arts Sector

The federal *Status of the Artist Act* (SAA)[87] provides another example of sectoral or multi-employer approaches to collective employee representation and bargaining. The SAA permits a broad array of professional artists in the federally regulated cultural sector to form associations and bargain collectively with the producers who engage their services. It allows for the certification of artists' associations that meet certain criteria,[88] in sectors within this industry that are considered suitable for bargaining. It is not necessary for an artists' association to provide proof that it represents more than 50% of artists working in a given sector (recognizing that it is often difficult or impossible to determine the exact size of the sector).

In addition, the SAA allows for the creation of producers' associations for bargaining with artists' associations. Certification gives an artists' association the exclusive authority to bargain a scale agreement on behalf of the artists in the sector.

Scale agreements are different from other collective agreements in that they establish only the minimum terms and conditions of engagement. Private negotiations between employees and employers for terms and conditions above and beyond scale agreements are permitted. This reflects the unique situation of the cultural industry, including the varying talent levels of individuals in the broadcasting industry. It appears that this practice has generally worked well in other sectors, such as in the areas of sports and entertainment.[89]

The SAA model holds the potential to extend collective bargaining to types of workers who may not conventionally be thought of as "employees". It aims to create a safety net for the majority of working artists while not depriving artists of the ability to bargain better terms. A weakness of the legislation is that producers are not required to form associations for bargaining, potentially leaving artists' associations with no sector-wide group with which to bargain. Only producers

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87 Quebec is the only province that has enacted similar legislation providing access to collective bargaining for artists. Note that the *Status of Ontario's Artists Act, 2007* does not address collective bargaining, and while this legislation does not fall within our review, the labour relations and employment issues concerning artists and performers do come within the terms of the review.

88 In order to become certified an artists' association must adopt by-laws and establish membership requirements, give its regular members the right to take part and vote in the meetings and to participate in ratification votes on any scale agreements that affect them, and provide their members with the right of access to a copy of a certified financial statement of affairs of the associations. After these prerequisites are met, the association is eligible to apply to the Board and have it determine eligibility for certification. The Board considers the "sector" and the "representativeness" of an association.

89 Minimum terms and conditions of employment supplemented by individual agreements negotiated by individual employees are also common in faculty agreements, newspapers and other industries.

bound to the agreement are subject to the terms and conditions established by scale agreements, and there is no process for binding a producer not voluntarily bound to the scale agreement.

Primarily as a result of the artists' and performers' need or desire to have independent contractor status for tax purposes, the performers are presumed not to be employees under the LRA and, therefore, the sector is not governed by the Act. As such, the agreements appear to fall outside the scope of the LRA. If there is no provision for binding individual producers to a scale agreement, and if the LRA does not apply, a producer who is not a party to an agreement cannot be compelled to negotiate with the association or sign the scale or other agreement.

Other Sector Arrangements

Another approach, common in Europe but generally absent in North America (except for the decree system in Quebec, which is much smaller in its application today than previously), is to institute a system by which certain terms (negotiated through a collective agreement or at a sectoral table) can be extended by decree to cover all workers, both union and non-union, within a specific sector. An example of this approach is Ontario's *Industrial Standards Act* (ISA), which was introduced in 1935 and repealed in 2000.

The ISA provided a mechanism for establishing a schedule of wages and working conditions that was binding on all employers and employees in a particular industry across a given geographical zone. Employers or employees in a particular industry could petition the Minister of Labour to call a conference of employers and employees in that industry, for the purposes of negotiating a schedule of minimum standards, including wages, hours of work, holiday pay, and overtime. The schedule would be submitted to the Minister, who could approve it if it had been agreed to by a "proper and sufficient representation of employers and employees." An approved schedule would be made as a regulation and would be binding across the entire industrial sector.

The ISA largely fell into disuse after the ESA was introduced in 1968. By 2000, when it was repealed, there were only two ISA schedules remaining, covering subsectors within the garment industry in Toronto.

Over the years, various proposals have come forward in relation to the concept of broader based bargaining. One that is frequently cited is a proposal put forward

by a majority of special advisors appointed by the British Columbia government in 1992 to review the province's *Industrial Relations Act*. In its report, a majority of the sub-committee endorsed the introduction of a form of sectoral certification for "those small enterprises where employees have been historically underrepresented by trade unions".[90]

The sectoral certification model proposed in British Columbia would be available only in sectors that were determined by the Labour Relations Board to be historically underrepresented by unions and where the average number of employees at work locations within the sector was fewer than 50. To determine whether a sector met these criteria, the Labour Relations Board would be required to hold public hearings and accept submissions not only from the parties but other employers and unions within the sector.

Sectors under this model would be defined by two characteristics – geographical area and similar enterprises – with employees performing similar tasks within that geographic area. For example, a sector could comprise "employees working in fast food outlets" in a city.

The recommendation stated that a union with the requisite support (e.g., 45% of employees) at more than one work location within a sector could apply for certification of the employees at those locations. To be certified, the union would have to establish majority support at each location and, in a representation vote, win majority support among all employees at the work locations where certification was being sought.[91]

Once the union obtained a sectoral certificate under the British Columbia model, collective bargaining would take place between the union and the various employers subject to the certificate. A standard agreement would be worked out and, subsequently, if the union could demonstrate sufficient support at additional locations within the sector, it would be entitled to a variance of its bargaining certificate to encompass the new employees. Although the standard agreement would then apply to the new employees, the Labour Relations Board would have the option of tailoring this agreement to the exigencies of any particular location. Once a sector had been declared "historically underrepresented," any union would be able to apply for certification within the sector. The authors of the proposal

90 Sub-committee of Special Advisors, *Recommendations for Labour Law Reform, A Report to the Honourable Moe Sihota, Minister of Labour* (Victoria: Ministry of Labour and Consumer Services, 1992), 30.
91 Ibid., 31.

point out that under their model, three or four different unions could end up representing employees within a sector or geographic area, each administering its own collective agreement. No union would have a "monopoly" on representation rights within a sector.[92]

The management representative on the committee opposed this recommendation and the proposal was not adopted by the British Columbia government.

Submissions

It is argued that the LRA is not only irrelevant for a very large number of employees, but also that if it does not provide for meaningful opportunities for collective bargaining for large groups of employees because of structural difficulties, then the *Charter of Rights'* guarantee of freedom of association has little practical meaning for many.

It is also argued that sectoral arrangements, like those in the construction and arts sectors, are intended to – and in some respects do – address the undesirable features of unstable employment and temporary work that feature prominently in the construction and arts sectors.

It is further argued that, not only does sectoral bargaining provide a more balanced framework for employers and employees, but also, multi-employer arrangements have generated training and benefit structures that have improved the skills of employees, and provided pension, health, welfare and other benefits that are hallmarks of "good jobs." For example, single-employer pension plans have become increasingly rare in the private sector but fixed-cost multi-employer pension arrangements are available to construction sector employers and employees and are an important source of investment capital in Ontario.

Also, it is argued that multi-employer bargaining in lower wage industries – like nursing homes – have provided benefit and pension plans to those employees, which could not have been possible in the context of single employers dealing with a single local union.

Some academics and unions have recommended the opening of new opportunities for broader-based bargaining. Some urged that the British Columbia proposal be adopted in some form. As discussed above, the British Columbia

92 Sub-committee of Special Advisors, *Recommendations for Labour Law Reform*, 31.

special advisor proposal was one in which unions could organize some parts of a sector, and then add to the certification over time, with a single master agreement applying to individual employers and bargaining units. The proposal also accommodated multiple unions.

Another option for sectoral bargaining is a model which permits an application for certification for bargaining rights for multiple employers in an entire sector, defined by industry and geography, in which multi-employer bargaining would take place with a union or council of unions and a designated employer bargaining agency in a sector. In this scenario, the collective agreement would apply to the entire sector. Some possible features of this option are discussed below.

Another proposal is to expand the application of negotiated provisions in a sector through employment standards legislation at the sectoral level and pursuant to a complex system of sectoral agreements and councils. This would essentially provide the OLRB with authority to prescribe certain minimum terms and conditions of employment within an entire sector, but with significant employer and employee input.[93]

Other specific proposals were made regarding franchise operations and the creation of geographic and industry sector-wide bargaining for the operations of a particular franchisor, consisting of both the franchisor and its franchisees.[94] As discussed above, in section 4.2.2, Related and Joint Employers, the identification of the appropriate employer is a long standing issue in labour relations law. As also noted in that section, the National Labor Relations Board has, in a recent decision, updated its approach to this issue finding that, in certain situations, two or more entities may be joint employers of a common workplace.[95]

There was also a specific proposal to allow for the certification of multi-employer bargaining units in a sector based upon sectoral standard provisions that the OLRB has prescribed. Interested parties may wish to review these proposals.[96]

A number of organizations, active in representing artists and performers, asked to have their scale agreements, described above, protected under the LRA, and for the ability to compel producers to bargain with them. A union seeking to represent

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93 Unifor, *Building Balance, Fairness, and Opportunity in Ontario's Labour Market: Submission by Unifor to the Ontario Changing Workplaces Consultation* (Toronto: Unifor, 2015), 104.
94 Ibid., 105.
95 *Browning-Ferris Industries of California, Inc.* (2015), 362 NLRB No. 186.
96 Unifor, *Building Balance, Fairness, and Opportunity in Ontario's Labour Market,* 127.

freelancers with multiple producers in the television industry, particularly in the production of reality TV, asked for a sectoral bargaining structure for that sector.

Employers generally did not raise the issue of broader-based bargaining during our consultations. They may be wary of losing autonomy by having to bargain through a multi-employer bargaining agent. However, it is noteworthy that the multi-employer model in construction came at the instance of employers wishing to provide a counterweight to strong unions and, as noted above, to avoid the problem of unions constantly "whipsawing" and "leapfrogging" employers, which could otherwise happen in a single-employer collective bargaining regime. Put simply, employers in the construction sector who do business in a very competitive market and whose product, or a similar one, can be purchased from numerous contractors at the same or similar price, felt vulnerable in a single-employer collective bargaining regime. Multi-employer bargaining was seen as providing the best chance for creating a level playing field for all unionized employers in the sector.

In this regard, a model has been discussed that would primarily serve employer interests in industries where unions or multiple unions refuse to bargain on a sectoral basis and, instead, insist on bargaining with individual employers. This model would permit an application by an employers' organization to accredit an employer bargaining agency along the same general lines as in the construction industry, and require that a union, or council of unions, bargain with the employer bargaining agency instead of individual employers.

Any model that would significantly expand the scope of sectoral collective bargaining to franchisors and franchisees, or multi-employer bargaining, both of which involve different employers bargaining together at the same table, will interest the employer community. Based on the employer reaction to proposals for sectoral bargaining in British Columbia, it is anticipated that the employer community will express a preference for enterprise-based bargaining, because of its concern that the needs and realities of specific enterprises will not be reflected adequately in a sectoral bargaining process.

Employers in British Columbia argued that the application of collective agreements, negotiated by others, on a newly certified employer is inconsistent with sound business and economic practices and deprives employers and employees of the necessary control over their own workplaces. In their view, only enterprise-based collective bargaining ensures a focus by both parties on the needs and circumstances of individual businesses. One British Columbia employer submission put it this way:

> *Only through enterprise-based bargaining can we ensure that collective agreements reflect the needs and circumstances of individual businesses, allowing them to remain flexible, competitive and successful in the modern economy, thereby encouraging further investment and job creation in our province. Further, only through enterprise-based bargaining do employees of a given enterprise have a direct voice in the terms and conditions which will govern their employment, which is the ultimate objective of collective bargaining.*[97]

Options:

Introduction to Options

We have been asked to consider a number of broader-based bargaining models and – as with other options set out in this report – have not yet decided which, if any, to recommend. We have not listed these in order of importance, nor does the order reflect that we are considering some more carefully than others.

Option 2 can be called an extension model, where negotiated provisions are extended to an entire sector but are, perhaps, limited geographically, akin to models in Quebec or in Europe or in the old ISA framework in Ontario. We have been provided with a very detailed proposal in this regard, which we do not set out but to which interested parties can refer.[98]

Option 3 deals with single franchisor/franchisee and single-employer, multi-location certification and bargaining. It contemplates a location-by-location approach to certification and a broad, multi-location approach to bargaining.

Options 4 and 5 deal with multi-employer, multi-location certification and bargaining but, whereas the acquisition of bargaining rights in 4 is incremental, the acquisition of bargaining rights in 5 is with respect to an entire sector.

Option 4, based on the British Columbia proposal, contemplates single-employer, location-by-location, certification and multi-employer sectoral bargaining. Because it was the subject of a specific detailed proposal in British Columbia and was the subject of much debate in British Columbia, we saw no need to model it in greater detail.

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97 Coalition of B.C. Businesses, *Labour Policies that Work, A New Vision for B.C.* (Vancouver: Coalition of B.C. Businesses, 2001), 24.
98 Unifor, *Building Balance, Fairness, and Opportunity in Ontario's Labour Market,* 120.

Option 5 is a new idea for the acquisition of bargaining rights at one time for an entire sector and geographical area, followed by multi-employer bargaining across the entire sector. Since it was a new idea, we felt it was wise to try to model it in detail, to see if it was practical and also so that it could be evaluated. This accounts for the extensive detail regarding this option, below.

Options 3, 4 and 5 are not mutually exclusive in the sense that only one would necessarily be recommended. All three models could be applied generally or they could be limited only to particular industries and sectors where collective bargaining has not taken root and/or where there are a large number of vulnerable workers and precarious jobs. All or none could be recommended and all three could co-exist under the LRA.

Option 6 is a new idea to support employer interests in broader bargaining structures where these might exist. Since it is modeled on an existing accreditation model in the construction industry, where there is already a wholly formed legislative scheme, we felt no need to model it in detail.

Option 7 addresses specific situations involving vulnerable workers in precarious jobs where it is not clear if collective bargaining, as currently structured, works effectively (e.g., home care), or how it could or would work if existing exemptions were eliminated (e.g., domestic, agriculture, and horticulture workers).

Option 8 considers the appropriateness and practicability of applying the artist-type model to freelancers and dependent contractors.

Option 9 considers dealing with the media industry and the groups affected by the *Status of the Artist Act* in separate provisions of the LRA that would apply exclusively to them; these could address the issues and difficulties described above.

Summary of Options

1. Maintain the status quo.
2. Adopt a model that allows for certain standards to be negotiated and is then extended to all workplaces within a sector and within a particular geographic region, etc. This could be some form of the ISA model or variations on this approach that have been proposed in a very detailed way (as discussed above).

3. Adopt a model that would allow for certification of a unit or units of franchise operations of a single parent franchisor with accompanying franchisees; units could be initially single sites with accretions so that subsequent sites could be brought under the initial agreement automatically, or by some other mechanism.

4. Adopt a model that would allow for certification at a sectoral level, defined by industry and geography, and for the negotiation of a single multi-employer master agreement, allowing newly organized sites to attach to the sectoral agreement so that, over time, collective bargaining could expand within the sector, along the lines of the model proposed in British Columbia.

5. Adopt a model that would allow for multi-employer certification and bargaining in an entire appropriate sector and geographic area, as defined by the OLRB (e.g., all hotels in Windsor or all fast-food restaurants in North Bay). The model would be a master collective agreement that applied to each employer's separate place of business, like the British Columbia proposal, but organizing, voting, and bargaining would take place on a sectoral, multi-employer basis. Like the British Columbia proposal, this might perhaps apply only in industries where unionization has been historically difficult, for whatever reason, or where there are a large number of locations or a large number of small employers, and, perhaps only with the consent of the OLRB.

   The following could be the technical details.

   a) A sectoral determination by the OLRB would precede any application for certification.

   b) To trigger a sectoral determination by the OLRB, itself a serious undertaking, a union (or council of unions), would have to demonstrate a serious intention and commitment to organize the sector, including a significant financial commitment.

   c) The OLRB would be required to define an appropriate sector, both by industry and geography, or could find that there was no appropriate sector. All interested parties could make representations on the appropriateness of the sector (e.g., all hotels in Windsor, or all fast-food outlets in North Bay).

   d) Employers in the sector would be required, at some stage of the sectoral proceedings, to produce employee lists to demonstrate the scope of the proposed sector and the union's apparent strength, or lack thereof.

e) A secret ballot vote and a *majority* of ballots cast (the current rule) would be required for certification.

f) Instead of the double majorities that could be required in the British Columbia model, this model would require only a single majority of employees because, as a result of the certification, all employers in the sector would be covered by the master agreement, whereas in the British Columbia-based proposal, almost by definition, there would be a non-union portion of the sector.

g) In the special case of an application for an entire sector in a large, multi-employer constituency, given the difficulties inherent[99] in determining an accurate constituency as of any given date and, therefore, whether a numerical threshold to trigger a vote has been met, the union(s) in this model would not be required to meet a numerical threshold to be entitled to a vote. Rather, to be entitled, the union(s) would be required to persuade the OLRB that it had significant and sufficient broad support in the sector. The union would have the obligation to make full, confidential, disclosure to the OLRB, as is required now, with respect to its membership evidence, including all of its information on the size of the unit, the number of employers, etc. Any effort to misrepresent the size of the unit could lead to the dismissal of the application.

h) Cards could be signed electronically, with the same safeguards now used by the OLRB for mailed membership evidence.

i) An OLRB-supervised secret ballot vote would take place electronically. Voters would "register," at the time they voted, listing their employer, work and home address, last hours worked, etc. The OLRB would have the authority and responsibility to quickly and administratively determine the eligibility of voters, including any status issues, and ensure that only eligible voters voted.

j) Such applications could only be brought at fixed intervals, and, if unsuccessful, could not be brought again, either by the same applicant or by any other applicant, for a period of one or two years.

k) If the union was certified, the OLRB would have the authority to accredit an employers' organization to represent the employers and to conduct the bargaining, directing that dues be paid from each employer on a pro-rata, per-employee basis.

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99 In most certification applications today there are status issues which the OLRB must resolve to determine if the union has met the threshold to entitle it to a vote. Keeping this requirement in a large multi-employer certification would bog the process down for years and make it impossible to determine.

6. Create an accreditation model that would allow for employer bargaining agencies in sectors and geographic areas defined by the OLRB (e.g., in industries like hospitals, grocery stores, hotels, or nursing homes), either province-wide, if appropriate, or in smaller geographic areas. This model is intended for industries where unionization is now more widespread, but bargaining is fragmented. Employers could compel a union to bargain a master collective agreement on a sectoral basis through an employers' organization, and be certified by an accreditation-type of model, similar to the construction industry accreditation model. This might be desirable for employers in industries where unions decline to bargain on a sectoral basis, and where the union could otherwise take advantage of its size, vis-à-vis smaller or fragmented employers, to "whipsaw" and "leapfrog."
7. Create specific and unique models of bargaining for specific industries where the *Wagner Act* model is unlikely to be effective or appropriate because of the structure or history of the industry, (e.g., home care, domestic, agriculture, or horticulture workers, if these industries were included in the LRA).
8. Create a model of bargaining for freelancers, and/or dependent contractors, and/or artists based on the *Status of the Artist Act* model.
9. Apply the provisions of the LRA to the media industry as special provisions affecting artists and performers.

4.6.2 Employee Voice

Background

As recognized in our discussion of the Guiding Principles, Values and Objectives for this Review, work is a fundamental aspect of our lives. It is natural for everyone to want to participate in and to influence his or her working environment. As noted in the "Guide to Consultations" paper, voice, together with efficiency and equity is one of the objectives of the employment relationship. By voice, we mean the right to participate in decision-making in some dimension, be it through the right to speak, or to be consulted, or to vote, because "participation in decision making is an end in itself for rational human beings in a democratic society."[100]

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100 John W. Budd, *Employment with a Human Face: Balancing Efficiency, Equity, and Voice* (Ithaca: Cornell University Press, 2004), 13. See also: Stephen F. Befort and John W. Budd, *Invisible Hands, Invisible Objectives: Bringing Workplace Law and Public Policy into Focus* (Stanford: Stanford University Press, 2009).

Underpinning this view is the belief held by many that every worker should, as a matter of principle, be afforded some system of employee voice. The absence of employee voice disproportionately impacts those social groups who face greater vulnerability in the labour market, including racial and ethnic minorities, recent immigrants, women, and youth.

Recognition of the importance of voice can be seen in the evolving jurisprudence of the Supreme Court of Canada, in a number of cases, some of which we quoted in our chapter on Guiding Principles, Values and Objectives.[101] Taken together, they recognize the value of employee voice, as seen, for example, in the court's discussion of the rights to organize in pursuit of common goals, to make representations and engage in meaningful dialogue, and to exercise real influence over the establishment of workplace rules.

There is little doubt that effective employee voice can make workplaces function better. In our many years as practitioners we have seen, directly, that the most successful workplaces are those in which the parties work together, embracing opportunities for voice by fostering open dialogue, problem-solving and innovation.

Research on workplace trends has emphasized that our modern, knowledge-based economy requires a high level of trust and cooperation at work, relationships that foster teamwork, networking, information-sharing, high commitment, and good customer service. The absence of employee voice, on the other hand, tends to produce high-conflict/low-trust employment relations and underperforming enterprises.[102]

About ten years ago, a published study by American researchers Richard Freeman and Joel Rogers identified the so-called "representation gap", based on a large-scale survey of both American and Canadian private-sector workers.[103] The picture painted by these authors, arising from these survey results, was that: *"given a choice, workers want 'more'"*, including more say in the workplace decisions that

101 *Dunmore v. Ontario (Attorney General),* (2001) 3 SCR 1016; *Health Services and Support — Facilities Subsector Bargaining Assn. v. British Columbia,* (2007) SCC 27; *Ontario (Attorney General) v. Fraser,* (2011) SCC 20; and *Mounted Police Association of Ontario v. Canada (Attorney General),* (2015) 1 SCR 3.

102 Thomas Kochan, "Employee Voice in the Anglo-American World: Contours & Consequences" (proceedings of the 57th Annual Meeting of the Labor and Employment Relations Association, 2005).

103 Richard Freeman and Joel Rogers, *What Workers Want*, rev. ed. (Ithaca: Cornell University Press, 2006). Known as the "Worker Representation and Participation Survey" (WRPS), the survey was conducted in the mid-1990s and updated in 2005. The authors surveyed 2,300 Americans and 1,100 Canadians, although their analysis is based primarily on the American results.

affect their lives, more employee involvement in their firms, more legal protection at the workplace, and more opportunities for collective representation.[104]

We are releasing to the public, concurrent with this Interim Report, a list of research projects that we commissioned for this Review, including a research report on employee voice.[105] The report reviews the decline of unionization in the private sector and the fact that unions may well not be able to attain a meaningful presence there. It argues that there is a vacuum in Ontario, created by a lack of meaningful ways for employees to express their voice in the vast majority of non-union workplaces.

That paper canvasses alternatives to the Ontario model of labour relations, called the *Wagner Act* model, including concepts about minority unionism put forward in the United States and in Canada, while also outlining how European jurisdictions, including the United Kingdom and Germany, deal with this. The paper examines, in depth, the potential positive and negative attributes of these models.

We will consider those models as part of this Review, and we urge interested parties to examine the paper and the models, and to comment to us in writing as they may find appropriate.

We make some brief comments on some of these issues, below.

Germany, in the latter half of the 20th century, developed a system of "co-determination," including a legislated requirement for the establishment of works councils. These bodies have substantial powers, extending to the effective right of veto on some issues. Participation rights allow for joint decision-making jurisdiction over a wide variety of issues, including hours, occupational health and safety, training, job classification, and individual and mass dismissals. They are not unions (although union members normally play a key role in them). German works councils are closely tied to a co-operative industrial relations model in which the value of employee voice is widely recognized at all levels (e.g., worker representation on the supervisory boards of larger corporations and extensive tripartite collaboration between labour, business and government at the policy level).

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104 Freeman and Rogers, 154.
105 Rafael Gomez, *Employee Voice and Representation in the New World of Work: Issues and Options for Ontario,* (Toronto: Ontario Ministry of Labour, 2015). Prepared for the Ontario Ministry of Labour to support the Changing Workplaces Review.

During our consultations, no one suggested that a model such as this, though not uncommon in European jurisdictions, could be transplanted root-and-branch to Ontario. Examining such models simply illustrates that there are different paths for achieving employee participation in the workplace.

The Law Commission of Ontario (LCO), in its report, *Vulnerable Workers and Precarious Work* (2012), did advocate the introduction of a "works council" model as a means of increasing employee participation and knowledge, initiating discussions between employers and employees on ESA matters and for potentially resolving disputes. If effectively implemented, the LCO suggested that the existence of such councils would reduce worker isolation by creating a system of support and representation in the workplace. The LCO noted, however, that there was a "mixed reaction" to this idea among members of their project advisory group.[106]

In a similar vein, the review of the *Canada Labour Code* Part III (the Arthurs Review, 2006)[107] recommended that the federal law be amended to facilitate consultation between employers and workers concerning any statutorily-permitted variation from working time standards. Under this proposal, where no union held bargaining rights, workers would be represented by a new body, the Workplace Consultative Committee (WCC). Among other things, the WCC would hear and consider all proposals put forward by the employer (e.g., regarding variations to working time standards) and be entitled to request and receive relevant information concerning the need for and consequences of the employer's proposals. It would also be able to offer its own suggestions concerning the matters under discussion. Part III of the Canada Labour Code was not reformed following the recommendations in this report.[108]

We note that the legal and historical situation in Canada and the United States is different. In the United States, a series of decisions and interpretations of the NLRA have severely limited the scope of non-union employee representation systems by finding them to be employer-dominated labour organizations which are unlawful

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106 Law Commission of Ontario, *Vulnerable Workers and Precarious Work* (Toronto: Law Commission of Ontario, 2012), 66. Available online: http://www.lco-cdo.org/vulnerable-workers-final-report.pdf.

107 Harry Arthurs, *Fairness at Work: Federal Labour Standards for the 21st Century* (Gatineau: Human Resources and Skills Development Canada, 2006). Available online: http://www.labour.gc.ca/eng/standards_equity/st/pubs_st/fls/pdf/final_report.pdf.

108 Note however, that the "Mandate Letter" to the new Minister of Employment, Workforce Development and Labour directs the Minister "to contribute initiatives to promote good quality jobs and decent work in Canada in response to the federal report: *Fairness at Work: Federal Labour Standards for the 21st Century."* Available online: http://pm.gc.ca/eng/minister-employment-workforce-development-and-labour-mandate-letter.

under the NLRA. By contrast, in Canada, non-union voice is neither banned nor encouraged by legislation. A representative group of non-union employees can negotiate with their employer over terms and conditions of employment, including wages and benefits.

While not widespread, there have been some cases in which very sophisticated employee representation systems have been developed within Canadian firms.[109] In some cases, these systems have ultimately transitioned to conventional union/collective bargaining relationships.[110] It should be noted, however, that Canadian unions are generally wary that employee representation systems in non-union enterprises provide, at best, a very poor substitute, and at worst, an impediment, to the genuine, autonomous expression of worker voice that unionism provides.[111]

The situation in the United States and Canada differs in another important respect. In the United States employees, who are not unionized but who are covered by the NLRA, have the right to engage in "concerted activity" under section 7 of the NLRA. This has been deemed to mean, for example, that any group of workers may make demands on the employer and, if not satisfied with the response, may engage in a legal work stoppage (or other types of activity). There is no similar provision under Canadian law. As a general rule, only unionized employees have the legal right to strike after engaging in good faith bargaining and conciliation. After the decision by the Supreme Court of Canada in *Saskatchewan Federation of Labour v. Saskatchewan,* (2015) S.C.J. No. 4 it is an open question whether concerted activity by non-union employees is protected under the *Charter* and whether it would carry with it a right to strike.

In the United States, because the NLRA protects "concerted activity" by non-union employees, there is somewhat greater scope for the concept of "minority

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109 Daphne Taras and Bruce Kaufman, "Nonunion Employee Representation in North America: Diversity, Controversy and Uncertain Future," *Industrial Relations Journal* 37, no. 5 (2006): 513-542.

110 Daphne Taras and Jason Copping, "The Transition from Formal Nonunion Representation to Unionization: A Contemporary Case," *Industrial and Labor Relations Review* 52, no. 1 (1998): 22-44.

111 The Supreme Court discussed the issue of independence from management in the *Mounted Police* decision, noting (at para 88): "The function of collective bargaining is not served by a process which is dominated by or under the influence of management. This is why a meaningful process of collective bargaining protects the right of employees to form and join associations that are independent of management." The court added (at para 95 and 97) that: "The *Wagner Act* model, however, is not the only model capable of accommodating choice and independence in a way that ensures meaningful collective bargaining. …The search is not for an "ideal" model of collective bargaining, but rather for a model which provides sufficient employee choice and independence to permit the formulation and pursuit of employee interests in the particular workplace context at issue."

unionism." A group of employees, falling short of a majority within the workplace, can engage in different types of actions in an effort to organize workers, provide advocacy and influence management within a context where there is some legal protection for these activities.

The emerging importance of organized non-union voice in the United States was evident at the recent (October 7, 2015) White House Summit on Worker Voice.[112] Background information provided on the White House website notes the growing importance in that country of alternate forms of worker bargaining or activity to improve conditions at their workplace.

> *As technology and other trends have changed the structure of our labor market in recent decades, alternative forms of worker bargaining have arisen to help workers, particularly those not eligible to collectively bargain through a union, express their collective voice. Paralleling the efforts of organized labor, workers themselves have come together to advocate for better wages and working conditions, utilizing resources such as online platforms to amplify their message.*
>
> *Large advocacy campaigns have had success in improving the workplace policies of large companies, sometimes by enlisting consumers as allies...*
>
> *In all, unions and other forms of worker voice continue to play a key role in promoting higher wages, benefits, and workplace safety, ensuring that the benefits of economic growth are broadly shared.*[113]

Canada often lags behind developments in the United States, sometimes for very good reason, as these developments do not necessarily fit within our cultural and political context. Our industrial relations systems are similar, however, unions in the United States are perceived to be even weaker than they are here. Given the fact that these developments have taken place in that country in order to replace union certification and bargaining activity there, it would be surprising if this same kind of employee activity did not become more commonplace in Canada.

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112 "White House Summit on Worker Voice: Celebrating Working Leaders," The White House, https://www.whitehouse.gov/campaign/worker-voice.

113 Jason Furman and Sandra Black, "The Evolution and Impact of Worker Voice over Time," The White House, https://www.whitehouse.gov/blog/2015/10/07/evolution-and-impact-worker-voice-over-time.

Submissions

What we heard through our consultations tends to generally reinforce the conclusions of the researchers noted above. While individuals and groups that met with us typically did not frame their submissions within the terminology of "voice," it is clear that there is a real desire coming from a range of workplace contexts for workers to have greater input and influence with regard to the issues that affect them at work. This emerged strongly from the submissions made by labour and employee advocacy groups, as well as many individuals.

One concrete expression of this desire is the recommendation that Ontario adopt a provision similar to the American NLRA's protection of "concerted activity" section for the purpose of "mutual aid or protection." It was submitted that:

> *There is no similarly broadly stated protection in Ontario for collective expressive activity on the part of unorganized workers. If we as a Province are serious about allowing workers true protected space to exercise their voice, and conduct legitimate protest, then we should adopt a rule similar to section 7 of the NLRA prohibiting any adverse treatment of workers collectively and publicly contesting, and communicating about their working conditions.*[114]

This submission is in aid of ensuring "protected space" for organizing, demonstrations, and campaigns among fast food, retail and warehouse workers in the United States, resulting in wage increases in some cases, as well as bringing attention to shift scheduling and work hour issues.

On the management side, considerable caution was advised with regard to making any major changes to our system, particularly in relation to the LRA. Employer groups generally indicated major concerns that any expansion of our collective bargaining model could upset the current balance and negatively affect Ontario's competitiveness.

In this regard, there would likely be concerns raised about any new legislatively-imposed mechanism for ensuring employee voice. For example, the Human Resources Professional Association noted that:

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114 Unifor, *Building Balance, Fairness, and Opportunity in Ontario's Labour Market,* 103.

> *The majority of HR professionals felt additional representation was not required. They believed that with good management, and a proper approach to employee relations, companies don't need additional structures in place. … Most senior HR professionals interviewed did not believe new forms of representation like worker councils found in Germany would be a good fit for Ontario. …. One professional feared that implementing worker councils "would make (Ontario) far less competitive." Another HR professional who worked with these types of councils in Italy said they were cumbersome to deal with, and very bureaucratic. While another who also had experience working directly with councils said "they were debilitating to the business," and "would be vehemently opposed to this in Ontario."* [115]

Options:

1. Maintain the status quo.
2. Enact a model in which there is some form of minority unionism.
3. Enact a model in which there is some institutional mechanism for the expression of employee interests in the plans and policies of employers.
4. Enact some variant of the models set out in the research report.
5. Enact legislation protecting concerted activity along the lines set out in the United States NLRA.

4.7 Additional LRA Issues

During the consultations, a number of additional features of the LRA were raised as being in need of reform. This section highlights specific issues that merit additional attention. However, stakeholders remain welcome to raise any other specific provisions in the LRA for consideration in our second stage of consultation.

Ability of Arbitrators to Extend Arbitration Time Limits

Before 1995, the LRA had included a provision stating that an arbitrator "may extend the time for any step in the grievance or arbitration procedure under a collective agreement" if the arbitrator believed that there were reasonable grounds

115 Human Resources Professional Association, *A New Deal for Ontario's Changing Workplaces* (Toronto: HRPA, 2015), 20.

for the extension and the opposite party would not be substantially prejudiced. In 1995, the legislation was extensively amended. The provision introduced in 1995 (section 48(16) of the LRA) which is still in place reads: “Except where a collective agreement states that this subsection does not apply, an arbitrator or arbitration board may extend the time for the taking of any step in the grievance procedure under a collective agreement”. As a result of this change, it appears that arbitrators no longer have the authority to extend time limits in the arbitration procedure (e.g., the time limit for referral to arbitration). Some stakeholders assert that the result of this situation is that potentially meritorious grievances can be defeated on technical grounds. This could be addressed through an amendment to the LRA. We invite comments on this point.

Conciliation Boards

Under the LRA, parties must go through the conciliation process before a strike or lock-out would be legal. If a conciliation officer is unable to effect a collective agreement, the Minister has the option of either appointing a conciliation board or issuing a notice in writing, informing each of the parties that he or she does not consider it advisable to appoint a conciliation board. This is known as a “no board” report. In practice, it appears that conciliation boards are never appointed. It is not clear when this mechanism fell generally into disuse. From the perspective of labour relations practitioners, there seems to be little point in having detailed procedures set out in the legislation that are simply not used in practice. The process requirements of the LRA could potentially be simplified by eliminating the reference to conciliation boards. We invite comments on this point.

Excluded Submission

One submission was excluded from our consideration. One union submitted recommendations relating to statutory expedited arbitration and the mandatory strike vote under the LRA. Due to a potential conflict of interest, these recommendations have been referred to the Ministry of Labour to be considered separately from the review process.

05 | Employment Standards

Overview

This section gives a brief overview not only of the present Act, the *Employment Standards Act, 2000* (ESA), but also of its evolution.

The Act sets out minimum rights and responsibilities that apply to employees and employers in most Ontario workplaces in such areas as:

- hours of work and overtime pay;
- minimum wage;
- job-protected leave;
- public holidays;
- vacation;
- termination and severance of employment;
- equal pay for equal work; and
- temporary help agencies.

These core standards are described in section 5.3.[116]

Employers and employees cannot contract out of, or waive, minimum standards under the ESA. Any such agreements are null and void. Employers can, however, offer greater rights or benefits than the ESA's minimum standards. If a provision in an agreement gives an employee a greater right or benefit than a minimum employment standard under the ESA, that provision applies to the employee instead of the employment standard.

116 Changes regarding the process to set minimum wage and the minimum wage rate are outside the scope of this Review.

As set out in section 5.2, a central feature of the Act and regulations is a complex web of more than 85 exemptions, partial exemptions, qualifying conditions, etc., which limit its application.

5.1 Legislative History of the ESA

Ontario's first comprehensive employment standards legislation – the *Employment Standards Act, 1968* – was proclaimed into force in 1969. This law consolidated a number of Acts dealing with different types of employment standards.

Sections below highlight key changes made to employment standards legislation over the past four decades. Note that this is not an exhaustive list of amendments and does not identify all details relating to a particular change (e.g., exemptions from, or qualifying conditions for, a particular standard).

Pre-1969

Related predecessor legislation to the *Employment Standards Act, 1968* included the following Acts:

- the *Ontario Factories Act* of 1884 was Ontario's first statute to regulate hours of work. That Act applied to the manufacturing industry and set maximum hours of work for boys, girls and women at 10 hours per day and 60 hours per week;
- in 1920, the *Minimum Wage Act* authorized a Board to establish a weekly minimum wage in a particular trade, industry or business. Initially the Act applied only to female employees, but was extended to male employees in the 1930s. The Board was also given authority to establish minimum hourly rates for overtime. In the early 1960s, hourly minimum wage rates replaced the weekly rates; and
- in 1944, the *Hours of Work and Vacations with Pay Act* set maximum hours of work at 8 hours per day and 48 per week in certain industrial undertakings, the same general standard that prevails today. A Board was authorized to order longer hours where both the employer and employees agreed. Also:
  - the Act provided for 1 week of vacation with 2% vacation pay after each year of service; in the mid-1960s employees with 3 or more years of service became entitled to 2 weeks' vacation and 4% of their total wages as vacation pay; and

- meal break requirements were introduced into the Act in the mid-1960s.

1968 and 1969

The separate statutes described above were replaced with the *Employment Standards Act, 1968*. In addition to setting out maximum hours of work, vacation with pay and minimum wage entitlements, the 1968 Act:

- set overtime pay at 1.5 times the regular rate for hours of work in excess of 48 hours a week (the employer and employee (with the approval of the Director of Employment Standards) could agree to average hours of work for the purposes of determining the employee's entitlement to overtime pay);
- incorporated provisions that were in the Ontario *Human Rights Code* concerning equal pay for female workers doing the same work as male workers in the same establishment; and
- provided for premium pay for hours worked on one of the four public holidays – Good Friday, Dominion Day (now Canada Day), Labour Day and Christmas Day.

1970 to 1999

Key amendments to the Act in the 1970s:

- instituted written notice of termination and provided for termination pay where notice was not given; created rules around mass terminations;
- incorporated pregnancy leave entitlements that were in the *Women's Equal Employment Opportunity Act*;
- lowered the overtime pay threshold from 48 to 44 hours of work in a week; and
- added 3 more public holidays – New Year's Day, Victoria Day and Thanksgiving Day.

Key amendments to the Act in the 1980s:

- introduced entitlement to severance pay;
- introduced the lie detector provisions;
- altered the length of required notice of termination; and
- added a public holiday – December 26 (Boxing Day).

Key amendments to the Act in the 1990s:

- introduced parental leave (in 1990); and
- created the Employee Wage Protection Program (EWPP) (in 1991; narrowed in 1995; and discontinued in 1997).[117]

The following were introduced after the change in government in 1995:

- a $10,000 cap on an order to pay issued by an Employment Standards Officer (ESO);
- a shorter time limit for recovery of unpaid wages;
- permission for the Director of Employment Standards to appoint private sector collectors;
- a general prohibition against unionized employees filing complaints under the Act (enforcement put under collective agreements); and
- jurisdiction to hear applications for review transferred from the Office of Adjudication to the Ontario Labour Relations Board (OLRB).

2000

The 2000 review of the former *Employment Standards Act* included province-wide consultations by the government. The new Act took effect in 2001.

Key changes included:

- hours of work – the permit system for excess hours was eliminated; an employee's agreement to work excess hours now had to be in writing; approval by the Director of Employment Standards for excess hours was required only after 60 hours in a week, not 48 hours;
- rest periods – daily, weekly/bi-weekly and between shift rest periods were introduced;
- overtime – agreements to average overtime over a period of up to 4 weeks no longer required the approval of the Director of Employment Standards; the Director's approval was still required to average overtime for a period

117 The Employee Wage Protection Program compensated employees, to up $5,000, for wages, vacation pay, termination and severance pay claims in cases of employers' bankruptcy, abandonment or failure to pay. In 1995, the maximum amount that could be recovered was lowered from $5,000 to $2,500, and the ability to recover unpaid termination or severance pay was eliminated. The program was discontinued in 1997.

longer than 4 weeks. Employers and employees could agree in writing that overtime will be taken as paid time off in lieu of overtime pay;

- job-protected leave – personal emergency leave (PEL) was introduced for employers with 50 or more employees; the length of parental leave was extended;
- posting information – required employers to post information about the ESA in the workplace;
- reprisals – introduced a general anti-reprisal provision enforceable by an ESO through orders for reinstatement and/or compensation. Burden placed on the employer to show there was no reprisal; and
- enforcement tools – authorized ESOs to issue Notices of Contravention (NOCs) and compliance orders. Provided for escalating maximum fines for corporations and increased the maximum jail term.

Post-ESA, 2000

Additional changes to the Act that generally focused on a specific issue, rather than a full review of the Act.

Excess hours of work and overtime averaging (2005):

Public consultations on the scheme for excess daily and weekly hours led to the following changes:

- the Director of Employment Standards must approve all agreements between employers and employees to work excess weekly hours (i.e., more than 48 hours in a week rather than just those above 60 hours a week);
- employers are required to give to an employee agreeing to work excess daily or weekly hours an information document, prepared by the Director of Employment Standards, that describes employees' rights under the hours of work and overtime pay provisions; and
- the Director of Employment Standards must approve all agreements between employers and employees to average hours of work for the purposes of determining the employee's entitlement to overtime – rather than just those agreements that average hours beyond a 4-week period.

New job-protected leaves:

- family medical leave was introduced in 2004;
- reservist leave was introduced in 2007; and
- organ donor leave was introduced in 2009.

New public holiday:

- Family Day was added beginning February 2008.

Temporary help agencies:

- extensive amendments relating to temporary help agency (THA) employment were introduced in 2009 (see section 5.3.9 for details).

Changes to the claims process (2010):

- provided that the Director of Employment Standards generally would not assign a claim to an ESO unless the employee takes certain steps identified by the Director (one such step established by the Director is that, generally, the employee must contact his or her employer to try to resolve the issue before she or he files a claim);
- provided that an ESO assigned to investigate a claim can attempt to effect a settlement between the parties; and
- provided that an ESO can give notice requiring an employee or employer to supply evidence or submissions within a specified timeframe, failing which, the ESO can make a decision based on the best available evidence.

2014 and 2015

The most recent changes to the ESA came into force in 2014 and 2015:

- cap and time period for recovering wages – the $10,000 cap on orders to pay wages was eliminated and the time limit for recovery of unpaid wages was extended from six (or twelve months in certain cases) to two years;
- minimum wage – beginning October 1, 2015, annual adjustments to the minimum wage became based on changes in the Consumer Price Index. A review of the minimum wage and the process for adjusting it must commence before October 1, 2020;

- employment standards poster – employers are now required to provide employees with a copy of the most recent version of the employment standards poster;
- temporary help agencies (THAs) – introduced joint and several liability between THAs and their clients for the failure to pay certain unpaid wages and premium pay; and
- new job-protected leaves – family caregiver leave, critically ill child care leave, and crime-related child death or disappearance leaves were enacted.

5.2 Scope and Coverage of the ESA

5.2.1 Definition of Employee

Background

There are two issues that have been raised consistently:

1) the misclassification of employees as independent contractors; and
2) the current definition of employee in the ESA.

Misclassification of Employees

Workers who are employees under the ESA definition are sometimes "misclassified" by their employers – intentionally or unintentionally – as independent contractors not covered by the ESA.

Currently, 12% of the total Ontario workforce of 5.25 million is reported as "own account self-employed" (i.e., self-employed individuals without paid employees).[118] The experience of the Ministry of Labour in enforcement and significant anecdotal evidence suggests that a portion of these "own account self-employed" workers are misclassified as they are actually employees within the meaning of the ESA but are treated by their employers as independent contractors. The US Department of Labor (DOL) has said that "the misclassification of employees as independent contractors presents one of the most serious problems facing affected workers, employers and the entire economy."[119]

118 Leah Vosko, Andrea M. Noack, and Mark P. Thomas, *How Far Does the Employment Standards Act, 2000 Extend and What Are the Gaps in Coverage* (Toronto: Ontario Ministry of Labour, 2015). Prepared for the Ontario Ministry of Labour to support the Changing Workplaces Review.
119 "Misclassification of Employees as Independent Contractors," United States Department of Labor, http://www.dol.gov/whd/workers/misclassification/.

Businesses that misclassify employees as independent contractors avoid the direct financial costs of compliance with the ESA and other legislation. These costs include:

- 4% vacation pay;
- approximately 3.7% of wages for public holiday pay;
- overtime pay;
- termination pay;
- severance pay; and
- premiums for Employment Insurance (EI) and the Canada Pension Plan.

Additionally, employees who are misclassified as independent contractors are denied benefit coverage where such coverage is available to employees. In sum, misclassification has significant adverse impact on those Ontario workers who are labelled independent contractors and not treated as employees.

The Law Commission of Ontario (LCO) recognized the problem of misclassification and has expressed the opinion that part of the solution is greater use of proactive enforcement:

> *In the LCO's view, the most straightforward approach would be to target the actual issue, the practice of misclassifying employees, through improved enforcement procedures, policy development, ESO training and public awareness. This would protect the most vulnerable without negatively impacting those who benefit from self-employment. The advantages of compliance and enforcement practices such as proactive inspections and expanded investigations outlined earlier are equally applicable to the situation of identifying cases of misclassification. The most effective enforcement activities would be those directed at industries known to be at high-risk for practices of misclassification such as trucking, cleaning and catering, as well as identification and proactive monitoring of industries populated by workers known to be disproportionately affected.*[120]

120 Law Commission of Ontario, *Vulnerable Workers and Precarious Work* (Toronto: Law Commission of Ontario, 2012), 94.

Misclassification is said by the US DOL to be a broad and significant problem, presenting:

> *…one of the most serious problems facing affected workers, employers and the entire economy. Misclassified employees often are denied access to critical benefits and protections to which they are entitled, such as the minimum wage, overtime compensation, family and medical leave, unemployment insurance, and safe workplaces. Employee misclassification generates substantial losses to the federal government and state governments in the form of lower tax revenues, as well as to state unemployment insurance and workers' compensation funds. It hurts taxpayers and undermines the economy.*[121]

Underscoring the importance of the misclassification issue, the DOL has allocated significant resources to the issue by prosecuted cases in federal court, and by signing partnership agreements with numerous states to encourage detection and prosecution of misclassification cases. In 2015 the DOL's investigations resulted in more than $74 million in back wages for more than 102,000 workers in industries such as the janitorial, temporary help, food service, day care, hospitality and garment industries.[122] It has also been reported that misclassification cases, which are described by the DOL as cases of workplace fraud, are the subject of numerous profitable class action cases.[123]

Definition of Employee in the ESA

The ESA applies to "employees" – workers who are in an employment relationship with an employer. Independent contractors are not employees.

The ESA currently defines "employee" as including:

- a person, including an officer of a corporation, who performs work for an employer for wages;
- a person who supplies services to an employer for wages;

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121 "Misclassification of Employees as Independent Contractors," United States Department of Labor.
122 Ibid.
123 Ibid. The DOL is working with other state and federal agencies on misclassification issues. The Wage and Hour division notes on its website that "Employee misclassification generates substantial losses to the federal government and state governments in the form of lower tax revenues, as well as to state unemployment insurance and workers' compensation funds." To build partnerships, the Wage and Hour Division has entered into a memorandum of understanding with the Internal Revenue Service and into partnerships with a number of states.

- a person who receives training from a person who is an employer, as set out in subsection (2); or
- a person who is a homeworker; and
- includes a person who was an employee.

Similar definitions have appeared in previous versions of the ESA. The current definition has been in place since 2001. In conjunction with the statutory definition, various common law tests are used when determining whether a worker is an employee. These tests have evolved and become more expansive of workers as employees over the years.

Over time, the Ontario economy has grown more sophisticated, workplaces have fissured and a spectrum of relationships and arrangements has evolved between workers and employers ranging from standard employment relationships at one end of the spectrum to independent contractors at the other (see Chapter 3). The result of these changing relationships is that the old definitions are not well suited to the modern workplace. Not every worker fits neatly into the category of employee or independent contractor. Within this spectrum, there are those whose relationship is more like a traditional employment relationship than that of an independent contractor and who are deprived of the protection of the ESA.

The common law has long recognized that there is a category of worker who is not a traditional employee and is not an independent contractor but who is entitled to some of the common law protections of an employee such as reasonable notice of termination of employment. The Ontario Court of Appeal[124] has concluded that an intermediate category between employee and independent contractor exists, "which consists, at least, of those non-employment work relationships that exhibit a certain minimum economic dependency, which may be demonstrated by complete or near-complete exclusivity. Workers in this category are known as 'dependent contractors' and they are owed reasonable notice upon termination." The Court noted that the recognition of an intermediate category based on economic dependency accords with the statutorily provided category of "dependent contractor" in the *Labour Relations Act, 1995* (LRA).

124 *McKee v. Reid's Heritage Homes Ltd.,* (2009) ONCA 916.

The LRA provides that an "employee" includes a "dependent contractor" defined as:

> *a person who performs work or services for another person for compensation or reward on such terms and conditions that the dependent contractor is in a position of economic dependence upon, and under an obligation to perform duties for, that person more closely resembling the relationship of an employee than that of an independent contractor.*

There is no provision in the ESA equivalent to the dependent contractor provision of the LRA that specifically defines "employee" for purposes of the Act as including a dependent contractor.

A further issue that has been raised by some is that independent contractors should also be included in the Act. A 2002 study for the Law Commission of Canada argued that although there were good reasons to include independent contractors under the ESA, because of the complexity of applying all standards to independent contractors, further study was required.[125] In 2012, the LCO, however, essentially rejected including independent contractors under the ESA.[126]

Under the US *Fair Labor Standards Act* (FLSA), to determine if a worker qualifies as an employee, the law focuses on whether, as a matter of economic reality, the worker is economically dependent upon the alleged employer or is instead in business for her/himself. Detailed interpretations of the tests to be applied in determining economic dependency have been issued by the Administrator.[127]

Submissions

Both issues discussed above were the subject of submissions by unions and employee advocates.

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125 Judy Fudge, Eric Tucker, and Leah Vosko, *The Legal Concept of Employment: Marginalizing Workers* (Toronto: Law Commission of Ontario, 2002), 111.

126 Law Commission of Ontario, *Vulnerable Workers and Precarious Work,* 94. The report states, "It is difficult to understand the justification for regulating the work of those who are legitimately self-employed. Furthermore, we are of the view that implementation of such a policy would have feasibility challenges. For example, should self-employed individuals be required to limit themselves to a certain number of hours per week or be required to pay themselves a certain wage? Such regulation would not only be unenforceable but also undesirable. Furthermore, how would the responsibility for a 2-week vacation be divided among an independent contractor's multiple clients? In our view, the real issue is how to identify and remedy the situation of workers erroneously misclassified as self-employed when an employment relationship actually exists. A secondary issue is whether additional protections should be put in place to protect self-employed workers in dependent working relationships (i.e., low-wage workers with only one client), while allowing for other self-employed persons to benefit from flexibility and choice in self-determination of working conditions."

127 "Administrator's Interpretation No. 2015-1: The Application of the Fair Labor Standards Act's "Suffer or Permit" Standard in the Identification of Employees Who Are Misclassified as Independent Contractors," United States Department of Labor, http://www.dol.gov/whd/workers/misclassification/ai-2015_1.htm.

Employee advocates asserted that too many employees are misclassified by employers as independent contractors. Such misclassification results in employees being required to work in substandard working conditions and in their being denied their statutory rights and protections. Their concern about misclassification was not limited to one business or sector, but was expressed as likely more prevalent in certain segments of the economy including: the "gig" or "sharing" economy, cleaning, trucking, food delivery and information technology – to name but a few.

Employee advocates suggest that misclassification occurs because of ignorance of the law by both employers and employees, because of the perceived benefit to employees of the ability to deduct business expenses from income (which may increase the willingness of employees to be treated as independent contractors) and because of intentional avoidance by employers of their legal obligations and the savings that result from non-compliance.

With respect to the second issue, unions and employee advocates submitted that the ESA should specifically be made applicable to dependent contractors. A few employee advocates suggested that the ESA coverage should be extended to independent contractors, but in the main, submissions focussed on the merits of amending the ESA to provide that dependent contractors have the protection of the Act. These advocates suggested that the current ESA operates as an incentive to fissuring and encourages business to structure their workplaces so that work is performed without employees, thus avoiding the obligations of an employer under the ESA and effectively negating the workplace rights of vulnerable workers.

Finally, employee advocates asserted that in cases where there is a dispute as to whether a person is an employee, the burden of proof to establish on a balance of probabilities that the person is not an employee should be on the employer.

Harry Arthurs, in *Fairness at Work* recommended an "autonomous worker" provision that was conceptually similar to a dependent contractor provision in the *Canada Labour Code* (CLC).[128] While the LCO rejected the inclusion of independent contractors under the ESA,[129] it did recognize that legislative

128 The recommendation essentially dealt with truck –drivers carrying on as owner-operators, and he recommended it in part for their protection and in part because omitting them would undermine others who were employees. However, many did not want to be covered by all of the statutory protections and he recommended sectoral exemption or special applications as required.

129 Law Commission of Ontario, *Vulnerable Workers and Precarious Work*.

provision for extending protection to dependent contractors should be explored, recommending that the Ontario government consider extending some ESA protections to self-employed persons in dependent working relationships with one client, focussing on low wage earners, and/or identifying other options for responding to their need for employment standards protection.[130]

The 1994 Thompson Commission Report on the British Columbia *Employment Standards Act* recommended that dependent contractors as the term is used in the *Labour Relations Code* be included in the definition of ''employee'' in the ESA. The government did not adopt that recommendation.

Some employers commented on both of the two main issues canvassed above. Employers often have the need to use independent contractors whose unique expertise, cost, efficiency and availability cannot be duplicated by their own employees and would oppose challenges that these are dependent contractors. Employers would also point out that there may be sections of the ESA such as hours of work and overtime pay that are difficult to apply to particular workers, even if they are dependent, where the workers themselves tend to set their own hours of work.

Options:

Misclassification of Employees

1. Maintain the status quo.
2. Increase education of workers and employers with respect to rights and obligations.

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130 Law Commission of Ontario, *Vulnerable Workers and Precarious Work*, 95. The report states, "Beyond considerations of consistency, extending protection to workers in relationships of dependency (i.e., low-wage contractors with one client) presents unique challenges. For example, a state of dependency may be fluid in that some such workers may be dependent upon one client at one point in time and have several clients at another time. Consideration of a definition of "employee" that extends itself to include such workers would need to take into account the needs of independent and/or self-employed persons who benefit from flexibility and control over their working arrangements. It would also have to respond to concerns expressed by employee representatives that have, in the past, suggested that such measures could cause employers "who already mislabel workers to do so with respect to newly-protected dependent contractors, i.e., labeling them as 'independent' contractors." In other words, it could make things worse instead of better. These would have to be considered in carefully drafting any new standard and it should also leave room for the recognition of new and emerging forms of employment with a range of individual situations. Recognizing that such changes cannot anticipate all impacts, any such policy and legislation should be evaluated after a reasonable period of time to determine effectiveness and whether adjustments are required."

3. Focus proactive enforcement activities on the identification and rectification of cases of misclassification.
4. Provide in the ESA that in any case where there is a dispute about whether a person is an employee, the employer has the burden of proving that the person is not an employee covered by the ESA and/or has an obligation, similar to section 1(5) of the LRA in relation to related employers, to adduce all relevant evidence with regard to the matter.

Definition of Employee in the ESA

5. Maintain the status quo.
6. Include a dependent contractor provision in the ESA, and consider making clear that regulations could be passed, if necessary, to exempt particular dependent contractors from a regulation or to create a different standard that would apply to some dependent contractors.

5.2.2 Who is the Employer and Scope of Liability

Background

Determining the appropriate employer(s), as well as other parties who ought to be liable for providing minimum terms and conditions of employment for employees in a business, is fundamental to maintaining a viable system for ensuring compliance with employment standards. The issue is which entities ought to share liability and responsibility for compliance with employment standards.

Currently, entities and persons who are liable in addition to the direct employer are:

- directors of corporate employers, who can be held personally liable for certain wages (not including termination or severance pay) that the corporate employer failed to pay. These liabilities generally mirror those in the Ontario *Business Corporations Act* (OBCA) but, unlike the OBCA's directors' liability provisions, may be enforced through administrative action under the ESA rather than through protracted and expensive civil proceedings;
- clients of THAs can be held liable for certain types of wages that the agency fails to pay to its employees (THAs are dealt with in section 5.3.9.); and

- "related employers": ESA section 4 allows separate, but associated or related, legal entities to be treated as one employer if certain statutory criteria are met. One of the criteria for treating separate legal entities as one employer is that the intent or effect of employers and persons carrying on related companies or activities is to defeat the intent and purpose of the Act.

The issue is whether any of these categories require change and whether other categories should be added.

When establishing liability for compliance with employment standards legislation, statutory definitions and enforcement mechanisms have traditionally focussed on the entity that directly employs the employee. However, in what has been called the "fissuring" of employment relationships, many companies have shifted away from direct employment through a wide variety of organizational methods such as subcontracting, outsourcing, franchising, and the use of THA workers (see Chapter 3 for a description of "fissuring.") Some of these activities are for organizational business reasons and some are for the express purpose of insulating and shielding the higher level business – which benefits from the labour – from responsibility and liability for employment standards. Some of these activities are undertaken for a complex mix of reasons.

Non-compliance in many industries may be driven by the practices of organizations at higher levels of an industry structure. The higher level company may, for example, control the economic model that dictates whether the entity with responsibility for running the business or providing the goods or services can even afford to conform to minimum standards. An example is a franchisor whose economic model makes it problematic for the franchisee to comply with minimum standards. Also a business needing a particular service may create fierce competition among subordinate businesses with whom it contracts by constantly retendering. Or, it may set pricing policies that make ESA compliance by the subordinate businesses difficult. Sometimes there is a contracting chain with multiple levels of subcontractors, with the actual work being performed at the lowest level.

Assigning liability to the higher level entities could well cause them to change their strategies with the effect of improving the compliance rates by subordinate employers further down the supply chain or change the economic model so that compliance with minimum terms and conditions of employment is attainable by the business performing the service or providing the goods.

Also, businesses may be structured into more than one corporate vehicle with one corporation primarily having assets – while the other corporate vehicle primarily has liabilities – thereby attempting to insulate one from the other. Measures to pierce the corporate veil are common to make corporate directors liable for the employer's failure to pay or to make related companies liable for flouting minimum standards of all related companies.

Other Jurisdictions

Canada

Across Canada, "related employer" provisions are common. Of the eight Canadian jurisdictions whose employment standards legislation contains a related employer provision, only Ontario requires a finding that the intent or effect of the corporate structure be to defeat the purpose of the Act.

The employment standards legislation in 3 provinces – Quebec, British Columbia and Saskatchewan – contain provisions that extend liability for unpaid wages beyond the direct and related employers in certain circumstances where employers contract out work.

Quebec's *An Act Respecting Labour Standards* provides that an employer who enters into a contract with a subcontractor, directly or through an intermediary, is responsible jointly and severally with that subcontractor and that intermediary for their pecuniary obligations under the Act. This provision has been in place for decades but is seldom used. It can only be enforced through the courts, and only at the instance of the Labour Standards Commission.

Saskatchewan's *Employment Act* (section 2-69) has a similar provision that states that if an employer or contractor contracts with any other person for the performance of all or part of the employer's or contractor's work, the employer or contractor must provide by the contract that the employees of that other person must be paid the wages they are entitled to receive. If the person fails to pay, the employer or contractor is liable. Like Quebec, this provision has been in place for many years and is used as a last resort.

British Columbia's *Employment Standards Act* (section 30) holds farm producers who use farm labour contractors liable for the wages of the contractor's employees if the contractor was not licensed or if the producer did not pay the contractor for the work performed.

United States (US)

California has what is referred to as a "brother's keeper" law,[131] aimed at deterring firms from entering into arrangements that are likely to lead to wage violations. It holds contracting firms liable for subcontractor's wage and hours violations in the construction, farm labour, garment, janitorial and security guard industry if the contracting firm knew, or should have known, that the contract does not contain sufficient funds for the subcontractor to comply with employment laws.

In January 2016, the US DOL issued a new interpretation of what it described as the increasing frequency of joint employment in the economy.[132] The concept of joint liability in the US is based upon an expansive definition of employer which is designed to define the employment relationship as broadly as possible. When joint employment exists, all of the joint employers are jointly and severally liable for compliance with the Act.[133] The interpretation described two forms of joint employment:

1) horizontal joint employment – exists where the employee has employment relationships with two or more employers and the employers are sufficiently associated or related with respect to the employee such that they jointly employ the employee. The analysis focuses on the relationship of the employers to each other. A horizontal joint employment relationship will be found, for example, where there are arrangements between employers to share an employee's services, or where one employer acts directly or indirectly in the interests of another employer regarding an employee, or where employers share direct or indirect control of an employee by virtue of the fact that one employer is controlled by (or under common ownership with) the other employer, where there is an intermingling of the joint employers' operations, and many others; and

2) vertical joint employment – exists where the employee has an employment relationship with one employer (typically a staffing agency, subcontractor, labor provider, or other intermediary employer) and the economic realities show that he or she is economically dependent on, and thus employed by, another entity involved in the work. This other employer, who typically contracts with the intermediary employer to receive the benefit of the employee's labor, would be the potential joint employer. Where there is

131 *California Labor Code*, Section 2810.
132 "Administrator's Interpretation No. 2016-1: Joint Employment under the Fair Labor Standards Act and Migrant and Seasonal Agricultural Workers Protection Act," United States Department of Labor, http://www.dol.gov/whd/flsa/Joint_Employment_AI.htm.
133 Ibid.

potential vertical joint employment, the analysis focuses on the economic realities of the working relationship between the employee and the potential joint employer.

In examining the "economic realities", the Department looks at:

- who is directing, controlling or supervising the work;
- who is controlling employment conditions;
- the permanency and duration of the relationship;
- the repetitive and rote nature of the work;
- whether the work is integral to the business;
- whether the work is performed on premises owned or controlled by the potential joint employer; and
- who is performing the administrative functions commonly performed by employers.

The DOL interpretation has been strongly criticized by some US employers.

Submissions

It is argued that it is fair that lead companies or employers who contract out, or in some cases individual directors of companies, should have some liability and responsibility for employment standards of the employees in the business from which they benefit. It is said that entities that benefit or derive profits from the particular labour should share responsibility to ensure that minimum statutory standards are being met in the production of goods and services used in that business. It is argued it is fair and appropriate for lead companies who direct and dictate the terms of the supply of goods and services to bear responsibility for compliance with employment standards in the production and provision of those goods and services.

In the case of franchisors, it is said that their overall control of the brand, the business model, and all the details of how the business must operate, make it appropriate for it to have responsibility for compliance with employment standards legislation, together with the franchisee. This argument would apply regardless of the amount of control over the terms and conditions of employment of the franchisee's employees is exercised by the franchisor. Alternatively, franchisors could be held liable only when they exercised a sufficient degree of control that they should be considered to be a joint employer.

Accordingly, employee advocates and some academics have suggested that additional provisions are required to create obligations on businesses higher up the chain of contracting, or the supply chain, to address non-compliance by employers lower down the chain or by subcontractors. Specifically, some or all of the following have been recommended:

- amending the ESA to make companies jointly and severally liable for the ESA obligations of their subcontractors and other intermediaries, similar to the laws in Quebec and Saskatchewan;
- adopting a statutory joint employer test similar to the policy adopted by the DOL in the US;
- amending the ESA to make franchisors and franchisees jointly and severally liable for minimum standards;
- enacting a provision similar to the provision under the American FLSA to allow the placement of an embargo or lien on goods manufactured in violation of the Act (it was argued that if penalties are felt by all parties along the chain of production, the parties in that chain, and particularly the lead company at the top of it, would ensure that minimum standards were observed all along the chain);
- adopting a "brother's keeper" law similar to the one in California to require companies in low-wage sectors to know that sufficient funds exist in the contract with subcontractors to permit compliance with the ESA; and
- establishing a provincial fair wage policy for government procurement of goods and contracts for work or service that would require adherence to minimum employment standards and industry norms.

In addition, employee and labour groups suggested that the existing "related employer" provisions are too narrowly confined. In particular, submissions focus on the narrow interpretation that has been given to the second criterion of section 4 – the "intent or effect" requirement – establishing a test that is extremely difficult to meet and rendering section 4 ineffective for assigning liability to other entities that, in fact – by satisfying the first criterion – are associated with, or related to, the direct employer. These groups cited examples of employers with unpaid orders who continue to operate other related businesses that are never pursued to satisfy those debts. One union submitted that this narrow interpretation has cost its members millions of dollars in lost wages, including termination and severance pay, and called for the repeal of the "intent or effect" criterion.

Employers argue that wide-ranging legislative provisions like those in Quebec and Saskatchewan – which make all businesses liable for the employment standards violations of their contractors – are too great an interference with the market where contracting is a legitimate business tool for organizing the production of goods and services. A strategy of lowering costs by creating competition for the provision of goods and services by contracting out work may be a necessary strategy to compete for business and maintaining viability. In any event it is argued that there is a difference between contracts where the business really closely controls the conditions under which the work is performed and deliberately fosters competition for the work and other situations where the entire point of hiring a contractor is to use the expertise of that entity to perform the work that is required. It is a perfectly normal business strategy to have the most efficient entity do the work. It is said to be impossible to distinguish between the two situations and that it is unfair to make companies responsible for the ESA violations of some of their contractors.

Representatives from the franchising industry strongly argue that making franchisors liable for franchisees' ESA obligations is unnecessary, would be costly and burdensome, and could threaten the entire franchise model that contributes to employment and the Ontario economy. Their view is that the Act, through the related employer provision, already captures the atypical situation where a franchisor exerts a significant measure of control over, or direct involvement in, decisions concerning a franchisee's employees. Franchisors also argue that the franchise model most commonly used makes employment the responsibility of franchisees who determine terms and conditions of employment of their employees.

Options:

1. Maintain the status quo.
2. Hold employers and/or contractors responsible for compliance with employment standards legislation of their contractors or subcontractors, requiring them to insert contractual clauses requiring compliance. This could apply in all industries or in certain industries only, such as industries where vulnerable employees and precarious work are commonplace.
3. Create a joint employer test akin to the policy developed by the DOL in the US as outlined above.
4. Make franchisors liable for the employment standards violations of their franchisees:

a) in all circumstances;

b) where the franchisor takes an active role;

c) in certain industries; or

d) in no circumstances.

5. Repeal the "intent or effect" requirement in section 4 (the "related employer" provision).

6. Enact a remedy similar in principle to the oppression remedy set out in the OBCA, but make it applicable to employment standards violations. It would apply when companies are insolvent or when assets are unavailable from one company to satisfy penalties and orders made under the Act, and the principal or related persons set up a second company or business, or have transferred assets to a third or related person. (Section 248(2) of the OBCA defines oppression as an act or omission which effects or threatens to effect a result which is oppressive, unfairly prejudicial or unfairly disregards the interests of, among others, a creditor or security holder of a corporation. Bad faith could or could not be an element of the activity complained of. Under the OBCA a court has broad remedial authority to take action it seems fit when it finds an action is oppressive, or unfairly prejudicial or unfairly disregards the interests of a creditor. This remedy could be sought in court or before the OLRB).

7. Introduce a provision that would allow the Ministry of Labour to place a lien on goods that were produced in contravention of the ESA.

8. Encourage best practices for ensuring compliance by subordinate employers through government leading by example.

5.2.3 Exemptions, Special Rules and General Process

Background

The ESA is generally thought of as legislation designed to provide basic minimum terms and conditions of employment applicable to all employers and employees, providing basic floors and a fair competitive playing field where the rules are the same for everyone. Prima facie, exemptions are inconsistent with the principle of universality – which is that minimum terms and conditions set out in the Act should be applicable to all employees. We agree that the ESA should be applied to as many employees as possible and that departures from, or modifications to, the norm should be limited and justifiable.

As noted elsewhere in this Interim Report and in our mandate, work has changed for many people in recent years. Unwarranted or out-dated exemptions may have unintended adverse impact on employees in today's workplaces. The concern is that many employees may be denied the protections under the ESA that are essential for them to be treated with minimum fairness and decency.

Business also has undergone fundamental change. Not only have many businesses faced significant technological change but also many have streamlined operations and made significant changes in the way they do business in order to meet the challenges of competitive markets. Many of these changes affect the work and the working conditions of employees. Unwarranted or out-dated exemptions could create unfairness if some employers gain competitive advantage over others because of such exemptions.

We know from our own experience that one size of regulation cannot fit every industry and every group of employees. Ontario's evolving economy is very diverse and some degree of flexibility is important in furthering the particular needs and circumstances of particular industries, or occupational groups, and the employees whose jobs depend on the success of those industries. We cannot simply discount the potential negative impact of the wholesale elimination of exemptions without further careful review. While exemptions should be subject to scrutiny, we accept that a standard in the Act could be modified or amended in particular sectors without sacrificing fairness or the legitimate interests of employees where there are compelling reasons for differential treatment.

The ESA contains more than 85 complex exemptions and special rules. Also, provisions requiring PEL and severance pay apply only to larger employers (see sections 5.3.4 and 5.3.8 respectively). Exemptions operate to permit some employers not to pay minimum wage and from other provisions including not paying vacation and statutory holiday pay, and/or overtime pay. As a result, a significant number of employees are denied the protection of important provisions of the Act – typically limitations on hours of work and the payment of overtime. Many of those exemptions are in industries where there are vulnerable workers in precarious jobs. For example, it is estimated that only 29% of low income employees are fully covered by overtime provisions as opposed to approximately 70% of middle and higher income employees and so on in respect of many of the exemptions.[134]

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134 Vosko, Noack, and Thomas, *How Far Does the Employment Standards Act, 2000 Extend and What Are the Gaps in Coverage.*

Some exemptions are decades old and have been present in some form since 1944. Many were introduced ad hoc over the years, largely as a result of lobbying by stakeholders in opaque processes and with no or little significant employee involvement.

The Ministry of Labour now has an internal policy framework for considering new exemptions and special rules. Since 2005 the Ministry has approved six of what it refers to as "Special Industry Rules" or (SIRs). SIRs were granted using principles and criteria developed by the Ministry for any new requests for exemptions. SIRs allow for modified standard for certain occupations in certain industries and have been granted in situations where an ESA standard arguably could not be met because of unique production issues, but where a modified version of the standard could reasonably apply. In developing these regulations, the Ministry consulted extensively with affected stakeholders. The ministry facilitated discussions between the affected parties including representatives of employees – generally the relevant unions – and developed modified rules that worked for the affected parties and met a set of consistent policy principles. These Ministry principles are set out below.

Most of the existing exemptions predate the development of that policy framework and have not been reviewed to see if they comply with it. Accordingly, these exemptions may not have a solid policy rationale or may be out-dated. The reasons for many existing exemptions are unclear. Some industries and occupations have modified standards. In other industries and occupations, there are broad exemptions where terms and conditions of employment such as hours of work are essentially unregulated. Overall, the existing exemptions do not fit into a consistent policy framework and constitute a disjointed patchwork of rules.

Accordingly, we are considering not only a process to review current exemptions but also a process that may be applied in the future for developing rules for unique situations and circumstances that may warrant special treatment. In short, a sectoral process may be appropriate in a variety of situations.

Ministry of Labour Principles for Exemptions and Special Rules

Below are the principles and criteria used by the Ministry for any new requests for exemptions:

Core Condition A:

The nature of work in an industry is such that it is impractical for a minimum standard to apply. Applying the standard would preclude a particular type of work from being done at all or would significantly alter its output; the work could not continue to exist in anything close to its present form. “Nature” of the work relates to the characteristics of the work itself. It does not relate to the quantity of work produced by a given number of employees.

Core Condition B:

Employers in an industry do not control working conditions that are relevant to the standard.

If one or both of the Core Conditions is met, a further Supplementary Condition must be met:

- supplementary condition – the work provides a social, labour market or economic contribution that argues for its continued existence in its present form, even in the absence of one or more minimum standards applying to it.

In addition to the above conditions, two other considerations are relevant to this issue:

- the employee group to whom the exemption or special rule would apply be readily identifiable, to prevent confusion and misapplication of the exemption/special rule; and
- both employees and employers in the industry agree that a special rule or exemption is desirable.

Submissions

During consultations, we heard from various organizations and individuals raising concerns with the number of exemptions in the Act or with specific exemptions for an occupation. There has been sustained criticism from many sources about the number and scope of the exemptions and that they are not only contrary to the implicit goal of universality but also that they are:

- out-dated;
- inconsistent;

- complex; and
- often lacking in rationale

and that they undermine the purpose of the Act to provide minimum terms and conditions of employment, denying basic employment standards to many workers.

It is argued that the cost of exemptions is borne not only by employees not covered by the Act who suffer lost income and insufficient time off, but also that there is a social cost to health and safety resulting from excessive overtime and long hours of work. It is argued that these costs are disproportionately borne by vulnerable and precarious workers.

Some organizations asked for existing exemptions to be maintained or broadened, explaining that they continue to be needed to maintain viability and competitiveness. These organizations argued that there are circumstances where a departure from a general rule is warranted and cautioned against a "one-size-fits-all" policy. For example, uncertainties in some industries may be caused by seasonal factors or unpredictable climate conditions necessitating more flexibility in hours of work.

We have not been asked directly by affected stakeholders to review the SIRs formulated after 2005 and, indeed, we have been asked by an affected employee group not to interfere with them.

Options:

Partial or full exemptions for a large part of the working population have been embedded in Ontario legislation and regulation for decades. Some may have been justified but are now out-dated and unwarranted. Some may never have been justified or subject to the careful scrutiny that any departure from employment standards should receive.

Although we have been reluctant at this stage of our Review to draw any firm conclusions on any of the issues because further consultations are still ahead of us, in order to make the remainder of the consultation process on this issue more helpful, we have decided that it would not be in the public interest to recommend a wholesale elimination of all the exemptions without further review. While some immediate changes may be warranted, the remainder of the current exemptions should not be eliminated, modified or amended without further careful assessment and consultation with those affected. Limitations on time and available resources,

however, mean that the implementation of a consultative process for a detailed review of exemptions is not practical as part of this Review. Thus we are likely to recommend that Ontario establish a new process of review to assess the merits of many of the exemptions to determine whether the exemptions are warranted or whether they should be modified or eliminated. The implementation of such a review process may lead to many further changes but only after a spotlight is put on each of the issues. The review process we will likely recommend would use fixed criteria for evaluation of exemptions and one that will invite the participation of workers and worker representatives as well as employers and other interested stakeholders. In any review of exemptions, a consistent policy framework informing such review is essential. So, too, is the recognition of the importance of equal protection and responsibility for employees and employers unless other treatment is clearly warranted.

Exemptions and special rules have the potential to recognize that the unique characteristics of some occupations and industries require a different approach from the norm. However, it must also be recognized that an exemption normally reduces employment rights. In our view, therefore, the burden of persuasion to maintain, extend or modify an exemption is high and ought to lie with those seeking to maintain the exemption. The proponents of an exemption should also try to balance the needs and interests of workers with the needs of the particular industry. Moreover, any reduction or modification of employee rights must involve consultation with those affected. To be clear, we view it as essential that worker representatives participate fully in this process so that employee interests can be heard and taken into account.

We outline below an approach to current exemptions by creating 3 categories:

1) exemptions where we may recommend elimination or alteration without further review beyond that which we will undertake in this review process;

2) exemptions that should continue without modification because they were approved pursuant to a policy framework for approving exemptions and special rules with appropriate consultation with affected stakeholders including employee representatives (these are the SIRs that were put into regulations since 2005); and

3) exemptions that should be subject to further review in a new process (i.e., those exemptions not in categories 1 and 2; this category covers most of the current exemptions).

Options:

Approach for Existing Exemptions

As noted above, existing exemptions are divided into 3 categories.

1) Existing exemptions that might be recommended for elimination or variation without a further review (see below for a detailed discussion on these exemptions and potential options for each).

   For category 1 exemptions, we ask for submissions on whether there are reasons to maintain, modify or eliminate such exclusions. Our preliminary view is that these exemptions need not be subject to a subsequent review. If there are reasons why these exemptions should be referred to a subsequent review process and not be dealt with as part of the Changing Workplace Review, we invite stakeholders to make submissions on this issue as well. These exemptions are:

   - information technology professionals;
   - pharmacists;
   - managers and supervisors;
   - residential care workers;
   - residential building superintendents, janitors and caretakers;
   - special minimum wage rates for:
     - students under 18; and
     - liquor servers; and
   - student exemption from the "three-hour rule" (see description below).

2) Exemptions that we do not currently think warrant review and which should be maintained.

   Category 2 exemptions are recent modifications (i.e., SIRs) created since 2005 in accordance with a policy framework and after a thorough consultative process involving stakeholder representation. Our preliminary view is that a current or subsequent review to consider the modification or elimination of these exemptions is not warranted. We ask for submissions from stakeholders on whether there are reasons to review these recent special rules at this time.

These exemptions are:

- public transit (2005);
- mining and mineral exploration (2005);
- live performances (2005);
- film and television industry (2005);
- automobile manufacturing (2006); and
- ambulance services (2006).

3) Exemptions that should be reviewed in a new process.

Category 3 contains the remaining exemptions (see the end of section 5.2.3 for list of remaining exemptions) that we think should be reviewed using a transparent and consistent review process to determine whether an exemption is justifiable. For these exemptions, we seek submissions as to the proper process to be implemented for the review and assessment of the current exemptions as well as for the review of proposed new exemptions that may be proposed in the future. We have set out some options for such a review process below.

Approaches for a New Process

Option 1: Use the policy framework developed by the Ministry for the SIRs process described above and use the criteria developed by the Ministry in the SIRs process to evaluate the exemptions.

Option 2: Create a new statutory process to review exemptions with a view to making recommendations to the Minister for maintaining, amending or eliminating exemptions/special rules as follows:

- a review process would be initiated by the Ministry either on its own initiative or where the Ministry agrees with a request for a new exemption/ special rule or a revision of an existing one;
- a sectoral, sub-sectoral or industry committee facilitated and chaired by a neutral person outside the Ministry would review the existing or any proposed new rules and make recommendations to the Minister;
- the Ministry's current policy framework could be maintained or revised, and it would govern the parameters of the work of all committees; or, the statute would contain the criteria under which exemptions would be evaluated;

- the onus of showing that existing exemptions/special rules or new proposed ones meet the criteria would be on the proponents of the exemption;
- there would be representation from employers and employees –
  - there could be participation by unions in the sector, if any, and/or persons designated to represent employee interests; and
  - representatives of affected or related industries and interests could be invited to participate; for example, the grocery industry and consumer interests could be asked to participate in an agricultural committee;
- the committee would have the flexibility to conduct surveys or votes among employees and or employers, if appropriate;
- the Chair would seek and the Ministry fund, if appropriate, any needed independent expert advice as in the case of complex hours of work issues;
- the Ministry would provide the parties with all available estimates of the costs of maintaining and eliminating the exemption;
- the Chair of the Committee would try to fashion consensus recommendations, but would have the right to make recommendations to the Minister; and
- the government would consider the recommendations in making its final decision on whether to maintain, amend or eliminate the exemption.

Option 3: Create a new statutory process where the OLRB would have the authority to extend terms and conditions in a collective agreement to a sector.

Essentially this option is one where the Cabinet's power to enact terms and conditions of employment for an industry would be given to the OLRB:

- provide authority to the OLRB to define an industry and prescribe for that industry one or more terms or conditions of employment that would apply to employers and employees in the industry (union and non-union) through "sectoral orders";
- sectoral orders by the OLRB would be implemented through the formation of "Sectoral Standards Agreements", setting basic minimum conditions applied to all workplaces within an identified regional, occupation, or industrial labour market; and

- an application for a "Sectoral Standards Agreement" could be made by a trade union or group of trade unions, a Council of unions, an employer or group of employers.[135]

Existing Exemptions – Category 1

Existing exemptions that we might recommend for elimination or variation without a further review beyond the Changing Workplaces Review:

- information technology professionals (Issue 1);
- pharmacists (Issue 2);
- managers and supervisors (Issue 3);
- residential care workers (Issue 4);
- residential building superintendents, janitors and caretakers (Issue 5);
- special minimum wage rates for:
  - students under 18 (Issue 6a); and
  - liquor servers (Issue 6b); and
- student exemption from the "three-hour rule" (Issue 7).

Issue 1 – Information Technology Professionals

Background

"Information technology professional" is defined under ESA Regulation 285/01 as "an employee who is primarily engaged in the investigation, analysis, design, development, implementation, operation or management of information systems based on computer and related technologies through the objective application of specialized knowledge and professional judgment."

Information technology professionals are exempt from all the hours of work rules (daily and weekly limits on hours of work, mandatory rest periods and eating periods) and overtime pay provisions. These exemptions have been in place since 2001 and were created in response to requests by industry stakeholders. It appears that the request for an exemption may have been made in conjunction

135 Unifor, *Building Balance, Fairness, and Opportunity in Ontario's Labour Market: Submission by Unifor to the Ontario Changing Workplaces Consultation* (Toronto: Unifor, 2015), 119.

with fears over the possible instability of computer systems in conjunction with the "Y2K" issue. It is not clear to us that people who were employed in the industry were consulted.

Industry stakeholders argued that timely support from information technology professionals is often needed to preserve the integrity of information technology systems and to prevent problems or deficiencies in their operation from becoming worse.

The definition of information technology professionals was meant to be narrow and have limited application. The exemptions were intended to apply only to those employees who work with "information systems" and "use specialized knowledge and professional judgment in their work." The exemptions are not intended to apply to employees who perform routine tasks that do not require specialized knowledge and professional judgment.

Alberta, British Columbia and Nova Scotia allow for exemptions for information technology related work. In Alberta, "information systems professionals" are exempt from maximum hours of work, rest periods, eating periods and overtime pay. In British Columbia, "high technology professionals" are exempt from rest periods, eating periods, overtime pay and public holiday pay. In Nova Scotia, information technology professionals are exempt from overtime pay.

Submissions

We heard from some individuals about this issue. The Ministry has also told us that concerns are often expressed to it.

The argument is made that it is not clear why this one industry is exempt from all of the ESA provisions dealing with hours of work and overtime. There are many other industries where urgent action or response is critical, and longer hours are required to fix equipment, ensure timely production, meet deadlines, etc. In most of these other industries the ordinary rules of the Act apply, so many critical areas, such as the provision and repair of power facilities, the operation and repair of power lines, emergency health care, stock exchanges, and many others are covered by the ESA. It is unclear what special factors justify this particular exclusion.

Assuming there is a justification for the exemption, information technology employees have repeatedly stated that the exemptions are being misused, either inadvertently or intentionally. Employees who appear to do routine computer support, maintenance and upgrading functions, or have jobs such as designing software for computer games, are complaining that they have been told they have no hours of work or overtime pay rights. It does not appear to us that the exemptions cover these types of work.

While a modified exemption may be justifiable, it is unclear to us why there is a wholesale exemption of all the hours of work rules including daily and weekly limits on hours of work, mandatory rest periods and eating periods, and overtime pay and why at least some limits are not appropriate.

It is argued that the definition of information technology professional is open to significant interpretation and is unclear, and thereby creates the risk of being applied in circumstances that were not intended.

Options:

1. Maintain the status quo.
2. Remove the exemption from overtime pay, or create a different rule.
3. Remove the exemption from hours of work and overtime pay, or create some different rule.
4. Amend the definition to try to make its scope clearer.

Issue 2 – Pharmacists

Background

The exemptions for "pharmacists" are in ESA Regulation 285/01 and apply to "persons employed as duly registered practitioners of pharmacy and students in training to become practitioners."

Pharmacists are exempt from all the hours of work rules (daily and weekly limits on hours of work, mandatory rest periods and eating periods), overtime pay, PEL, public holidays, vacation with pay and minimum wage. It is assumed that, as professionals, pharmacists have an obligation to respond to patients' needs,

and interruptions in their work for rest may not be possible at times and that exemptions were granted. Also, at the time this exemption was granted many more pharmacists were likely self-employed drugstore owners and it may not have appeared to have been a significant issue.

Pharmacists have the same exemptions as many other professions under the Act, such as physicians and surgeons, chiropractors, dentists and physiotherapists. Many of these exemptions for professions are longstanding and were granted as a result of requests from professional governing bodies. Each of the exempted professions is governed by a different professional body. Pharmacists are governed by the Ontario College of Pharmacists.

Manitoba and New Brunswick are the only other jurisdictions that allow for exemptions for pharmacists. In Manitoba, pharmacists are exempt from rest periods, eating periods, overtime pay, public holiday pay and minimum wage. In New Brunswick, pharmacists are exempt from public holiday pay.

Jurisdiction	Exemptions for Pharmacists
Ontario	All hours of work rules (daily and weekly limits on hours of work, mandatory rest periods and eating periods), overtime pay, public holidays, vacation with pay and minimum wage
Nova Scotia	—
Quebec	—
Newfoundland and Labrador	—
Prince Edward Island	—
New Brunswick	Public holiday pay
Saskatchewan	—
Alberta	—
British Columbia	—
Manitoba	Rest periods, eating periods, overtime pay, public holiday pay and minimum wage

Submissions

During consultations we heard from several individual pharmacists regarding requirements to work excessive hours with no breaks and concerns about the safety and quality of pharmaceutical care because of these poor working conditions. The Ministry has also told us that they regularly receive correspondence on this issue.

We also heard during consultations that the nature of work and the work environment for pharmacists has changed drastically over the last decades. Many pharmacists are employees who have no control over their work environment and that it is not uncommon for pharmacists to have non-pharmacist employers. Corporately owned stores that commonly require shifts of 12 hours or more with no guaranteed breaks have replaced many independent pharmacies. The health consequences to individual pharmacists and the increased risk of medication dispensing errors are factors to be considered.

Options:

1. Maintain the status quo.
2. Remove the exemption from some of the provisions while retaining others.
3. Remove all exemptions.

Issue 3 – Managers and Supervisors

Background

Employees who are classified as managerial or supervisory are exempt from overtime pay and from the rules which govern maximum daily and weekly hours of work, daily and weekly/bi-weekly rest periods, and time off between shifts.

Managerial and supervisory employees are defined as those whose work is supervisory or managerial in character and who may perform non-supervisory or non-managerial tasks on an “irregular or exceptional basis.” This means that the supervisor/manager exemption can apply even if the employee is not exclusively performing supervisory or managerial work.

"Exceptional" suggests that non-supervisory or non-managerial duties may be performed as long as they are outside the ordinary course of the employee's duties. "Irregular" implies that although the performance of non-supervisory or non-managerial duties is not unusual or unexpected, their performance is unscheduled or sporadic; "irregular" may also depend on the frequency with which such duties are performed and the amount of time spent performing them.[136]

The fact that an employer calls an employee a "supervisor" or "manager" does not mean that the exemption will automatically apply. The employee's actual job duties would need to be assessed.

The number of workers in the labour force who report working in management occupations has remained relatively constant, and even declined over time, ranging from a high of 10.7% in the mid-1990s to a low of 8.5% in 2014.[137]

Other Jurisdictions

Many provinces exempt managers from overtime pay (exceptions are New Brunswick, Newfoundland and Labrador, and Prince Edward Island). Most provinces also exempt managers from at least some hours-of-work rules. Alberta and British Columbia, for instance, exempt managers from rest period and eating period rules.[138]

The American federal FLSA exempts certain executives and administrative employees from minimum wage and overtime requirements. The exemptions for executives and administrative employees are based on a "salary-plus-duties" test. The employee must perform certain specified duties *and* be paid a certain salary in order to be captured by the exemptions.

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136 For more detail, see *Employment Standards Act, 2000 Policy & Interpretation Manual* (Toronto: Carswell, 2001), section 31.5.1.

137 Vosko, Noack, and Thomas, *How Far Does the Employment Standards Act, 2000 Extend and What Are the Gaps in Coverage.*

138 Some jurisdictions do not have any rules in certain areas, for instance, maximum daily hours of work.

Executives

Exempt if the following conditions are met:[139]

- The employee must be compensated on a salary basis at a rate not less than $455 per week. [This equals $23,660 per year for a full-year worker.]
- The employee's primary duty must be managing the enterprise, or managing a customarily recognized department or subdivision of the enterprise.
- The employee must customarily and regularly direct the work of at least two or more other full-time employees or their equivalent.

AND

- The employee must have the authority to hire or fire other employees, or the employee's suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees must be given particular weight.

Administrative Employees

Exempt if the following conditions are met:[140]

- The employee must be compensated on a salary or fee basis at a rate not less than $455 per week. [This equals $23,660 per year for a full-year worker.]
- The employee's primary duty must be the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers.

AND

- The employee's primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

Highly Compensated Employees

Employees who perform office or non-manual work and are paid total annual compensation of $100,000 or more are exempt if they customarily and regularly perform at least one of the duties of an exempt executive or administrative employee identified above.

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139 "Fact Sheet #17B: Exemption for Executive Employees Under the Fair Labor Standards Act (FLSA)," United States Department of Labor, http://www.dol.gov/whd/overtime/fs17b_executive.pdf.

140 Fact Sheet #17C: Exemption for Administrative Employees Under the Fair Labor Standards Act (FLSA)," United States Department of Labor, http://www.dol.gov/whd/overtime/fs17c_administrative.pdf.

The DOL is updating the salary threshold for the exemptions. Under the new rule, which will come into effect on December 1, 2016, the standard salary level will be set at the 40th percentile of weekly earnings for full-time salaried workers in the lowest-wage census region (currently the south); this will be $913 per week ($47,476 annually for a full-year worker). The high income exemption will be set at the 90th percentile of earnings for full-time salaried workers nationally, which will be $134,004. Both salary figures will be automatically updated every three years, beginning on January 1, 2020.

The DOL estimates that, in the first year, 4.2 million currently exempt workers could be entitled to overtime. Similarly, it estimates that 65,000 workers currently exempt under the "highly compensated employees" category may become covered.

Submissions

It is argued that this exemption has a broad cost to workers amounting to $196 million per year in Ontario.[141] It is said that the permission to work unlimited hours and unlimited amounts of overtime is a heavy burden to put on some supervisors and managers, especially those whose remuneration is not high. It is also argued that the interpretation of the term "exceptional" allows prolonged unpaid overtime, for example, the working of unpaid overtime by managers where workers are constantly away owing to a labour dispute.

While the exemption does not distinguish between supervisory and managerial employees, it is questioned whether there is a bona fide rationale for exempting supervisory personnel who generally are not part of a core management team. The question is not whether there is a conflict of interest between the supervisor and the employees they supervise, but whether supervisors controls their own hours of work, have any real bargaining power, or are paid enough to justify the exemption.

There is also a concern expressed about the growing misclassification of managers and supervisors, who often have a title that is used to exclude them unjustifiably because they are often lower-age staff who find themselves performing significant non-managerial functions without protection from working excessive hours of work and not being paid overtime. It could be argued many such employees also do not set or control their own hours and are exploited by the exemption.

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141 Mark Thomas, Leah Vosko et al., "The Employment Standards Enforcement Gap and the Overtime Pay Exemption in Ontario," prepared for the ILO 4th Conference of the Regulating for Decent Work Network, Geneva, July 2015, 19.

Rationales in favour of the exemptions include the ostensibly strong bargaining position of such employees, the ability of such employees to control their own hours of work and cost to the employer. Some employers have argued that the exemption should be broadened to look at the primary function of such persons by looking at their compensation levels and training and not take into account whether part of their work includes doing the work of non-managerial or non-supervisory employees. In retail, for example, it is argued that managers' and supervisors' serving customers as part of the team should not convert them into regular employees entitled to overtime. We also heard that the definition of manager/supervisor is too vague, can be difficult to apply properly, and that a minimum salary threshold for overtime eligibility should be considered.

Options:

1. Maintain the status quo.
2. Define the category generally by looking at the primary purpose of the job and not how often or in what circumstances non-managerial or non-supervisory work is performed.
3. Include in the definition of managers and supervisors those who:
    a) earn more than a certain amount in wages/salary; and/or
    b) managers only and not supervisors; and/or
    c) exempt only supervisors and managers who regularly direct the work of two or more full-time employees or their equivalent, or some other number (and the employee must have the authority to hire or fire other employees, or have an effective power of recommendation with respect to hiring, firing, advancement, promotion or any other change of status); or
    d) the employee's primary duty must be managing the enterprise, or managing a customarily recognized department or subdivision of the enterprise; or
    e) the employee's primary duty must be the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers.

Issue 4 – Residential Care Workers

Background

Exemptions and special rules for "residential care workers" in ESA Regulation 285/01 have been in place since 1982.

A residential care worker is defined as "a person who is employed to supervise and care for children or developmentally handicapped[142] persons in a family-type residential dwelling or cottage and who resides in the dwelling or cottage during work periods, but does not include a foster parent."

According to the definition:

- the employee must supervise and care for children or developmentally handicapped persons;
- the employee must work in a family-type residential dwelling or cottage;
- the employee must reside in the dwelling or cottage during work periods.

Residential care workers are exempt from the hours of work and eating periods (daily and weekly limits on hours of work, mandatory rest periods and eating periods) and overtime pay provisions. However, they are entitled to 36 hours free time each work week. They have special rules regarding minimum wage entitlement, records of hours and rules defining when work is deemed to be performed.

At the time of the creation of this exemption, the government was implementing a de-institutionalization policy. This involved moving children and developmentally disabled adults out of large institutions and, in as many cases as possible, placing them in the community in home-like settings, preferably in a family-type group home.

The definition of residential care workers was meant to be narrow and apply only to those homes where the parent-model, with its continuity of supervision by the same persons, was of significance in the rehabilitation and well-being of the person being cared for. The "live-in" aspect of the position is also an important element in defining this model of care and in defining this category of worker.

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142 The *Ontarians With Disabilities Act, 2001* amended the Ontario *Human Rights Code* by replacing the word "handicap" in the Code with the word "disability". As Regulation 285/01 uses the word "handicap", for consistency, we use this out-dated language.

The exemptions and special rules for residential care workers were intended to cover workers responsible for supervision and care of children or adults with developmental disabilities during the patients'/residents' sleeping and eating periods as well as during entertainment and/or recreational periods inside or outside the home.

Submissions

The residential care workers exemption has been identified as potentially out-dated and perhaps irrelevant. The strict definition of this type of worker reflects the intent in the 1980s – that the exemptions and special rules be narrowly applied to a specifically defined worker, serving a specifically defined client. The specific scenario that this regulation once applied to may no longer exist.

Options:

1. Maintain the status quo.
2. Remove the exemption and special rules.

Issue 5 – Residential Building Superintendents, Janitors and Caretakers

Background

The exemptions for "residential superintendents, janitors and caretakers" are in ESA Regulation 285/01 and apply to superintendents, janitors and caretakers of residential buildings who reside in the building. The individual must actually live in the building for which he or she is responsible or in another building in the same complex.

These occupations are exempt from some hours of work rules (daily and weekly limits on hours of work and mandatory rest periods), overtime pay, public holidays, and minimum wage. These exemptions have been in place at least since 1969. The exemption reflects the requirement to deal with frequent and unpredictable events or demands that arise from tenant concerns or emergencies. The result can be sometimes long and unpredictable hours of work.

The *Residential Tenancies Act, 2006* (RTA) requires owners/landlords to maintain the property in a good state of repair. It is typical practice to answer maintenance requests in the order of their urgency, but all legitimate requests must be answered within a reasonable time. It does not require 24-hour site service.

British Columbia and Nova Scotia are the only other provinces that have exemptions for superintendents. However, their exemptions are narrower than those in Ontario. In British Columbia, superintendents are exempt from eating periods and overtime pay. They are also subject to a special minimum wage rule, under which they are entitled to a monthly base wage and a certain amount per unit supervised. In Nova Scotia, they are only exempt from overtime pay.

Submissions

We heard only a little during the consultations, but in addition the Ministry has told us that concerns on this issue are often expressed to it.

Letters received raise concern about the lack of employment rights. Generally, individuals have raised concerns about the long hours and the little, if any, free time available for individuals in these jobs. Employees suggest that they are expected to be available 24 hours a day, 7 days a week.

While the rationale for the exemptions is in part the difficulty in monitoring employees engaged in this type of work that is off-site from the employer, technology has changed dramatically and there may well be ways in which work hours can be monitored. The fact that most Canadian jurisdictions do not restrict the rights of such employees could suggest that the Ontario law needs to be reconsidered.

Options:

1. Maintain the status quo.
2. Remove or reform the exemption.

Issue 6a – Minimum Wage Differential for Students Under 18

Background

There is a separate minimum wage for students under 18 who work no more than 28 hours per week when school is in session, or work during a school break or summer holidays. For such employees the minimum wage is $10.55 instead of $11.25.[143] Among students who are affected by the special rules for a student minimum wage, 52,000 (59%) report earning less than the general minimum wage,

143 On October 1, 2016, the student minimum wage will increase to $10.70, while the general minimum wage will increase to $11.40.

suggesting that employers are using this provision. It has been estimated that the individual cost of this special rule is a median of $8 per week per employee, and the weekly cost to all student employees in Ontario is approximately $482,000.[144]

Ontario is the only province with a lower minimum wage for students.[145]

Submissions

The Ministry states that the rationale for the student minimum wage is "to facilitate the employment of younger persons, recognizing their competitive disadvantage in the job market relative to older students who generally have more work experience and may be perceived by employers as more productive".[146] Proponents of the lower rate believe it is necessary to give employers an incentive to hire younger workers and that youth employment would decline if the special rate was not there.

Student groups strongly sought the end of the special rate as it is considered purely discriminatory and the students need the higher income. Similarly, employee advocacy groups have recommended that the student minimum wage be eliminated.

Options:

1. Maintain the status quo.
2. Eliminate the lower rate.

Issue 6b – Minimum Wage Differential for Liquor Servers

Background

Liquor servers are covered by a minimum wage of $9.80 instead of the general minimum wage of $11.25.[147] This is intended to recognize that such servers earn additional income from tips and gratuities. It is said that among the approximately 45,900 liquor servers in Ontario, about 9,000 (20%) report earning less than the general minimum wage, even after reported tips and commissions. For these

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144 Vosko, Noack, and Thomas, *How Far Does the Employment Standards Act, 2000 Extend and What Are the Gaps in Coverage.*

145 Nova Scotia has a lower minimum wage for "inexperienced employees" – employees who have done a kind of work for less than 3 calendar months and has worked for the same employer for less than 3 calendar months.

146 *Employment Standards Act, 2000 Policy & Interpretation Manual* (Toronto: Carswell, 2001), section 13.5.1.

147 On October 1, 2016, the liquor servers' minimum wage will increase to $9.90, while the general minimum wage will increase to $11.40.

employees, the median cost of this lower minimum wage – the difference between their reported wage and the general minimum wage – is approximately $21 a week, based on their usual hours of work. Across all liquor servers, the cost of this special rule was calculated at approximately $258,900 per week.[148]

We note that the Ontario Legislature recently passed the *Protecting Employees' Tips Act, 2015*, which prohibits employers from taking any portion of an employee's tips or other gratuities, except in limited circumstances. The Act came into force on June 10, 2016. The impact this Act may have on liquor servers' incomes remains to be seen.

Alberta and British Columbia are the only other provinces with a lower minimum wage for liquor servers. Quebec has a lower minimum wage for tipped employees.

Submissions

Employee advocacy groups recommended that the liquor servers' minimum wage be eliminated.

Options:

1. Maintain the status quo.
2. Eliminate the lower rate.

Issue 7 – Student Exemption from the "Three-hour Rule"

(Note: Issues regarding reporting pay are dealt with in section 5.3.2 on Scheduling).

Background

Students of any age and with any hours of work are exempt from what is known as the "three-hour rule" or "reporting pay." Under this rule, when an employee who regularly works more than 3 hours a day is required to report to work but works less than 3 hours, he or she must be paid the higher of:

- 3 hours at the minimum wage; or
- the employee's regular wage for the time worked.

148 Vosko, Noack, and Thomas, 20.

Other Jurisdictions

Almost all Canadian jurisdictions have requirements concerning reporting pay; two have different rules that apply to certain students.

In Saskatchewan, there is a minimum call-out pay of 3 hours if an employee reports to work and there is no work or the employee works fewer than 3 hours. This rule does not apply to students in Grade 12 or lower during the school term; if these employees work, they are paid only for the time worked with a minimum of 1 hour.

In Alberta, there is a general "three-hour rule" when employees are required to report to work. However, certain employees only have to be paid for two hours; this includes adolescents (12-14 years of age) who work on a school day, but these employees are prohibited from working more than two hours a day on a school day in any event.

Submissions

It is said that this provision is unfair to all students who need the protection as much as anyone. The criticism is that the exemption subjects them to discriminatory and harsh scheduling practices by allowing employers to send students home without any payment beyond what was already worked. This provision incentivized employers to schedule students irresponsibly and adversely affected students compared to other workers. We did not receive submissions from the employer community on the student exemption specifically, although we did hear about the rule in the context of scheduling issues more broadly.

Options:

1. Maintain the status quo.
2. Remove the exemption.

ESA Exemptions That Should be Reviewed Under a New Process – Category 3

1. Architects
2. Chiropodists
3. Chiropractors
4. Dentists
5. Engineers
6. Lawyers

7. Massage Therapists
8. Naturopaths
9. Physicians and Surgeons
10. Physiotherapists
11. Psychologists
12. Public Accountants
13. Surveyors
14. Teachers
15. Veterinarians
16. Students In-Training in Professions
17. Ambulance Drivers, Ambulance Driver's Helper or First-aid Attendant on an Ambulance
18. Canning, Processing, Packing or Distribution of Fresh Fruit or Vegetables (seasonal)
19. Continuous Operation Employees (Other than Retail Store Employees)
20. Domestic Workers (Employed by the Householder)
21. Commissioned Automobile Salesperson
22. Homemakers
23. Embalmers and Funeral Directors
24. Firefighters
25. Fishers – Commercial fishing
26. Highway Transport Truck Drivers ("For Hire" Businesses)
27. Local Cartage Drivers and Driver's Helpers
28. Retail Business Employees
29. Hospital Employees
30. Hospitality Industry Employees (hotels, restaurants, taverns, etc.)
31. Hunting and Fishing Guides
32. Ontario Government and Ontario Government Agency Employees
33. Real Estate Salespersons and Brokers

34. Construction Employees (Other than Road Building and Sewer and Watermain Construction)
35. Road Construction
36. Sewer and Watermain Construction
37. Road Construction Sites – Work that is Not Construction Work
38. Road Maintenance – Work that is Not Maintenance Work
39. Sewer and Watermain Construction Site Guarding
40. Road Maintenance
41. Sewer and Watermain Maintenance
42. Maintenance (Other than Maintenance of Roads, Structures Related to Roads, Parking Lots and Sewers and Watermains)
43. Ship Building and Repair
44. Student Employee at Children's Camp
45. Student Employee in Recreational Program Operated by a Charity
46. Student Employee Providing Instruction or Supervision of Children
47. Swimming Pool Installation and Maintenance
48. Taxi Cab Drivers
49. Travelling Salespersons (Commissioned)

Agricultural Exemptions:

50. Farm Employees – Primary Production
51. Harvesters of Fruit, Vegetables or Tobacco
52. Flower Growing
53. Growing Trees and Shrubs
54. Growing, Transporting and Laying Sod
55. Horse Boarding and Breeding
56. Keeping of Furbearing Mammals
57. Landscape Gardeners
58. Canning, Processing, Packing or Distribution of Fresh Fruit or Vegetables (seasonal)

5.2.4 Exclusions

5.2.4.1 Interns/Trainees

Background

In the past few years, there has been widespread reporting of the growth in unpaid internships.

The ESA provides an exclusion for "interns/trainees" (referred to as "person receiving training" under the Act). The conditions that must all be met for the exclusion to apply are as follows:

- training is similar to that of a vocational school;
- training is for the benefit of the individual;
- person providing the training derives little, if any, benefit from the activity of the individual while being trained;
- intern does not displace employees of the person providing the training;
- intern is not accorded a right to become an employee of the person providing the training; and
- intern is advised that he or she will receive no remuneration for the time spent in training.

In April 2014, and again in September 2015, the Ministry conducted proactive enforcement blitzes, focusing on interns at workplaces across the province. Ministry officers checked for contraventions of the ESA and whether those individuals are employees under the ESA and, therefore, entitled to be paid.

In the 2014 blitz, out of 31 employers who had internship positions, 13 employers were found to be in contravention of the Act.

In the 2015 blitz, out of the 77 workplaces that had internships, 18 employers were found to be in contravention of the Act.

The Act provides exclusions for secondary students who are participating in a board-approved work experience program and for approved programs provided by universities and colleges of applied arts and technology. We are not commenting on these exclusions.

Submissions

In the expectation of receiving training and valuable work experience, some individuals may be attracted to unpaid "intern/trainee" opportunities that will help them secure decent paid employment in the future. During consultations, it was asserted that some employers abuse the intern/trainee exclusion by using "interns/trainees" to perform unpaid work that would otherwise be performed by paid employees and where no training similar to that provided in a vocational school is provided. It is suggested that many intern/trainee positions do not comply with the ESA requirements and that some employers misuse the exception to benefit from free labour, with the result that many employees are misclassified as interns or trainees and are denied the minimum standards and the protections mandated by the Act.

Options:

1. Maintain the status quo.
2. Eliminate the trainee exclusion.
3. Provide that intern/trainee exemption is permitted only if a plan is filed by the employer and approved by the Director as complying with the Act and with reporting obligations as determined by the Director.

5.2.4.2 Crown Employees

Background

Only certain parts of the Act apply to employees of the Crown or a Crown agency, and to their employer. The term "Crown" refers to the government of Ontario. This exception dates back to 1968.

The following provisions of the ESA apply to Crown (i.e., Ontario government) employees and their employer:

- Part IV (Continuity of Employment);
- Section 14 (Priority of Claims);
- Part XII (Equal Pay for Equal Work);
- Part XIII (Benefit Plans);
- Part XIV (Leaves of Absence);
- Part XV (Termination and Severance of Employment);

- Part XVI (Lie Detectors);
- Part XVIII (Reprisal) except for subclause 74(1)(a)(vii) and clause 74(1)(b); and
- Part XIX (Building Services Providers).

The provisions of the ESA that do not apply to Crown employees include:

- hours of work;
- overtime pay;
- minimum wage;
- public holidays; and
- vacation with pay.

Not all public sector employers fall within this exception, e.g., hospitals, municipalities, etc.

Other Jurisdictions

Ontario remains the outlier among its provincial counterparts owing to the breadth the exclusion of Crown employees.

In Nova Scotia, only deputy ministers or other deputy heads of the civil service are exempt from the overtime provisions. Manitoba uses a salary-based overtime exclusion for Crown employees, which applies to those making above $34,497 per year. Several provinces – including Alberta, Manitoba, New Brunswick, Nova Scotia and Saskatchewan – explicitly provide that Crown employees are covered by employment standards legislation.

In the federal jurisdiction, most federal Crown corporations are covered by Part 111 of the CLC but the public service is not.

Several provinces stress inclusion – including Alberta, Manitoba, New Brunswick, Nova Scotia, and Saskatchewan – noting explicitly that Crown employees are covered by employment standards legislation.

Submissions

The exclusion of Crown employees in Ontario has been raised as an issue during consultations by labour groups who contend that there is no rational basis to exempt Crown employees from ESA protections. They assert that notwithstanding

high union density in the public sector, these exclusions affect Crown employees – particularly non-unionized and contract employees who may experience inequitable working conditions as a result.

Options:

1. Maintain the status quo.
2. Remove the exception.
3. Narrow the exception to only certain provisions such as hours of work and overtime pay.

5.3 Standards

5.3.1 Hours of Work and Overtime Pay

Background

Limits on working hours in Ontario were originally designed to protect the health and safety of women, children and youths. Under the *Ontario Factories Act* of 1884, maximum hours of work were set at 10 hours in a day and 60 hours in a week. Subsequent legislation covered hours of work in shops and mines.

In 1944, the *Hours of Work and Vacations with Pay Act* established maximum hours of work of 8 hours in a day and 48 hours in a week for most employees. A primary policy objective was to create jobs by limiting hours of work and to spread work among armed forces personnel returning to the civilian labour force. These maximums still form the basis of hours of work limits today.

Under the ESA, hours of work regulate the number of hours an employee can be required to work in a day/week, and excess hours refer to daily hours over eight hours in a day or an established work day and weekly hours over 48. Overtime rules refer to pay. Overtime pay was introduced in 1969 and set as time-and-one-half premium for hours beyond 48 hours in a week. In 1975, the trigger point was reduced to 44 hours where it remains today.

In 1986, growing concern over what appeared to be excessive hours being worked by some while many others were without any work led the Minister of Labour to appoint the Ontario (Donner) Task Force to examine hours of work and

overtime rules. The report found that there was limited job creation potential in reducing hours of work and overtime. The report also found that a reduction in the standard work week after which overtime would be paid would increase the use of overtime. Among the report's recommendations were: the standard work week should be reduced from 44 hours to 40; overtime after 40 hours per week should be voluntary and paid at time-and-a-half. These recommendations were not implemented.

Key changes to the hours of work and overtime pay rules were made in 2001. The ESA eliminated a long-standing permit system that had regulated hours of work after 48 hours in a week. The requirement for employee written agreement to work excess hours was introduced. Employees and employers could agree in writing to a work week of up to 60 hours without Ministry of Labour approval. Ministry approval was needed for agreements to work beyond 60 hours in a week. In addition, the current provisions for daily and weekly/biweekly rest periods and in between shifts were introduced (see below for an explanation of these).

The new Act also made changes with respect to overtime pay. Agreements to average overtime over a period of up to 4 weeks no longer required the approval of the Director of Employment Standards. The Director's approval was still required to average overtime for a period longer than 4 weeks.

Changes were subsequently made in 2005 to require the Director of Employment Standards to approve all agreements between employers and employees to work excess weekly hours – i.e., more than 48 hours in a week – not just those above 60 hours a week. Similarly, the changes required the Director of Employment Standards to approve all agreements between employers and employees to average hours of work for the purposes of determining the employee's entitlement to overtime – not just those that average hours beyond a 4-week period.

In general, the hours of work and overtime provisions of the ESA include limits on daily hours and weekly hours as well as rules regarding rest and eating periods and payment of overtime. In addition, there are rules permitting work beyond some limits provided there are written agreements between employers and employees and provided the employer has obtained approval from the Ministry of Labour Director of Employment Standards.

Exemptions to the hours of work and overtime provisions are commonplace, but their terms vary significantly with some containing different standards than in the

ESA and others containing no standard. Some were not arrived at in a transparent process or in consultation with employees. Exemptions are dealt with as a separate subject in section 5.2.3.

Approximately 78% of employees are estimated to be fully covered by the hours of work provisions, while an exemption or different rule applies to approximately 22% of employees in the province.[149] About 15% of employees are exempt from the overtime provision.[150]

Daily Hours

The maximum number of hours employees can be required to work in a day is 8 hours or the number of hours in an established regular workday so long as the 11-hour daily rest period is complied with. The daily maximum of 8 hours or an established workday can be exceeded only when there is written agreement between the employee and employer. However, taking into account the 11-hour daily rest requirement, the absolute maximum regular workday that an employer can establish is 12 hours per day (which cannot be exceeded). For example, if the regular established work day is 9 hours per day, written agreement would be required for the employee to work beyond 9 hours per day, up to 12.

Weekly Hours

The maximum number of hours an employee can be required to work in a week is 48. A written agreement with the employee is required to exceed this maximum as is an approval by the Director of Employment Standards. We understand that employer applications to schedule up to 60 hours per week are routinely approved by the Director of Employment Standards. Applications for hours beyond 60 are scrutinized.

Rest Periods – Daily Rest and Weekly/Biweekly Rest

Rest periods are periods when an employee must be free from work.

Daily Rest

An employee must receive at least 11 consecutive hours off work each day. An employee and an employer cannot agree to less than 11 consecutive hours off work each day. Therefore the maximum number of hours of work that can be

149 Vosko, Noack, and Thomas, 24.
150 Ibid., 21.

scheduled in 1 day is 12 hours of work because 1 hour for meal breaks is required if an employee is scheduled for 13 hours of work. An employee and an employer cannot agree to less, and there is no other way to modify it.

Weekly/Biweekly Rest

Employees must receive at least 24 consecutive hours off work in each workweek or 48 consecutive hours off work in every period of two consecutive workweeks. This means the effective maximum work week is 6 days. For example, a 6-day work week of 8 hours per day complies with the Act.

Rest Between Shifts

There is a requirement for 8 hours off work between shifts if the total time worked on successive shifts is more than 13 hours. An employer and employee can agree in writing that the employee will receive less than 8 hours off work between shifts.

Eating Periods

Employees are entitled to a meal break of 30 minutes scheduled by the employer at intervals that will result in the employee working no more than 5 consecutive hours without a meal break. A 30-minute eating period can be split into two periods within each 5-hour period, provided the employer and employee agree. This agreement can be oral or in writing.

Overtime Pay

There are two main components to the overtime pay provisions: overtime pay and overtime averaging for the purpose of calculating overtime pay.

Overtime pay is 1.5 times the employee's regular rate of pay and is paid on weekly hours worked in excess of 44.

An employee and an employer can agree in writing that the employee will receive paid time off work instead of overtime pay. If an employee agrees to bank overtime hours, he/she must be given 1.5 hours of paid time off work for each hour of overtime worked.

Overtime averaging allows hours of work to be averaged over a specified period of 2 or more weeks for the purpose of calculating overtime pay. Overtime averaging is permitted if the employer and the employee agree in writing and if the employer obtains an approval from the Director of Employment Standards.

We understand that employer applications to permit overtime averaging over a period of 4 weeks or less are routinely approved by the Director of Employment Standards. Applications to permit overtime averaging over a period of more than 4 weeks are scrutinized.

There is no limit on the period over which overtime can be averaged.

Employee Written Agreements Required for Excess Hours

Section 17 of the ESA provides that an employer cannot require or permit an employee to work more than the daily or weekly limits unless there is employee agreement.

An employee can agree in writing to work more than eight hours a day – or more than the regular workday if it is more than eight hours – or to work more than 48 hours in a week. Employee agreement is not valid unless the employer has first provided the employee with a copy of a Ministry document outlining the rights of employees under the hours-of-work rules.

The Ministry's Employment Standards (ES) Program policy allows for agreements between employers and employees to be made electronically. However there does not seem to be widespread knowledge that this is acceptable. Agreements made electronically are discussed in section 5.4.2.

In most cases, an employee can revoke the agreement by giving the employer two weeks' written notice. An employer can also cancel the agreement by giving the employee reasonable notice.

In some cases, employee agreement is obtained at the time of hiring when the prospective employee may have little bargaining power if he/she wants the job. There is no evidence of how many employees refuse to grant consent at the time of hiring. Written consents are also obtained after hiring and there is no evidence as to how many employees decline to agree. Anecdotally we were told that in a plant where the culture lends itself to being able to refuse with confidence about 20% refuse to work excess hours. There is no evidence about the frequency of employee agreement being revoked by an employee once given although anecdotally it seems to be a rare occurrence.

In a unionized workplace, the Ministry recognizes that the trade union is the exclusive agent of employees in the bargaining unit and that the union can enter into an agreement with an employer on behalf of all bargaining unit employees

wherever an agreement with an employee is required under the Act. There is one reported case[151] in which an arbitrator concluded that although the terms of the collective agreement allowed the employer to require an employee to work on a public holiday, the collective agreement could not override the employee's individual statutory right to elect not to work. The Ministry has taken the position that "this decision is inconsistent with the Program's interpretation of s. 7 of the Act and should not be followed."[152]

The Ministry also takes the position that, where an agreement is made between a union and an employer, unilateral revocation by an employee is not possible during the operation of a collective agreement.

With respect to agreements to average overtime, the Ministry also accepts that for employees represented by a trade union, the written agreement may be embodied in a collective agreement or a memorandum of agreement or other written documentation signed by union representatives and that all bargaining unit employees are bound by the agreement.

We are advised that union consent to work excess hours and to overtime averaging is commonplace.

Relationship Between Hours of Work and the Human Rights Code

Section 5 of the *Human Rights Code* requires employers to provide their employees with equal treatment without discrimination because of family status and disability. Work requirements – including hours of work – that have an adverse impact on employees because of their family status and/or disability could be discriminatory unless the requirement is found to be reasonable and bona fide and the employer has accommodated to the point of undue hardship.

Other Jurisdictions

Most provinces' standard daily workday is 8 hours and the standard workweek ranges from 40 to 48 hours. All provinces mandate a minimum number of consecutive hours off weekly (most require 24 consecutive hours off per week). However, Ontario is the only province to require 11 consecutive hours off each day. Ontario is the only Canadian jurisdictions to have daily rest rules mandating that the longest an employee can be required to work in a day is 12 hours and where no variations or extensions can be made. This is a hard cap on daily hours.

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151 *Collins and Aikman Plastics, Ltd. v. United Steelworkers, Local 9042*, 128 LAC (4th) 438.
152 *Employment Standards Act, 2000 Policy & Interpretation Manual* (Toronto: Carswell, 2001), section 7.6.1.

All provinces include provisions for overtime pay which is generally at time-and-a-half of regular hourly rate for all overtime hours worked. However, there are some variations in the trigger point at which overtime is paid. Nova Scotia, Saskatchewan, and British Columbia allow hours to be averaged.

Hours of Work

Jurisdiction	Daily Hours	Weekly Hours	Daily Rest Requirement
Ontario	8 hours or the hours in an established regular workday	48 (written agreement and approval from ministry required to exceed)	11 hours (hard cap; no variations possible) 8 hours between shifts (unless total time worked on successive shifts does not exceed 13 hours or unless the employer/ employee agree otherwise)
Nova Scotia	—	48	—
Quebec	—	40	—
Newfoundland and Labrador	—	40	8 hours in a 24-hour period
Prince Edward Island	—	48	—
New Brunswick	—	—	—
Saskatchewan	8 hours or 10 hours (in a 4-day week)	40	8 hours in a 24-hour period (exception for emergency circumstances)
Alberta	12 hours (hours of work must be confined within a period of 12 consecutive hours in any 1 work day, however, the Director can issue a permit authorizing extended hours of work)	44	8 hours between shifts
British Columbia	8 hours	40	8 hours between shifts
Manitoba	8 hours	40	—
Federal	8 hours	40	—

Overtime Pay

Jurisdiction	Overtime Pay Trigger
Ontario	After 44 hours
Nova Scotia	After 48 hours
Quebec	After 40 hours
Newfoundland and Labrador	After 40 hours
Prince Edward Island	After 48 hours
New Brunswick	After 44 hours
Saskatchewan	After 40 hours
Alberta	After 44 hours
British Columbia	After 40 hours in a week (at the rate of time-and-a-half). After 8 hours in a day (at the rate of time-and-a-half) for the next 4 hours worked. Double time for all hours worked in excess of 12 hours in a day.
Manitoba	After 40 hours
Federal	After 40 hours

Right to Refuse Excess Hours

It appears that only Ontario and four other provinces require employee agreement to work excess hours but the precise rules differ significantly and the rules in Ontario appear to be among the most stringent. The requirement for employee written agreement to work excess hours beyond eight hours a day or beyond the regular hours of work is only found in Ontario and in Manitoba.

If one were to ask where in Canada can the employer insist that employees work 1 to 4 excess hours on a given day – assuming the normal daily hours are 8 and the normal maximum weekly hours are 44 – the answer appears to be that the employer can insist[153] on this everywhere except in Ontario and Manitoba.

Quebec and Alberta prohibit more than 4 excess hours in a day or 12 hours work on a day. Saskatchewan permits the scheduling of up to 4 excess hours on a day

153 Subject to human rights considerations.

– assuming a regular 40-hour week – because although it has no daily maximum, it has a weekly maximum of 44 hours.

Ontario does permit flexibility to employers to have regular daily hours of work that are in excess of 8 hours as long as the total hours do not exceed 48 in a week.[154] This means, for example, that an employer could schedule regular hours of work of 9 hours a day or four 9-hour days and one 8-hour day.[155] However, in these circumstances, the employer could still not insist on the employee working 1 to 3 excess hours a week[156]. There are nine provinces and the federal jurisdiction[157] that appear to permit an employer to require a 9-hour a day, 5-day-a-week schedule,[158] but of those, only Ontario and Saskatchewan permit an employee to refuse to work additional hours before they have worked 48 hours per week. Quebec allows employees to refuse after working 50 hours in a week and the other jurisdictions do not give employees the right to refuse to work hours above any weekly maximum.

Jurisdiction	Right to decline excess hours – daily	Right to decline excess hours – weekly
Ontario	Above 8, or above regular hours of work	Above 48
Manitoba	Above 8	Above 40
Saskatchewan	–	Above 44
Alberta	Above 12	–
Quebec	Above 12	Above 50
British Columbia	No	No
Federal	No	No
Prince Edward Island	No	No
Nova Scotia	No	No
New Brunswick	No	No
Newfoundland and Labrador	No	No

154 Unless there is written agreement to exceed 48 weekly hours. Additionally, the daily hours must provide for 11 hours of rest.
155 A work week made up of four 9-hour days and one 8-hour day is permissible as long as that is the regular schedule and does not vary from week to week. The employer would have to pay for regular hours of work up to 44 and overtime pay thereafter.
156 The difference between 48 and 45 hours per week.
157 Manitoba is the exception.
158 In Saskatchewan, 1 of the 5 days would have to be an 8-hour day.

In the US, many states have their own laws pertaining to hours of work and overtime pay. The standard work week is 40 hours under the FLSA. Also, the FLSA does not limit the number of hours in a day or days in a week an employee may be required or scheduled to work, including overtime hours. It does not allow for averaging agreements over 2 or more weeks. Unless specifically exempted, employees covered by the Act must receive overtime pay for hours worked in excess of 40 hours in a workweek at a rate not less than time and one-half their regular rates of pay.

Submissions

During consultations, we heard most about scheduling of hours of work; however, the limitations on hours of work were not at the forefront of the debate. Scheduling is dealt with in section 5.3.2.

A very general concern raised by labour and employee advocacy groups is that the power imbalance between employers and employees potentially prevents employees from freely exercising their hours of work rights, particularly the right to refuse excess hours. Other criticisms from these groups were that excess hours approvals are not adequately reviewed or enforced and that some excess hours approvals are granted almost automatically without rigorous pre-approval scrutiny by the Ministry.

Employers, on the other hand, complained that the requirement for written consent from every employee was burdensome and that the consistent refusal to work excess hours by a significant minority within the workforce sometimes threatened the ability of business, especially manufacturers, to respond to urgent production issues.

We did hear from some businesses that generally all the different requirements and rules for hours of work create a very complex and unwieldy system that is difficult to track and follow. We also heard from employers that the hours of work rules need to be more flexible particularly regarding the daily rest period rules which require at least 11 hours free from work and cannot be overridden by consent. Employer groups point out that some workplaces, such as those in the manufacturing sector, require greater flexibility owing to just-in-time processes.

We did hear that the requirement for employee consent to work excess hours, (e.g., above 8 hours in a day and above the regular 48-hour week (which prevails in some parts of the automotive industry)) caused hardship to some employers

where employees in key jobs refuse to work excess hours, thus jeopardizing just-in-time production and delivery of goods.

Labour and employee advocacy groups called for a reduction in the weekly maximum hours of work to 40 hours and for the overtime pay trigger to also be reduced to 40 hours. They also argued for the elimination of overtime averaging on the basis that it reduces employees' pay in some circumstances and that it gives employers an incentive to schedule excess hours. Limited scope to averaging would help to ensure that employees are not deprived of overtime pay rights. We found no data as to how much the averaging provision costs employees or saves employers.

During consultations, employer comments related to overtime focused on scheduling flexibility. Employers asked that both the 44-hour overtime pay trigger and the averaging provisions be maintained. Employers explained that many schedules run with many hours in a week and few hours in the next week, which is preferred by many employees. For example, averaging hours for purposes of calculating overtime pay allows flexible work arrangements such as compressed work weeks, "continental" shifts, and other arrangements that are becoming increasingly common. Employers contend that eliminating or tightening the rules on overtime averaging would probably reduce the number of these types of schedules and thus adversely affect the flexibility required to meet operational requirements.

Summary of Current Law for Hours of Work and Overtime Pay

- maximum daily hours: 8 hours, or the number of hours in an established regular workday;
- maximum weekly hours: 48 hours;
- need written employee consent to work more daily or weekly hours;
- also need ministry director approval to work more than 48 weekly hours;
- compulsory daily rest period of at least 11 hours, meaning an effective limit on workdays of 12 hours (no exceptions possible except by formal exemption);
- 8 hour rest required between two shifts of more than 13 hours combined duration;
- weekly/bi-weekly rest periods: 24 consecutive hours off per week or 48 consecutive hours off per 2 weeks;

- mandatory 30-minute eating period for every 5 hours worked;
- overtime pay after 44 hours at 1.5 times the regular rate; and
- overtime averaging permitted with employee written consent and ministry director approval.

Options:

1. Maintain status quo.
2. Eliminate the requirement for employee written consent to work longer than the daily or weekly maximums but spell out in the legislation the specific circumstances in which excess daily hours can be refused.

   For example, in *Fairness at Work*, Professor Arthurs effectively recommended that employers should be able to require employees to work, without consent, up to 12 hours a day or 48 in a week (with exceptions where they could be required to work even longer) but that there should be an absolute right to refuse where: the employee has unavoidable and significant family-related commitments; scheduled educational commitments or a scheduling conflict with other employment (part-time workers only). This change would mean employers could require employees to work excess daily hours without consent as set out above.
3. Maintain the status quo employee consent requirement, but:

   a) in industries or businesses where excess hours are required to meet production needs as, for example, in the case of "just-in-time" operations, the need for individual consent would be replaced by collective secret ballot consent of a majority of all those required to work excess hours; and

   b) employees required to work excess hours as a result of (a), would still have a right to refuse if the employee has unavoidable and significant family-related commitments; scheduled educational commitments or a scheduling conflict with other employment (part-time workers only); or protected grounds under the *Human Rights Code* such as disability. This "right to refuse" would also apply to unionized employees.
4. The same as option 3, except that instead of a blanket legislative provision as in (3a), where a sector finds it difficult to comply with the daily hours provisions, exemptions could be contemplated in a new exemption process, the possibility of which is canvassed in section 5.2.3.

5. Eliminate daily maximum hours, but maintain the daily rest period requirement of 11 hours, and the weekly maximum hours of work of 48.
6. Eliminate or decrease the daily rest period below 11 hours which would effectively increase the potential length of the working day above 12 hours.
7. Enact a legislative provision similar to one in British Columbia that no one, including those who have a formal exemption from the hours of work provisions, can be required to work so many hours that their health is endangered.[159]
8. Codify that employee written agreements can be electronic for excess hours of work approvals and overtime averaging.
9. Eliminate requirement for Ministry approval for excess hours (i.e., only above 48 hours in a week). Maintain requirement for employee written agreement.
10. Eliminate requirement for Ministry approval for excess weekly hours between 48 and 60 hours. Maintain requirement for Ministry approval for excess hours beyond 60 hours only. Maintain requirement for employee written agreement.
11. Reduce weekly overtime pay trigger from 44 to 40 hours.
12. Limit overtime averaging agreements – impose a cap on overtime averaging (e.g., allow averaging for up to a 2- or 4-week or some other multi-week period). Maintain requirement for employee written agreement. Ministry approval could (or could not) be required.

5.3.2 Scheduling

Background

The ESA does not include provisions regulating scheduling of work by employers. There is currently no provision in the ESA requiring an employer to provide advance notice of shift schedules or of last minute changes to existing schedules.

There is a "three-hour rule" providing that, when an employee who regularly works more than 3 hours a day is required to report to work but works less than 3 hours, he/she must be paid the higher of:

159 In British Columbia, for instance, an employer must not require or allow an employee to work excessive hours or hours harmful to the employee's health or safety.

- 3 hours at the minimum wage, or
- the employee's regular wage for the time worked.[160]

Despite the numerous and varied responsibilities of many in today's workforce, there are workers who often have very little ability to make changes to their work schedules when those changes are needed to accommodate family and other responsibilities.

Many low-wage workers not only have very little or no control over the timing of the hours they are scheduled to work but also receive their schedules with very little advance notice and work hours that vary significantly. Uncertainty can also include: last-minute call-in where no schedule is maintained and, where there is a schedule, last-minute notice to employees of changes in work hours, and "on-call" shifts where employees are expected to be available for work on short notice (i.e., less than 24 hours' notice). Such practices make it difficult for employees to plan for child-care, undertake further training and education, maintain or search for a second job, make commuting arrangements, and plan other important activities. Consequently, uncertainty in scheduling practices may contribute to making work precarious.

Other Jurisdictions

Canada

Like Ontario, most Canadian and American jurisdictions have some reporting pay requirement that requires employers to compensate employees for a minimum number of hours when they report for work, but are sent home before the end of the scheduled shift. The amount of reporting pay required in such circumstances differs among jurisdictions, but generally ranges from 2 to 4 hours.[161]

There are examples in Canada of schedule posting requirements. In Alberta, every employer must notify the employee of the time at which work starts and ends by posting notices where that can be seen by the employee, or by any other

160 The rule does not apply in some cases where the cause of the employee not being able to work at least 3 hours was beyond the employer's control (e.g., fire, power failure).

161 The majority of provinces require employers to provide a minimum of 3 hours compensation to employees for on-call or regularly scheduled cancelled shifts. In British Columbia, for example, an employee scheduled for 8 hours or less must be paid for a minimum of 2 hours even if work less than 2 hours. An employee scheduled for more than 8 hours, must be paid for a minimum of 4 hours even if works less than 4 hours. Must be paid for if they report to work as scheduled, regardless of whether or not they start work. In addition to these reporting pay requirements, some American jurisdictions require that employees be scheduled for minimum shift lengths (i.e., a shift cannot be scheduled for less than 3 hours).

reasonable method. An employer must not require an employee to change from one shift to another without at least 24 hours' written notice and 8 hours of rest between shifts. In Saskatchewan, employers must give employees notice of the work schedule at least 1 week in advance and must provide employees written notice of a schedule change 1 week in advance.

The federal government has also made a commitment that certain employees will be given the right to request flexible hours (in addition to an increased parental leave). For example, employees will have the legal right to ask their employers for flexibility in their start and finish times, as well as the ability to work from home.[162]

United States (US)

Scheduling has been the subject of much discussion across the US, in response to the issues raised here. Recent developments have included: predictable scheduling laws (i.e., advance notice provisions); enhanced employee flexibility laws (i.e., right to request provisions); and non-legislative approaches (e.g., retailers re-evaluating and updating existing practices in response to external pressures).

In 2014 San Francisco became the first US jurisdiction to pass legislation[163] penalizing the use on-call shifts. The San Francisco *Retail Workers Bill of Rights* is intended to give hourly retail staffers more predictable schedules and priority access to extra hours of available work. It applies to retail chains with 20 or more locations nationally or worldwide and that have at least 20 employees in San Francisco under one management system. It is estimated that this law affects about 5% of the city's workforce.

The ordinances require businesses to post workers' schedules at least 2 weeks in advance. Workers receive compensation for last-minute schedule changes, "on-call" hours, and instances in which they are sent home before completing their assigned shifts. Specifically, workers receive 1 hour of pay at their regular rate of pay for schedule changes made with less than a week's notice and 2 to 4 hours of pay for schedule changes made with less than 24 hours' notice. Finally, it requires

162 "Minister of Employment, Workforce Development and Labour Mandate Letter," Office of the Prime Minister, http://pm.gc.ca/eng/minister-employment-workforce-development-and-labour-mandate-letter.

163 It comprises two separate pieces of legislation – the "Hours and Retention Protections for Formula Retail Employees" and the "Fair Scheduling and Treatment of Formula Retail Employees". Together, the ordinances contain five major provisions to curb abusive scheduling practices at corporate retailers.

employers to provide equal treatment to part-time employees, as compared to full-time employees at their same level, with respect to:

- starting hourly wage;
- access to employer-provided paid time off and unpaid time off; and
- eligibility for promotions.

Hourly wage differentials are permissible if they are based on reasons other than part-time status, such as seniority or merit systems. Further, employees' time-off allotments may be prorated according to hours worked. Issues around equal pay for part-time and temporary employees are addressed in section 5.3.7.

The *Retail Workers Bill of Rights* in San Francisco has generated a larger discussion in the US about the need for predictable and stable schedules for part-time employees. A number of state legislatures have introduced or enacted similar measures including Michigan in 2014, and Connecticut, California, Illinois, Maryland, Massachusetts, Michigan, Minnesota, New York, Oregon, and Indiana in 2015.[164]

Some governments have passed (i.e., Vermont[165] and San Francisco[166]) right to request provisions. Such a right to request is intended to protect those who choose to limit their work hours in order to address family duties, to promote continuance of working at one's current job, and to accommodate the choice of parenthood even if labour force withdrawal is affordable. Moreover, such provisions protect against reprisals for requesting schedule changes for any number of reasons.

Two federal bills have been introduced which demonstrate the extent to which scheduling issues have begun to have greater prominence in the debate in the US over workplace rules.[167]

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164 "Fact Sheet: Recent Introduced and Enacted State and Local Fair Scheduling Legislation," National Women's Law Center, http://www.nwlc.org/sites/default/files/pdfs/recent_introduced_and_enacted_state_and_local_fair_scheduling_legislation_apr_2015.pdf.

165 *An Act Relating to Equal Pay*. Available online: http://www.leg.state.vt.us/docs/2014/Acts/ACT031.pdf.

166 *Family Friendly Workplace Ordinance (FFWO)*. Available online: http://library.amlegal.com/nxt/gateway.dll/California/administrative/chapter12zsanfranciscofamilyfriendlywork?f=templates$fn=default.htm$3.0$vid=amlegal:sanfrancisco_ca$anc=JD_Chapter12Z.

167 The *Flexibility for Working Families Act* would give employees a right to request from their employer a change to part-time hours, flex-time schedule, telework, and a right to request minimum time of notice for schedule changes. Similarly, the *Schedules That Work Act of 2014* would provide employees in all organizations with 15 or more employees not only a right to request more flexible, predictable or stable hours but a "right to receive" schedule changes for those employees with caregiving or education responsibilities, unless the employer has bona fide business reasons for not doing so. This Bill is aimed at redressing the problems of unpredictable and unstable schedules in retail sales, food preparation and service, and building cleaning occupations.

Retailers are addressing scheduling issues on their own, with many publically speaking about existing or proposed changes. For example, Abercrombie & Fitch, Victoria's Secret, and Gap Inc. pledged to make specific changes to their scheduling practices following inquiries by the New York Attorney General requesting information about their on-call scheduling practices questioning whether such practices were legal. Other large retailers in the US have voluntarily implemented predictable and stable scheduling regimes for part-time employees. In a unionized environment, Macy's sets schedules for its employees as far as six months in advance for some of the shifts at its unionized stores in and around New York City.[168] Some companies have instructed their local store managers to consider requests for making schedules more stable or consistent week-to-week, such as Starbucks and Ikea, which provide up to 3 weeks' advance notice of upcoming schedules.[169]

Outside North America, other jurisdictions have also implemented right to request legislation.

European Union (EU)

An EU directive on part-time work includes provisions facilitating movement from full-time to part-time status and vice versa, where employers are required to give consideration to requests from workers to transfer from one status to another.[170] Some European countries allow requests for transfers for all employees, but in many cases these are limited to those with caregiving responsibilities. A wide entitlement to request a change in status is often accompanied by the right to refuse for any reason although there may be a requirement that the employer meet employees to discuss the matter and provide a rationale in writing within a fixed

168 The collective bargaining agreement with Macy's negotiated by Local 1-S RWDSU enables workers to choose shifts 3 weeks in advance and select permanent shifts of up to 6 months ahead of time. Available online: http://retailactionproject.org/wp-content/uploads/2014/09/ShortShifted_report_FINAL.pdf

169 "Irregular Work Scheduling and Its Consequences," Economic Policy Institute, http://s2.epi.org/files/pdf/82524.pdf.

170 Clause 5 of the Part-time Directive states that as far as possible, employers should give consideration to:
a) requests by workers to transfer from full-time to part-time work that becomes available in the establishment;
b) requests by workers to transfer from part-time to full-time work or to increase their working time should the opportunity arise;
c) the provision of timely information on the availability of part-time and full-time positions in the establishment in order to facilitate transfers from full-time to part-time or vice versa;
d) measures to facilitate access to part-time work at all levels of the enterprise, including skilled and managerial positions, and where appropriate, to facilitate access by part-time workers to vocational training to enhance career opportunities and occupational mobility;
e) the provision of appropriate information to existing bodies representing workers about part-time working in the enterprise.

period of time if the request is rejected. Reprisals cannot be taken against workers for making the request. While employers have a broad right to refuse requests, there is evidence that employers are more likely to permit adjustments between full and part-time works when a statutory right to request the change is in place.

The Netherlands passed the *Part-Time Employment Act*, which gives workers the right to periodically request a change in their weekly work hours (either requesting more or fewer hours). In July 2014, the UK extended the legal right to request flexible work arrangements for those with caregiving responsibilities to all employees to request flexible work arrangements.[171]

Australia

In Australia, caregivers have the right to request flexible work arrangements. It is available to any employee (with at least 12 months on a full-time or part-time experience with their employer) who has a child up to age 18 (or any caregiving responsibility for a member of his or her immediate family or household), has a disability, is experiencing domestic violence, or is age 55 or older.[172]

Australia also deals with scheduling as there are 122 industry and occupation awards (including retail and hospitality sectors) that cover most workers. Among other standards, the system addresses scheduling practices (i.e., rostering) as they would be relevant to particular sectors (e.g., notice of schedule changes must be provided by advance written notice for part-time retail workers).[173]

Submissions

Employee-representative bodies and advocacy groups expressed that vulnerable workers need predictable schedules, minimum shift requirements and that those workers should be compensated for being on-call (i.e., requirement to be available for a period of time during which the employer may require an employee to work but which is not compensated unless actually called into work) and for last minute changes. They are critical of the limited scheduling regulations in the ESA. For example, the current reporting pay requirement is relatively easy to circumvent through the scheduling of split shifts by employers.

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171 If the employee has been with a company for at least half a year. An employer can still deny a request if it has a good business reason for doing so.

172 "The Right to Request Flexible Working Arrangements," Fair Work Ombudsman, http://www.fairwork.gov.au/about-us/policies-and-guides/best-practice-guides/the-right-to-request-flexible-working-arrangements.

173 Under the General Retail Industry Award 2010.

They suggested that scheduling uncertainty is most prevalent in the food, hospitality, retail, health care, and child-care sectors wherein hours of work and incomes tend to be unpredictable. These sectors predominantly comprise women, visible minorities, and recent immigrants

The majority of submissions from these groups recommend: advance notice (i.e., posting) of employees schedules (e.g., 2 weeks); minimum shift requirements (e.g., 3 hours per day to 16-24 hours per week); compensation for last minute changes to schedules (e.g., 1 hour's pay if schedule is changed less than a week's notice, four hours' pay if changed with less than 24 hours' notice); the right to request provisions without reprisals; offering of shifts to part-timers prior to hiring new staff; and job-sharing provisions – to name a few. The rationale behind such recommendations is to address issues of the need for predictability in working hours, underemployment, financial uncertainty, and general precariousness in the labour market that scheduling uncertainty contributes to and exacerbates. Moreover, anecdotally – such provisions are said to reduce absenteeism, workforce turnover, and to increase employee morale and engagement.

Employer representative groups generally strongly oppose any mandatory scheduling provisions in the ESA that apply to all employers (i.e., provisions that are applicable irrespective of the size, location, and industry). As such, they have explicitly stated a one-size-fits-all approach for scheduling does not work and that no changes be made to current models of scheduling in the ESA.

Some unions have also supported this point of view. Employers and trade unions have both expressed that scheduling can sometimes be a very difficult and complex matter requiring research, negotiations, and (sometimes) 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.

Professor Harry Arthurs recommended that after 1 year of service, employees should have a right to request, in writing, 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 would 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. There would be no appeal of an employer's decision on the merits. The employer's obligation to respond to an employee's request would be limited to one request per calendar year, per employee.[174]

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174 Harry Arthurs, *Fairness at Work: Federal Labour Standards for the 21st Century* (Gatineau: Human Resources and Skills Development Canada, 2006). Available online: http://www.labour.gc.ca/eng/standards_equity/st/pubs_st/fls/pdf/final_report.pdf

Options:

1. Maintain the status quo.
2. Expand or amend existing reporting pay rights in ESA:
    a) increase minimum hours of reporting pay from current 3 hours at minimum wage to 3 hours at regular pay;
    b) increase minimum hours of reporting pay from 3 hours at minimum wage to 4 hours at regular pay; or
    c) increase minimum hours of reporting pay from 3 hours at minimum wage to lesser of 3 or 4 hours at regular rate or length of cancelled shift.
3. Provide employees job-protected right to request changes to schedule at certain intervals, for example, twice per year. The employer would be required to consider such requests.
4. Require all employers to provide advance notice in setting and changing work schedules to make them more predictable (e.g., *San Francisco Retail Workers Bill of Rights*). This may include (but is not limited) to:
    - require employers to post employee schedules in advance (e.g., at least 2 weeks);
    - require employers to pay employees more for last-minute changes to employees' schedules (e.g., employees receive the equivalent of 1 hour's pay if the schedule is changed with less than 2 days' notice and 4 hours' pay for schedule changes made with less than 24 hours' notice);
    - require employers to offer additional hours of work to existing part-time employees before hiring new employees;
    - require employers to provide part-timers and full-timers equal access to scheduling and time-off requests;
    - require employers to get consent from workers in order to add hours or shifts after the initial schedule is posted.
5. Sectoral regulation of scheduling – encourage sectors to come up with own arrangements:

Recognizing the need for predictable and stable schedules for employees in certain sectors, and the variability of scheduling requirements, the government would adopt a sectoral approach to scheduling as follows:

- the government would be given the legislative authority to deal with scheduling issues, including by sector;
- the policy of the government would be to strongly encourage sectors which required regulation to come up with their own scheduling regimes but within overall policy guidelines of best practices set by the Ministry;
- to develop the overall policy guidelines for scheduling, the government would appoint an advisory committee, comprising representatives from different sectors:
  - representatives of employers;
  - representatives of employees;
  - individuals with expertise in scheduling; and
  - others who may facilitate an educated discussion of the issues (e.g., representatives of community service agencies and academics with relevant expertise).

  The advisory committee would be chaired and discussions facilitated by a neutral person from outside the Ministry of Labour. Once the guidelines were in place, sectoral committee structured as described in the exemptions section of this report (see section 5.2.3) could be established as required to advise the Minister on the scheduling issues in that sector.

5.3.3 Public Holidays and Paid Vacation

5.3.3.1 Public Holidays

Background

Ontario has nine public holidays that most employees are entitled to take off work with public holiday pay. This is in line with the number of public holidays in other Canadian provinces and the federal jurisdiction, which ranges from six to ten days.

Public holiday pay is equal to the total amount of regular wages earned and vacation pay payable to the employee in the 4 work weeks before the work week in which the public holiday occurred, divided by 20. The proper calculation of public holiday pay is a common problem for employers. It is often pointed to as an example of unnecessary complexity in the Act.

Before 2001, if an employee's work hours did not vary, the employee was paid a regular day's pay for the public holiday. There was a requirement to calculate public holiday pay only for employees whose daily hours of work varied. Since 2001, employers are required to perform public holiday pay calculations for every employee, even those whose work hours do not vary.

In addition, those who work on a public holiday are entitled to be paid:

- public holiday pay plus premium pay of 1.5 times the employee's regular rate of pay; or
- their regular rate for hours worked plus a substitute day off with public holiday pay.

There are special rules for public holidays that apply to construction employees. Such employees are not entitled to public holidays or public holiday pay if they receive 7.7% or more of their hourly wages for vacation or holiday pay.

Submissions

Current rules around public holidays (other than applicable exemptions) were not widely raised during our consultations. Some organizations suggested paid religious holidays that would mirror the two Christian-based public holidays (Good Friday and Christmas Day).

We heard from some organizations that they want public holiday pay to be simplified and more straightforward. For instance, the calculation could be more aligned with the applicable pay period. There could be greater clarity about whether bonuses and other similar payments form part of the calculation.

We also heard from small business that premium pay can impose a burden for retailers who need to be open on public holiday days.

Options:

1. Maintain status quo – maintain the current public holiday pay calculations – i.e., total amount of regular wages earned and vacation pay payable to the employee in the 4 work weeks before the work week in which the public holiday occurred, divided by 20.
2. Revert to the former ESA's public holiday pay calculation –
    - Employees whose work hours do not vary: regular wages for the day;
    - Employees whose work hours differ from day to day/week-to-week (i.e., there is no set schedule of hours for each day of the week):
        - the average of the employee's daily earnings (excluding overtime pay) over a period of 13 work weeks preceding the public holiday; or
        - the method set out under a collective agreement.
3. Combined calculation – revert to the former ESA's public holiday pay calculations for full-time employees and commission employees and maintain the current ESA's formula for part-time and casual employees –
    - Full-time and commission employees: regular wages for the day;
    - Part-time and casual employees: total amount of regular wages earned and vacation pay payable to the employee in the 4 work weeks before the work week in which the public holiday occurred, divided by 20.
4. Set a specified percentage for public holiday pay – e.g., employees receive 3.7% of wages earned each pay period. This would be the equivalent of wages for 9 regular working days to reflect the 9 public holidays in a year.[175] Under this option public holiday pay would essentially be "pre-paid" throughout the year – employees would not receive public holiday pay on each individual holiday and existing qualifying criteria would no longer apply.[176]

    Employees who worked on a public holiday would still be entitled to premium pay (or a substitute day off).

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175 For example, 3.7% of regular wages reflects 5 days/week multiplied by 50 weeks/year, less 9 public holidays, or 241; 9 equals 3.7% of 241.

176 Right now, employees generally qualify for the public holiday entitlement unless they fail without reasonable cause to work all of their last regularly scheduled day of work *before* the public holiday or all of their first regularly scheduled day of work *after* the public holiday (this is called the "Last and First Rule").

5.3.3.2 Paid Vacation

Background

Employees are entitled to 2 weeks of vacation time after each 12-month vacation entitlement year. The ESA does not provide for any increases to the 2-week vacation time entitlement based on length of employment although a contract of employment or collective agreement might do so. There are rules around when vacation must be taken.

Vacation pay must be at least 4% of wages earned in the 12-month vacation entitlement year (or alternative period).

Compared to other Canadian provinces and the federal jurisdiction, Ontario has the least generous provisions with respect to vacation time and pay. Most other provinces and the federal jurisdiction start with 2 weeks of paid vacation, and increase it to 3 weeks after a certain period of employment, which ranges from 5 to 15 years. One province, Saskatchewan, starts with 3 weeks of paid vacation, and increases it to 4 weeks after 10 years of employment.

Submissions

Employee advocates and labour groups have said that vacation entitlements should be increased. Many suggested starting at 3 weeks of paid vacation, and increasing to 4 weeks after 5 years of employment. Some organizations suggested that employees get 3 weeks' vacation after 5 years of employment; some suggested 3 weeks for everyone.

Some employer organizations said that the current entitlements around paid vacation should be maintained. Some want greater flexibility regarding when vacation pay is paid.

Options:

1. Maintain the status quo of 2 weeks.
2. Increase entitlement to 3 weeks after a certain period of employment with the same employer – either 5 or 8 years.
3. Increase entitlement to 3 weeks for all employees.

5.3.4 Personal Emergency Leave

(Note: Issues concerning paid sick days and doctors' notes are addressed in section 5.3.5).

Background

Under the current legislation, employees whose employer regularly employs 50 or more employees are entitled to 10 days of unpaid PEL.

Section 50 of the ESA provides that an employee may use these days for a personal illness, injury or medical emergency or for the death, illness, injury or medical emergency or urgent matter concerning:

- the employee's spouse;
- a parent, step-parent or foster parent of the employee or the employee's spouse;
- a child, step-child or foster child of the employee or the employee's spouse;
- a grandparent, step-grandparent, grandchild or step-grandchild of the employee or of the employee's spouse;
- the spouse of a child of the employee;
- the employee's brother or sister;
- a relative of the employee who is dependent on the employee for care or assistance.

Employees must inform their employers about their plans to take the leave either before or as soon as possible after they have begun the leave.

Overall, about three-quarters (74%) of Ontario employees are estimated to be fully covered by the PEL provisions of the ESA. About 8% of employees have special rules for emergency leave, largely professional employees who are not permitted to take PEL if doing so would constitute professional misconduct or dereliction of duty. An additional 971,000 employees – or 19% – are exempt from the PEL provisions, because they work in small firms.[177]

There were 442,659 businesses with employees in Ontario in 2014. Only 5% of businesses employed more than 50 employees while 95% of businesses

177 Vosko, Noack, and Thomas, 27.

employed 49 or less employees. More than half of these businesses (58%) employed less than five employees.[178]

Other Jurisdictions

PEL is not easily compared to leave provisions in other jurisdictions because it combines a number of different leaves (sick, bereavement, and family responsibility leaves into one with an employer size threshold (50+)).

Whereas Ontario has 10 days that can be used for the purposes outlined above, every other Canadian jurisdiction except for Alberta (which does not have any leaves for sickness, bereavement, and/or family responsibility) has a specific number of days for each categorized leave. For example, New Brunswick has sick leave of up to 5 days, family responsibility leave of up to 3 days, and bereavement leave of up to 5 days for a total of up to 13 days, whereas British Columbia has bereavement leave of up to 3 days and family responsibility leave of up to 5 days for a total of 8 days.

Ontario is also the only Canadian jurisdiction to have an employer-size (50+) eligibility threshold.

Payment for any of these leaves is not common, but does exist. The federal jurisdiction provides 3 paid days of bereavement leave for immediate family members. Quebec offers 1 paid bereavement day for immediate family members, and Newfoundland and Labrador provide 1 paid bereavement day for a relative.

Only Prince Edward Island provides for paid sick leave. After six months continuous service with an employer, an employee is entitled to unpaid leaves of absence of up to three days for sick leave during a twelve-month period. If the employee takes three consecutive days, the employer may ask for a medical certificate. Employees who have more than five years of continuous service with the same employer are entitled to one day of paid sick leave and up to three days of unpaid sick leave each calendar year.

In the US, it is common to have no statutory leave entitlement for PEL. Only California and Massachusetts have PEL-related leaves. Both states have provisions for paid sick leave, which are described in section 5.3.5.

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178 Statistics Canada, *CANSIM Table 552-0001 – Canadian Business Patterns, Location Counts with Employees, by Employment Size and North American Industry Classification System, Canada and Provinces* (Ottawa: Statistics Canada, 2016). These are calculations made by the Ontario Ministry of Labour based on data from Statistics Canada's Canadian Business Patterns. The data includes all active Canadian locations with employees in 2014.

Submissions

During consultations we heard concerns from employee advocates about the 50+ employee threshold. They have made recommendations to remove this threshold and extend PEL to employees working for smaller employers so that all employees could have access to this benefit.

Employers asserted that PELs should be assessed in the context of the other leaves that are provided in the ESA including: pregnancy leave, parental leave, family medical leave, organ donor leave, family caregiver leave, critically ill child care leave, crime related child death of disappearance leave, leave for declared emergencies and reservist leave (see section 5.3.6). The problems many employer stakeholders point to is the complexity in navigating the various ESA leaves, and concerns about the way leaves are implemented.

Some employers with generous paid sick leave and bereavement and other leave policies advised that some of their employees view PEL days as being an entitlement that exists in addition to leaves already provided by the employer. The ESA currently provides that:

> *If one or more provisions in an employment contract…that directly relate to the same subject matter as an employment standard provide a greater benefit to an employee than the employment standard, the provision or provisions in the contract…apply and the employment standard does not apply.*

Some employers have said that the nature and scope of the current PEL makes it difficult for employers to establish that their leave policies provide a greater right or benefit than PEL. For example, some say that even though they provide for paid sick leave, some employees are asking for additional unpaid sick leave days pursuant to the statutory provision.

During consultations, we heard from a number of employers about absenteeism and employees abusing the PEL provisions. Some employers pointed to high levels of absenteeism on Mondays and Fridays and on days abutting holidays as circumstantial evidence of abuse. They also asserted that although they are entitled to "require an employee who takes leave under this section to provide evidence reasonable in the circumstances that the employee is entitled to the leave" that the circumstances triggering entitlement to such leaves are difficult if not impossible to monitor.

Employers point out that the impact of such leaves when expressed as a right or entitlement can be very significant particularly because employers are not given much, if any, notice by employees of their intention to take such leaves. Indeed the very nature of such leaves, being related to emergencies precludes much notice being given in most circumstances. The leaves, although unpaid, often trigger additional costs to schedule overtime for others to fill in for the absent employee or even to staff at higher levels than necessary in order to retain the requisite staffing levels for their manufacturing operations. Sometimes, it requires the additional use of temporary and/or part time employees or of agency workers. Absenteeism and the management of absenteeism is a major concern for employers because it adds to costs and decreases productivity.

A number of employer stakeholders recommend separating/categorizing PEL into three separate leaves.

We did not hear from many smaller employers but we anticipate that they might well have vigorous opposition to any extension of the PEL provisions to employers who regularly employed less than 50 employees. Such employers do not have the resources to employ human resources professionals and lack the expertise needed to deal with absenteeism issues. Secondly, there is a concern that they do not have the flexibility and the capacity to deal with PELs as currently framed in the legislation. It can be expected that small employers have key employees who perform essential functions and who cannot be replaced on a short-term temporary basis. Therefore, they may argue that the extension of PEL provisions to smaller employers will have significant adverse impact on their ability to provide service/product to their customer/consumer base.

Options:

1. Maintain the status quo.
2. Remove the 50 employee threshold for PEL.
3. Break down the 10-day entitlement into separate leave categories with separate entitlements for each category but with the aggregate still amounting to 10 days in each calendar year. For example, a specified number of days for each of personal illness/injury, bereavement, dependent illness/injury, or dependent emergency leave but the total days of leave still adding up to 10.
4. A combination of options 2 and 3 but maintaining different entitlements for different sized employers.

5.3.5 Paid Sick Days

Background

As described in the section 5.3.4, currently, under the ESA, an employee whose employer regularly employs 50 or more employees is entitled to an unpaid leave of absence of up to 10 days per year because of any of the following:

- a personal illness, injury or medical emergency;
- the death, illness, injury or medical emergency of certain relatives; or
- an urgent matter that concerns certain relatives.

In addition, employers may request "reasonable evidence" with respect to absences taken under PEL. This could include requiring an employee to provide a doctor's note in cases where they have been away from work due to illness.

In the "Guide to Consultations" we asked whether revisions were needed to this entitlement, and whether there should be a number of job-protected sick days.

In *Expected and Actual Impacts of Employment Standards*, a paper prepared for the Changing Workplaces Review, Professor Morley Gunderson noted there is not a lot of research documenting the extent to which personal and other leaves are taken and their effects on health and other outcomes. He states that "workers who come to work when sick are not likely to be productive and can infect others with that associated cost," but that creating paid sick days would be most costly for employers and would also add a cost to the public medical system for providing examinations and documentation. He further says that "workers clearly respond to the incentives of sick leave in that the more generous the leave provisions and the greater the job protection, the longer the sick leave that is taken, with their use increasing to the extent that employees increasingly regard them as a 'right' rather than a privilege."

While some employers do not provide paid sick days, many others do. Where they exist, sick leave plans vary greatly in benefits provided. Some employers have plans which provide for short term and long term disability. Some employer plans and collective agreements have unpaid waiting periods before sick pay is granted, or they provide different amounts of pay depending on the number of sick days taken in a year.

Other Jurisdictions

While most provinces in Canada have some protection for employees to be away from work due to illness, requiring payment for sick days is not common. In Canada, Prince Edward Island is the only province to provide 1 paid sick day per year. This leave is only available to employees with 5 or more years of service.

In the US, California and Massachusetts have paid sick leave legislation.

In California, the leave is available to all employees and accrues at 1 hour of paid leave for every 30 hours worked. Employers are allowed to limit the amount of paid sick leave per year to 24 hours or 3 days per year.

In Massachusetts, paid sick leave is available to employees who work for employers with 11 or more employees and accrues at one hour of earned sick time for every 30 hours worked up to a cap of 40 hours per year. Employers with fewer than 11 employees are expected to offer the same leave, but unpaid.

In September 2015, US President Obama signed an executive order requiring federal contractors to offer their employees up to 7 days of paid sick leave per year. The executive order was estimated to assist approximately 300,000 people at the time of signing. In addition, President Obama has urged Congress to pass legislation that would provide paid sick day protections for workers.[179]

Globally, a 2010 report for the World Health Organization[180] suggests that as many as 145 countries have some form of leave and wage replacement with respect to employee illness. However, there are variations in how long these leaves may be and how wages are replaced (for example, wages may be replaced only partially).

Submissions

During consultations we heard from many employee advocacy groups and labour groups about the need for paid sick leave. We also heard from health care professionals and others that the lack of paid sick days causes unnecessary costs to patients, other workers who become infected by colleagues who are ill, and the health-care system generally.

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179 "Fact Sheet: Helping Middle-Class Families Get Ahead by Expanding Paid Sick Leave," The White House (Office of the Press Secretary), https://www.whitehouse.gov/the-press-office/2015/09/07/fact-sheet-helping-middle-class-families-get-ahead-expanding-paid-sick.

180 Xenia Scheil-Adlung and Lydia Sandner, *The Case for Paid Sick Leave: World Health Organization Report,* (Geneva: World Health Organization, 2010). Available online: http://www.who.int/healthsystems/topics/financing/healthreport/SickleaveNo9FINAL.pdf.

Employee advocacy groups asserted that the lack of legislated entitlements to paid sick days has left many precarious workers unable to stay home when sick due to fear of lost wages and/or termination. It was commonly recommended that the ESA should be amended to repeal the exemption of 49 or fewer workers from providing PEL that all employees should accrue paid sick time [for example, a minimum of 1 hour of paid sick time for every 35 hours worked (approximately 7 paid sick days per year)], and that employers should be prohibited from requiring evidence for such absences.

Many employers were opposed to the creation of paid sick days. Some felt that a new statutory requirement would be overly costly and hurt their competitiveness. Many employers pointed to the current PEL requirement, which can be used for personal illness, to illustrate how some employees abuse the provision by viewing it as a vested entitlement. In discussing PEL, employers noted the importance of being allowed to request doctors' notes to substantiate employee absences while acknowledging the burden that this places on the health care system. On the other hand many people have questioned the utility of medical notes which very often can only repeat what the physician is told by the patient, are costly, and which are of very little value to the employer and have little probative value in any legal proceeding.

Although we did not receive a submission from the Ontario Medical Association (OMA), in January 2014, the OMA issued a news release encouraging people who are sick to stay home. It also encouraged employers to not require sick notes as doing so only encourages the spread of germs in the doctor's office waiting room. The then-president of the OMA said: "I can't stress it enough going to work while sick is bad for you and potentially worse for your colleagues. Staying home to rest will help you to manage your illness and prevent others from getting infected."

Options:

1. Maintain the status quo.
2. Introduce paid sick leave –
    a) Paid sick leave could:
        i. be a set number of days (for example: every employee would be entitled to a fixed number of paid sick days per year); or
        ii. have to be earned by an employee at a rate of 1 hour for every 35 hours worked with a cap of a set number of days;

b) Permit a qualifying period before an employee is entitled to sick leave, and/or permit a waiting period of a number of days away before an employee can be paid for sick days;

c) Require employers to pay for doctor's notes if they require them.

5.3.6 Other Leaves of Absence

Background

The ESA provides ten unpaid, job-protected leaves of absence. Before 2001 (when the ESA, 2000 came into force), there were only two job-protected leaves: pregnancy leave and parental leave. The (then) new ESA introduced a third new leave: emergency leave (the name was later changed to PEL). Seven new leaves have been created in the decade between 2004 and 2014.[181]

While PEL is discussed in a different section of this report (see section 5.3.4), all the remaining leaves are discussed below.

Pregnancy Leave and Parental Leave

Under the ESA, pregnant employees who qualify have the right to take pregnancy leave of up to 17 weeks of unpaid time off work.

New parents have the right to take parental leave – unpaid time off work when a baby or child is born or first comes into their care. Birth mothers who took pregnancy leave are entitled to up to 35 weeks' leave. Birth mothers who do not take pregnancy leave and all other new parents are entitled to up to 37 weeks' parental leave.

The federal *Employment Insurance Act* (EIA) provides eligible employees with maternity and/or parental benefits that may be payable to the employee during the period he or she is off on an ESA pregnancy or parental leave.

Family Caregiver Leave

Family caregiver leave is a leave of up to 8 weeks per calendar year per specified family member. It may be taken to provide care or support to certain family members for whom a qualified health practitioner has issued a certificate stating that he or she has a serious medical condition.

181 One of these leaves is Declared Emergency Leave, which is available in certain circumstances where the Ontario government declares an emergency under the *Emergency Management and Civil Protection Act*. There has not been a declared emergency since this leave was introduced in 2006, and this leave is not discussed further in this report.

Family Medical Leave

Family medical leave is a leave of up to 8 weeks in a 26-week period. It may be taken to provide care or support to certain family members and people who consider the employee to be like a family member in respect of whom a qualified health practitioner has issued a certificate indicating that he or she has a serious medical condition with a significant risk of death occurring within a period of 26 weeks.

The federal EIA provides 26 weeks of employment insurance benefits ("compassionate care benefits") to eligible employees taking this leave.

Critically Ill Child Care Leave

Critically ill child care leave is a leave of up to 37 weeks within a 52-week period. It may be taken to provide care or support to a critically ill child of the employee for whom a qualified health practitioner has issued a certificate stating:

- that the child is a critically ill child who requires the care or support of one or more parents; and
- sets out the period during which the child requires the care or support.

Parents who take leave from work to provide care or support to their critically ill child may be eligible to receive EI special benefits for Parents of Critically Ill Children (PCIC) for up to 35 weeks.

Crime-Related Child Death or Disappearance Leave

Crime-related child death or disappearance leave provides up to 104 weeks with respect to the crime-related death of a child and up to 52 weeks with respect to the crime-related disappearance of a child.

An employee who takes time away from work because of the crime-related death or disappearance of their child may be eligible for the Federal Income Support for Parents of Murdered or Missing Children grant.

Organ Donor Leave

Organ donor leave is an unpaid, job-protected leave of up to 13 weeks, for the purpose of undergoing surgery to donate all or part of certain organs to a person.

Reservist Leave

Employees who are reservists and who are deployed to an international operation or to an operation within Canada that is or will be providing assistance in dealing with an emergency or its aftermath are entitled under the ESA to unpaid leave for the time necessary to engage in that operation.

Employees on ESA leaves have the right to continue participation in certain benefit plans and continue to earn credit for length of employment, length of service, and seniority. In most cases, employees must be given their old job back at the end of their leave.

Income Support and Leaves

The leaves under the ESA are unpaid, but employees taking Pregnancy and Parental Leave, Family Medical Leave, Critically Ill Child Care Leave, and Crime-Related Child Death or Disappearance Leave may be eligible for EI benefits or grants from the federal government.

Owing to this interaction between these federal income supports and the provincial job-protected leaves, Ontario is often limited in how and when it introduces or structures new or existing leaves. Most provinces follow suit or introduce/implement leaves that are closely aligned with federal income support programs.

For example, two recent federal changes may have an impact on Ontario's Family Medical Leave:

1) an amendment to the EIA increased the number of EI compassionate care benefit weeks from 6 weeks in a 26 week period to 26 weeks in a 52 week period; and

2) an amendment to the CLC that increased maximum compassionate care leave from 8 weeks to 28 weeks for providing care or support to a family member with a serious medical condition with a significant risk of death within 26 weeks. The period in which the leave may be taken has increased from 26 weeks to 52 weeks.

In addition, the new federal government has committed to providing Canadians with more generous and flexible leaves for caregivers and more flexible parental leave. The government's election platform commitment specified that, in the future, parents may be able to receive benefits in blocks of time over a period of

up to 18 months and may be able to take a longer leave of up to 18 months when combined with maternity benefits at a lower level.

These federal changes put pressure on Ontario to follow suit with leaves that mirror the federal changes so that employees who rely on the ESA can fully take advantage of the expanded EI benefits.[182]

Other Jurisdictions

Jurisdictions vary in their approach to the number of leaves they offer and in how those leaves are structured. In Canada, many of the provinces model their leave provisions on the CLC to ensure that employees are able to access federal benefits or grants when utilizing the job-protected leave. Also, some jurisdictions offer leaves to employees such as Domestic Violence/Abuse Leave (California and recently passed in Manitoba) and Elder/Child Care Leave (in Massachusetts).

Submissions

Through the consultations, we heard about different situations that might warrant the need for a job-protected leave. Specifically, we received submissions that suggested the need for a job-protected leave for employees who are victims of domestic abuse. Unfortunately, victims of domestic abuse often must find shelter for themselves and their children or to seek counselling with respect caring for themselves and their children. They may also be required to attend court proceedings related both to their right to stay in a matrimonial home and to deal with contested family issues relating to the primary residence, access to the children, or spousal and child support. These issues require immediate attention and a leave from work may be necessary. During consultations one union suggested that the ESA be amended to introduce 5 paid days of domestic violence leave and a right to extend the leave on an unpaid basis as needed.

We also received submissions that special leave provisions of 52 weeks should be available for employees who are dealing with the death of a child that is not a result of a crime.

On the other hand, during consultations we heard from a number of employers and employer organizations who cautioned us against introducing any new

182 Nova Scotia has already amended its Compassionate Care Leave to mirror the recent EI and CLC changes to compassionate care leave and Newfoundland and Labrador is making changes.

paid or unpaid leaves and recommended consolidation of the various existing leave provisions. For example, one association pointed out that there are four separate leaves related to the employee or their family members and that a more consolidated approach would provide administrative relief to employers. Likewise, another organization suggested that their members view the number of leaves in Ontario as confusing and burdensome; it was told by survey respondents that simplification would help both businesses and employees that are requesting the leaves.

Generally, employers believe that the existing leave provisions in the ESA provide reasonable and generous leave provisions for employees and to increase these leave provisions would further compromise productivity and competitiveness.

Options:

1. Maintain the status quo.
2. Monitor other jurisdictions and the federal government's approach to leaves and make changes as appropriate (e.g., to family medical, pregnancy and parental and family caregiver leave).
3. Introduce new leaves:
    a) Paid Domestic or Sexual Violence Leave[183] for a number of days followed by a period of unpaid leave;
    b) Unpaid Domestic or Sexual Violence Leave;
    c) Death of a Child Leave, either through:
        i. expansion of the existing Crime-related Child Death or Disappearance Leave or Critically Ill Child Care Leave; or
        ii. creation of a separate leave of up to 52 weeks for the death of a child.[184]
4. Review the ESA leave provisions in an effort to consolidate some of the leaves.

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183 A private member's bill was recently introduced that would (if passed) create a new leave of absence if an employee or the employee's child has experienced domestic or sexual violence (Bill 177, *Domestic and Sexual Violence Workplace Leave, Accommodation and Training Act, 2016*).

184 A private member's bill was recently introduced that would (if passed) create a new leave of absence of up to 52 weeks if an employee's child dies (Bill 175, *Jonathan's Law (Employee Leave of Absence When Child Dies), 2016*).

5.3.7 Part-time and Temporary Work – Wages and Benefits

(Note: Issues concerning employees' right to request changes to their schedule are dealt with in section 5.3.2 on Scheduling. Further descriptions on part-time and temporary employment can be found in Chapter 3).

Background

This section deals with issues related to compensating part-time, temporary, casual and limited term contract employees in the same manner as full-time employees doing the same work in the same establishment hired directly by an employer. This section does not address temporary employees hired by a THA and assigned to a client. That subject is covered in section 5.3.9.

Over a long period, employment in part-time and temporary work has grown considerably and is a prominent feature of the modern labour market. Attitudes towards workers in such jobs have been changing as well. For example, at various times the OLRB considered that full-time and part-time workers should generally be in separate bargaining units because they did not share a community of interest. The attachment and commitment of part-time and temporary employees to the business was considered to be less than that of full-time and permanent employees. It was thought that their concerns and interests would be so different that they should not even bargain as a single group. This approach reflected the logical expectation that their treatment on issues like wages and benefits would be different.

This policy of separate certification for part-time and full-time units ceased in 1993 when the amendments[185] to the Labour Relations Act overruled such an approach and created a presumption in favour of combined full-time/part-time units.[186] The fundamental attitude that part-timers doing the same work in the same establishment can be treated differently through lower wages and relative access to benefits, however, has persisted in some areas of the economy and in some establishments. While many employers may treat their employees equitably (e.g., pro rata treatment or meeting a reasonable threshold of income or hours to qualify for benefits) – it is still common to find part-timers being paid less than comparable

185 Under Bill 40, the *Labour Relations and Employment Statute Law Amendment Act, 1992* (proclaimed into effect on Jan. 1, 1993), the LRA was amended to direct the OLRB to certify part-time and full-time employees in the same unit where the union had more than 55% membership support overall.

186 In 1995, Bill 7 repealed the Bill 40 amendments. Nevertheless, the Board continued to adopt in practice the Bill 40 practice of preferring combined over separate units in respect of full and part-time employees.

full-time employees, and without equitable access to benefits. This has raised concerns regarding the treatment of such employees in comparison to full-time employees doing the same work in the same establishment.

Concerns have also been raised over the growth of individuals working on ubiquitous fixed and limited term contracts. There are concerns over the lack of security in such arrangements – particularly in instances where it appears that employees are kept in such positions indefinitely to justify lower wages and lack of benefits.

Current Application of the ESA

The only type of wage discrimination that is prohibited under the ESA is to ensure that women and men receive equal pay for performing substantially the same job. They are entitled to receive equal pay for "equal work," meaning work that is substantially the same, requiring the same skill, effort and responsibility and performed under similar working conditions in the same establishment.[187] The Act does not extend such protection to part-time or temporary employees in comparison to full-time employees.

Part-time and temporary employees are covered by the ESA and generally have the same rights as other employees as they are equally entitled to minimum wage, regular pay days, overtime, etc.

The ESA does not require provision of benefits plans. Where benefits plans are provided by employers, the ESA prohibits discrimination (with some stipulations[188]) between employees or their dependents, beneficiaries or survivors because of the age, sex or marital status of the employee.

Part-time Employment

"Statistics Canada defines part-time workers as employed persons who usually work fewer than 30 hours per week at their main or only job[189]."

187 Exceptions include where differences are due to seniority, merit or other criteria not based on gender (e.g., working night shifts).
188 For example, when referring to benefits and age discrimination – "age" is defined as any age of 18 years or more and less than 65 years.
189 "Classification of Full-Time and Part-Time Work Hours," Statistics Canada, http://www.statcan.gc.ca/concepts/definitions/labour-travail-class03b-eng.htm.

In 2015, there were 1.3 million part-time workers in Ontario, which comprised approximately 19% of total employment in the province. Job growth in part-time employment outpaced full-time work between 2000 and 2015, growing at 25% and 18%, respectively.[190]

Part-time employment in Ontario tends to be:

- predominantly female (as of 2015, women made up about 50% of total employees and 66% of total part-time workers, while men comprised 34% of total part-time workers)[191];
- recent immigrants (as of 2008, they made up 10% of total employees and almost 16% of temporary part-time workers)[192]; and
- minimum-wage earners (as of 2013, 21.8% of part-time workers earned minimum wage as compared to only 3.4% of full-time workers).[193]

Temporary Employment

StatsCan defines a temporary job as having a predetermined end date, or a temporary job that will end as soon as a specified project is completed. It includes seasonal jobs; temporary, term or contract jobs, including work done through a THA; casual jobs; and other temporary work.[194]

Between 2000 and 2015, cumulative growth in temporary employment has outpaced that of permanent job growth (at 45% and 15%, respectively).

As of 2015, there were 747,600 temporary employees in Ontario, comprising approximately 13% of total employees (temporary and permanent).[195]

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190 Statistics Canada, *CANSIM Table 282-0002 – Labour Force Survey Estimates, by Sex and Detailed Age Group* (Ottawa: Statistics Canada, 2016).
191 Statistics Canada, *CANSIM Table 282-0002*.
192 Andrea M. Noack and Leah F. Vosko, *Precarious Jobs in Ontario: Mapping Dimensions of Labour Market Insecurity by Workers' Social Location and Context* (Toronto: Law Commission of Ontario, 2011). Available online: http://www.lco-cdo.org/vulnerable-workers-call-for-papers-noack-vosko.pdf.
193 Diane Galarneau and Eric Fecteau, "The Ups and Downs of Minimum Wage," Statistics Canada, http://www.statcan.gc.ca/pub/75-006-x/2014001/article/14035-eng.htm.
194 Statistics Canada, *CANSIM Table 282-0080 – Labour Force Survey Estimates, Employees by Job Permanency, North American Industry Classification System, Sex and Age Group* (Ottawa: Statistics Canada, 2016).
195 Statistics Canada, *CANSIM Table 282-0074 – Labour Force Survey Estimates, Wages of Employees by Job Permanence, Union Coverage, Sex and Age Group* (Ottawa: Statistics Canada, 2016).

Part-time or Temporary Work Arrangements

Employees with part-time or temporary work arrangements generally experience:

- *Lower Wages*

  In 2015, median hourly rates for part-timers were $12.50, only slightly more than half of the $24.04 for full-timers in Ontario.[196] Median hourly wages for temporary employees were $15.00 in 2015, while permanent employees earned $23.00 per hour across the province.[197]

  These gaps may reflect differences in the types of jobs done by part-time/temporary and full-time/permanent workers, but they also reflect pay differences that exist when the jobs are the same or similar.

  In 2012, 30% of minimum wage earners were employed in a temporary status, a figure that well exceeded the share of temporary status workers in the workforce as a whole at that time (12.9%). Thus, minimum wage workers were two-and-a-half times more likely to be employed in a temporary job category such as seasonal, contract, casual, etc.[198]

- *Less Access to Benefits*

  These differences in salary are compounded by differences in benefit coverage and especially as many benefits are non-taxable. Employers are at least twice as likely to offer extended health, dental, insurance and pension benefits to full-time permanent employees as to part-time and temporary employees.[199] Some employers and some multi-employer collective agreements offer benefits to part-timers but it is difficult to generalize about them because they vary and have different thresholds for service before employees can qualify. Some employers pay part-time employees a fixed percentage of pay in lieu of benefits.

  A 2006 study found that only 23% of temporary and contract workers had some form of benefits, as compared with 86% of full-time, permanent workers.[200]

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196 Statistics Canada, *CANSIM Table 282-0152 – Labour Force Survey Estimates, Wages of Employees by Type of Work, National Occupation Classification, Sex, and Age Group* (Ottawa: Statistics Canada, 2016).
197 Statistics Canada, *CANSIM Table 282-0074*.
198 Computed by the Ontario Ministry of Finance based on data from Statistics Canada's Labour Force Survey. This was a special tabulation made for the Ontario Minimum Wage Advisory Panel.
199 Noack and Vosko, *Precarious Jobs in Ontario: Mapping Dimensions of Labour Market Insecurity by Workers' Social Location and Context.*
200 McMaster University, *Work and Health Survey* (Hamilton: McMaster, 2006).

- *Less Likely to be in Unionized Positions*

  Union coverage is higher for full-time employees than part-time employees. However, coverage has been trending downwards significantly for full-time employees, but relatively flat for part-time employees (i.e., the gap has shrunk). In 2015, the union coverage in Canada was 32.2% for full-time and 23.5% for part-time employees.[201]

  As of 2015, the union coverage was 27.7% for permanent and 20.8% for temporary workers in Ontario.[202]

Other Jurisdictions

Canada

There are two jurisdictions in Canada that mandate parity in wages or benefits according to employment status.

In Quebec, employers are prohibited from paying an employee less than other employees doing the same work in the same establishment, solely on the basis that they work fewer hours each week (i.e., an employee working on a part-time basis). This does not apply to employees who earn more than twice the minimum wage.

In Saskatchewan, an employer with 10 or more full-time equivalent employees must provide benefits to eligible part-time employees (i.e., part-time employees who work between 15 and 30 hours a week receive 50% of the benefits provided to comparable full-time employees, and those working 30 or more hours in a week receive 100% of the benefits provided to comparable full-time employees).

Australia

In Australia, part-time employees are entitled to the same rights, on a "pro-rata" basis, in relation to the number of hours worked. They are also entitled to ongoing employment (or a fixed-term contract) and can expect to work regular hours each week. Australia also has special provisions for casual workers[203] through casual loading, a percentage on top of the base pay received by full-time and part-time

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201 Statistics Canada, *CANSIM Table 282-0224 – Labour Force Survey Estimates, Employees by Union Status, Establishment Size, Job Tenure, Type of Work and Job Permanency* (Ottawa: Statistics Canada, 2016).
202 Statistics Canada, *CANSIM Table 282-0074.*
203 Those who have no guaranteed hours of work, usually work irregular hours, do not get paid sick or annual leave, can end employment without notice, unless notice is required by a registered agreement, award or employment contract.

employees. Casual employees get paid extra to make up for not getting entitlements like paid annual leave and sick leave. The exact amount of the "top-up" depends on the industry and the occupation. Most casual workers are entitled to receive 25% above the wages received by regular employees doing the same work.[204]

European Union (EU)

Part-time work has been promoted in the EU over the last two decades as a tool to mobilize labour-market groups with lower participation rates (e.g., women with children, individuals with health problems and older workers). The EU has also strongly promoted part-time work as a way to offer employers who face variations in business demand increased scheduling flexibility.

Encouraging part-time employment appears to have been one important rationale behind the agreement of all the relevant interests in society that there should be equal treatment in compensation between part-time and full-time employees. From this agreement came the Council Directive 97/81/EC in 1997.

Accordingly, in the EU, part-time workers may not be treated in a less favourable manner with respect to employment conditions than comparable full-time workers solely because they work part-time unless justified on objective grounds. A comparable full-time worker is an employee in the same establishment having the same type of employment contract or relationship, who is engaged in the same, or similar work or occupation with due regard being given to other considerations which may include seniority and qualification/skills (the Directive also deals with scheduling requests, which is dealt with in section 5.3.2).

The term "working conditions" is defined differently in the various EU countries but generally encompasses hourly wages, probationary periods, various leaves, and health and safety, training, sick pay, pension schemes, incentive programs, transfer possibilities, notice periods etc. Pro rata treatment of part-time workers with full-time workers based on the differences in hours worked is in keeping with the principle of fair treatment and there is recognition that some benefits and working conditions are difficult to apply or to provide on a pro rata basis or to provide to workers whose hours of work are insufficient to make the benefits reasonable or applicable. There are provisions, for example, that entitlement to a particular employment condition be subject to a period of service, or a number of hours worked or a level of earnings.

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204 "Casual Employees," Fair Work Ombudsman, http://www.fairwork.gov.au/employment/casual-full-time-and-part-time-work/pages/casual-employees.

The term "objective reasons," which permits differences in treatment, has been defined as precise and concrete circumstances characterising a given activity. It must be transparent as to the aim, and relate to objective reasons why the nature of the part-time or fixed-term work justifies differential treatment. In the UK, the courts have interpreted objective reasons to mean that the part-time nature of an employee's status must be the effective and predominant cause of the less favorable treatment, though not necessarily the sole reason. A performance related pay scheme, or differences in seniority or skill and qualifications could justify different treatment.

Casual employees may be excluded from the laws requiring no discrimination against part-timers, but in practice most countries in the EU do not exclude them.

In 1999, the EU also passed Directive 1999/70/EC on Fixed-Term Work. The Directive sought to eliminate discrimination in the pay and conditions of work between fixed-term and permanent workers. It also prohibits the treatment of fixed-term workers in a less favourable manner than permanent workers solely because they have a fixed-term contract, unless the difference in treatment can be justified on objective grounds. The terms used in the Directive are identical to those used with regards to part-time employees.

To prevent abuse, countries must introduce one or more of the following measures:

- objective reasons justifying the renewal of such contracts or relationships;
- the maximum total duration of successive fixed-term employment contracts and relationships; and
- the maximum number of successive renewals.

Repeated renewals of fixed-term contracts was seen as a problem insofar as they may have been used to circumvent employers' obligations to permanent employees with respect to termination of employment, for instance. The most popular measure for preventing abuse of fixed-term contracts is a cap on the total duration of such contracts.

Submissions

Employee advocacy and labour groups have argued that part-time workers should receive the same pay (and in some cases, benefits) as their full-time counterparts.

Some have expressed concern that employers are using employment status to impose inferior pay on part-time and temporary workers. They are concerned that this is leading to a growing "precariat," challenging concepts of decency of work, fairness and imposing challenges on vulnerable individuals to improve their situation.

Concerns were also raised with the issue of ongoing fixed-term contracts which may keep employees in a precarious state over long periods of time (i.e., unable to access permanent employment entitlements[205] even though they have been employed over a long period of time with one employer). Concerns were also raised with respect to employees who have successive short term contracts and project work with successive employers who find it difficult to obtain benefit coverage.

Many groups recommended that there be no differential treatment in pay and working conditions for workers who are doing the same work but are classified differently (i.e., part-time or temporary); and that where an employer provides benefits, these must be provided to all workers, at least pro rata or equitably, regardless of employee status.

University faculty associations have raised the issue of providing the same wages and benefits to part-time, contract faculty as full-time faculty in order to address growing concerns regarding precarious work in the sector.

One employer expressed support, stating that temporary workers should be paid a considerably higher minimum wage, and that part-time workers should have the same pay and benefits as full-time workers. The vast majority of employers have been silent on this issue.

Professor Harry Arthurs recommended that part-timers be paid the same as full-timers in the same establishment performing similar work.[206]

Options:

1. Maintain the status quo.
2. Require part-time, temporary and casual employees be paid the same as full-time employees in the same establishment unless differences in qualifications, skills, seniority or experience or other objective factors justify the difference.

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205 For example, contract workers may be offered lower wages and benefits when compared to full-time employees. They also may have less access to pension plans or severance pay.
206 Arthurs, *Fairness at Work: Federal Labour Standards for the 21st Century.*

3. Option 2 could apply only to pay or to pay and benefits, and if to benefits, then with the ability to have thresholds for entitlements for certain benefits if pro rata treatment was not feasible.
4. Options 2 or 3 could be limited to lower-wage employees as in Quebec where such requirements are restricted to those earning less than twice the minimum wage.
5. Limit the number or total duration of limited term contracts.

5.3.8 Termination, Severance and Just Cause

5.3.8.1 Termination of Employment

Background

In most cases, when an employer ends the employment of an employee who has been continuously employed for 3 months, the employer must provide the employee with either written notice of termination, termination pay in lieu of notice, or a combination of the two. Notice of termination is intended to ensure that employees are given some minimum amount of advance warning of termination of employment (or pay in lieu of notice or some combination thereof) so that the employee can attempt to make new arrangements for work.

The following table specifies the amount of notice required if an employee has been continuously employed for at least 3 months. Special rules apply to the amount of notice required in cases of mass terminations.

Period of Employment	Notice Required
Less than 1 year	1 week
1 year but less than 3 years	2 weeks
3 years but less than 4 years	3 weeks
4 years but less than 5 years	4 weeks
5 years but less than 6 years	5 weeks
6 years but less than 7 years	6 weeks
7 years but less than 8 years	7 weeks
8 years or more	8 weeks

There are certain rules that apply during the statutory notice period. For example, the employer cannot reduce the employee's wage rate and must continue to make whatever contributions would be required to maintain the employee's benefit plans.

The ESA also has rules concerning the temporary layoff of employees and how long such a layoff can last before the employer is considered to have terminated the employment. Generally, a temporary layoff can last no more than 13 weeks in any period of 20 consecutive weeks, but can last longer in certain circumstances (e.g., where the employer continues to make payments for the employee's benefit under an insurance or retirement/pension plan).

Employees who are guilty of wilful misconduct, disobedience, or wilful neglect of duty that is not trivial and has not been condoned by the employer are not entitled to notice of termination or termination pay under the ESA.

Additionally, notice of termination generally does not apply to an employee who was hired for a specific length of time or until the completion of a specific task (with some exceptions). There are other exemptions.

For employees with separate periods of employment, two periods of employment will be added together if they are separated by 13 weeks or less; if two periods of employment are separated by more than 13 weeks, only the most recent period counts for purposes of notice of termination.[207]

Relationship with the Common Law of Wrongful Dismissal

Employees whose employment has been terminated and/or severed may file a complaint for termination pay and/or severance pay with the Ministry or they may sue for damages representing "reasonable notice" in a wrongful dismissal action in court. However, they cannot do both.

Because of the costs and delays surrounding suing for wrongful dismissal and the unpredictability of the result, many employees settle for their ESA entitlements even though what they are entitled to under the ESA may be less – sometimes substantially less – than the damages they would be entitled to receive at common law.

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207 Different rules apply for severance pay, where multiple periods of employment are added together regardless of the amount of time between those periods. See Section 5.3.8.2.

Other Jurisdictions

The federal jurisdiction and all provincial jurisdictions require employers to provide employees with advance notice of their termination, or pay instead of notice.

Threshold for entitlement: Every jurisdiction requires a minimum amount of employment before the obligation to provide notice of termination is triggered. The threshold ranges from a low of 31 days in Manitoba to a high of 6 months in New Brunswick and Prince Edward Island, with all other jurisdictions, including Ontario, setting the threshold at 3 months.

Amount of notice/pay required: All jurisdictions have a stepped system that requires employers to provide more notice/pay the longer the employee has been employed. All jurisdictions have a maximum amount of notice/pay that is required; the most common one, found in seven jurisdictions, including Ontario, is 8 weeks.

Submissions

Compared to some other issues, termination and severance of employment did not receive significant stakeholder attention during the consultations. There were, however, a number of suggested changes and concerns identified.

We heard that the 8-week cap on notice of termination (or pay in lieu of notice) should be eliminated or increased. It could, for instance, be increased to 26 weeks to mirror the cap on severance pay. We also heard that the 3-month employment threshold should be eliminated.

Some employee advocates raised concerns about the eligibility of recurring seasonal, contract, THA, and construction employees to notice/pay in lieu of notice. They also want to ensure that recurring periods of employment with the same employer are “counted” in determining eligibility.

With respect to temporary layoffs, we heard that rules concerning temporary layoffs and when they constitute a termination of employment are complex and open to employer manipulation.

In terms of an employee’s obligations when he/she is ending an employment relationship, it was also suggested that employees be required to provide 2 weeks’ notice.

Options:

1. Maintain the status quo.
2. Change the 8-week cap on notice of termination either down or up.
3. Eliminate the 3-month eligibility requirement.
4. For employees with recurring periods of employment, require employers to provide notice of termination based on the total length of an employee's employment (i.e., add separate periods of employment as is done for severance pay). For example, if an employer dismisses a seasonal employee during the season, the employee could be entitled to notice based on his/her entire period of employment (not just the period worked that season).
5. Require employees to provide notice of their termination of employment.

5.3.8.2 Severance Pay

Background

"Severance pay" is compensation that is paid to an eligible employee who has his or her employment "severed." It compensates an employee for loss of employment. Severance pay is not the same as and is required in addition to termination pay, which is given in place of the required notice of termination of employment.

An employee qualifies for severance pay if his or her employment is severed and he/she:

- has worked for the employer for five or more years; and
- his or her employer either:
  - has a payroll in Ontario of at least $2.5 million; or
  - has severed the employment of 50 or more employees in a 6-month period because all or part of the business has permanently closed.

In determining whether the 5-year employment threshold is met, multiple periods of employment with the same employer are added together regardless of the amount of time between the periods of employment or the reason any of the periods of employment came to an end. Seasonal employees and employees on

fixed-term contracts, for instance, would have their previous years' employment with the same employer counted for the purposes of determining their eligibility for severance pay.

Almost 40% of Ontario employees are covered fully by the ESA severance pay provision.[208]

Other Jurisdictions

In Canada, only Ontario and the federal jurisdiction provide for severance pay entitlements. The threshold for entitlement is longer in Ontario than the federal jurisdiction – 5 years' employment in Ontario compared to 12 months' employment in the federal jurisdiction. However, the amount of severance pay to which an eligible employee is entitled is more generous in Ontario – 1 weeks' pay per year of service (to a maximum of 26 weeks) in Ontario compared to two days' pay per year of employment (with a minimum benefit of 5 day's pay) in the federal jurisdiction.

Submissions

Employee advocates have suggested that the employment, payroll and 50-employee thresholds be eliminated or reduced. It was also submitted that greater clarity is needed on the question of whether payroll outside of Ontario "counts" in the calculation of the $2.5 million payroll.[209]

The large number of vulnerable employees in short-tenure precarious jobs results in their not being entitled to any severance pay.

Options:

1. Maintain status quo.
2. Reduce or eliminate the 50 employee threshold.
3. Reduce or eliminate the payroll threshold.
4. Reduce or eliminate the 5-year condition for entitlement to severance pay.
5. Increase or eliminate the 26-week cap.
6. Clarify whether payroll outside Ontario is included in the calculation of the $2.5 million threshold.

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208 Vosko, Noack, and Thomas, 4.

209 *Paquette c. Quadraspec Inc.,* (2014) ONCS 2431. A recent Ontario court decision ruled that, in determining whether the employer's payroll is $2.5 million, the employer's payroll outside Ontario should be included in the calculation. This outcome, however, does not align with the ministry's long-standing operational policy of looking only at the employer's payroll in Ontario.

5.3.8.3 Just Cause

Background

The ESA does not require employers to have "just cause" for terminating an employee's employment. Generally, an employer can dismiss an employee for any reason (subject to the anti-reprisal protections). Except for terminations for wilful misconduct, disobedience, or wilful neglect of duty (that is not trivial and has not been condoned by the employer), the ESA requires only that the employer provide notice of termination or pay in lieu of notice to the employee and, if the employee is eligible, severance pay.

Three Canadian jurisdictions, Nova Scotia, Quebec and the federal jurisdiction have unjust dismissal protection that allows employees to contest their termination and provide for possible reinstatement by an independent arbitrator where no cause is found to exist. However, as a result of a recent Federal Court of Appeal decision (now under appeal at the Supreme Court of Canada), there is a question as to whether the federal CLC does protect against termination where no cause exists.

In the three Canadian jurisdictions that have unjust dismissal protection:

- all impose a minimum service requirement before an employee has the protection, ranging from 12 months to 10 years;
- the statutory remedial authority has been interpreted as allowing for "make whole" remedies where an employee has been unjustly dismissed, including reinstatement and compensation addressing lost wages and benefits, mental distress, job search expenses, and other damages incurred because of the dismissal[210]; and
- although the statutory language used to trigger a contravention is slightly different in each jurisdiction, the decision-makers all generally apply the same standards that are applied by arbitrators in the collective agreement context when they determine whether there was "cause."

The intent of statutory unjust dismissal protection is to prevent arbitrary and unfair terminations, to enhance job security, to avoid the negative impacts on

210 Although many adjudicators interpret the *Canada Labour Code* as providing authority for awarding whatever is needed to make the employee "whole", there is a great deal of inconsistency and some just apply the common law rules of wrongful dismissal when measuring damages.

an employee who has been summarily dismissed and to provide "make whole" remedies that include the possibility of reinstatement, a remedial authority not available through the courts in a wrongful dismissal suit.

Almost all collective agreements contain a "just cause" provision and many cases of industrial discipline and discharge are contested in arbitration proceedings on a daily basis in Ontario. The proposal would extend this system to terminations to the non-unionized sector.

Many temporary foreign workers (TFWs) are employed on a seasonal basis in Ontario in agriculture and come here each year from the Caribbean, Mexico, and Vietnam and elsewhere under a program administered by the federal government. As a practical matter, most workers are permitted to be employed only by a single employer. If a TFW is dismissed by the employer, he/she is often required to return to their country of origin. Migrant workers and their representatives advised us that TFWs are often threatened with dismissal and with being sent home.

Similar concerns were expressed in relation to TFWs injured on the job who may be sent home or threatened to be sent home because of injuries sustained on the job.

Submissions

Employee advocates have said that the ESA should be amended to provide protection against unjust dismissal, meaning employees could not be dismissed without just cause and could be reinstated if they were dismissed without cause. Adjudication by a government appointed adjudicator – who has the jurisdiction to order reinstatement in an appropriate case – is seen as a more accessible, efficient and effective than the courts.

Such protection could be limited to employees who had been employed for a certain minimum period.

Some suggested that, at a minimum, an employer should be required to provide reasons for terminating an employee's employment, which may provide greater protection against employer reprisals.

It was also suggested that an expedited process should be in place for TFWs who are particularly vulnerable to unilateral employer action and – in the absence of an expedited adjudication process – may otherwise be required to leave Canada before a complaint of unjust dismissal is heard.

Options:

1. Maintain the status quo.
2. Implement just cause protection for TFWs together with an expedited adjudication to hear unjust dismissal cases.
3. Provide just cause protection (adjudication) for all employees covered by the ESA.

5.3.9 Temporary Help Agencies

Background

Temporary work, a large part of which occurs through temporary help agencies (THAs), has grown over the past 10 years.

THAs recruit and assign people to perform work on a temporary basis for clients of the agency. The duration of the assignment can vary from a day to years. Such persons are termed here "assignment workers." Clients comprise diverse sectors and professions (e.g., manufacturing, administrative, support services, information and information technology, etc.), and as such require assignment workers with varying degrees of skill and education. However, the temporary staffing sector disproportionately comprises lower-skilled and lower-wage workers.

Businesses use THAs in a variety of ways and for a variety of purposes. Some may not always be able to predict their staffing needs and so may need temporary help to manage peaks and valleys in demand. THAs are widely used to fill this need although some employers use their own pools of temporary workers. Other clients use assignment workers as an integral part of their regular staffing program using it as a device to vet workers in lieu of a probationary period (although most keep a probationary period if the assignment worker is ever hired by the client), or because it is much easier to terminate an assignment worker than it is a regular employee of the client. Clients also wish to have a specialized agency recruit and screen potential workers at their business.

At the end of 2014, there were 1,045 temporary help services[211] in Ontario which comprised 44.1% of all temporary help service establishments in Canada.

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211 "Temporary Help Services (NAICS 56132): Establishments," Innovation, Science and Economic Development Canada, https://www.ic.gc.ca/app/scr/sbms/sbb/cis/establishments.html?code=56132&lang=eng.

We heard that THAs were ubiquitous in many communities and constituted the major or sole entry point to employment into certain industries in some Ontario communities.

Data on industry growth are available for the employment services sector, which includes temporary staffing services as well as executive search and recruitment.[212] These data suggest the employment services sector is growing quickly; operating revenue grew by about 7% from almost $12.4 billion in 2012 to almost $13.3 billion in 2014 across Canada – with Ontario generating just over half that. Ontario experienced growth in revenue between 2012 and 2014 of about 9%, increasing from $6.4 billion to almost $7 billion.[213]

Almost 53% of the $13.3 billion in operating revenue across Canada in 2014 was generated in temporary staffing services.[214]

Since the economic recovery began in the US in 2009, staffing employment grew 3.5 times faster than the economy and seven times faster than overall employment.[215] In 2014 the industry grew 2.5 times faster than the economy and was on track to grow 3 times faster in 2015.[216] In the 20 years before 2013, the economy grew on average 2.7% annually while temporary and contract staffing grew at an average annual rate of 4.6% and sales increased 8.3% on average.[217]

Temporary and contract sales in the US grew to $115.5 billion in 2014, a year over year increase of 5.7%, and were expected to increase by 5% in 2015 and 6% in 2016. The penetration rate of the industry in the US reached a new record in 2015 of 2.05% of non-farm employment. Data from the Association of Canadian Search, Employment and Staffing Services (ACSESS) indicate that in Canada the penetration rate is 0.75%.

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212 Under the North American Industry Classification System, employment services comprises establishments primarily engaged in listing employment vacancies and selecting, referring and placing applicants in employment, either on a permanent or temporary basis; and establishments primarily engaged in supplying workers for limited periods of time to supplement the workforce of the client.

213 Statistics Canada, *CANSIM Table 361-0042 – Employment Services, Summary Statistics* (Ottawa: Statistics Canada, 2016).

214 Statistics Canada, *CANSIM Table 361-0066 – Employment Services, Sales by Type of Goods and Services* (Ottawa: Statistics Canada, 2016).

215 Cynthia Poole, "Steady Growth Continues," *Staffing Success*, September 2015, 5. Available online: https://americanstaffing.net/wp-content/uploads/2015/10/StaffingSuccess-Special15-CoverReprint.pdf.

216 Ibid., 9.

217 Steven Berchem, "Navigating the 1% Economy," *Staffing Success*, September 2013, 30. Available online: http://altstaffing.org/wp-content/uploads/2014/03/American-Staffing-2013_Navigating-the-1-Percent-Economy.pdf.

The industry attributes its growth to the need for flexibility and access to talent by clients. Using THAs to keep fully staffed during busy times, to fill in temporarily, to replace absent employees, to staff for short term projects, and to use agencies to find permanent employees are among the reasons that the US industry gives for why its clients use them increasingly. It is also said that economic uncertainty and volatility constrains new job creation and the use of THAs allows for "leaner staffing."[218]

THA Business Model

While the specifics of the staffing industry business model are somewhat opaque (e.g., percentage of the mark-up charged to clients by agencies, wages of assignment workers relative to regular staff, etc.), the basic structure is that the agency recruits, refers and pays the assignment worker who performs their duties at the client's place of business, subject to the direction of the client and for the benefit of the client's business. The assignment worker can be removed from the client's workplace at the direction of the client with no requirement of any notice. After the assignment is terminated, the assignment worker then is placed back on the referral list of the agency and may or may not be assigned to work for another client of the agency.

Assignment workers may comprise a large or small percentage of the client's workforce and may work there for short or very long periods of time as circumstances vary from client to client, agency to agency, and worker to worker.

While the agency provides workers' compensation insurance coverage for assignment workers, generally in client/agency contracts, the client agrees to provide all assignment workers with a safe worksite and information, and training and safety equipment as required. Because the client controls the facilities in which workers work, the client and agency generally agree that the client is primarily responsible for compliance with all applicable occupational, health and safety laws.

Anecdotally, we were advised that THAs charge a significant percentage premium to their clients for every hour that the assignment worker works for the client. We were advised that this premium to the client was perhaps 40% or more above the hourly rate paid by the THA to the assignment worker. Based on her research in

218 Ibid., 32.

the US, Erin Hatton claims that agencies typically charge their clients about twice the workers' hourly wage.[219]

Assignment Worker Profile

There are limited data on assignment workers in Canada although there tends to be more on the industry in the US. In Canada, according to 2004 statistics,[220] assignment workers are:

- most likely to work in processing, manufacturing and utilities jobs (43%) and in the management, administrative and other support industry (48%);
- far less likely to be unionized than direct-hire, permanent employees (recent estimates of union coverage rates among agency workers are as low as 3.4%);
- less likely than other workers to have completed high school or have a university degree; and
- are older than other types of temporary workers[221] (e.g., seasonal, contract or casual workers), with 32% being 45 years of age or older.

Although some assignment workers seek agency work because they desire flexible employment conditions, studies have found that many engage in this work for involuntary reasons – that is, they have been unable to find more stable employment.[222]

Triangular Relationship

The triangular relationship makes the legal status of assignment workers, clients and THAs complex. While assignment workers generally have the same rights as other workers under the ESA, *Occupational Health and Safety Act, 1990* (OHSA), LRA, and *Workplace Safety and Insurance Act, 1997* (WSIA), the employment relationship under such laws function differently than those for workers hired by and working directly for a client employer. The laws are applied differently because

219 Erin Hatton, *The Temp Economy: From Kelly Girls to Permatemps in Postwar America* (Philadelphia: Temple University Press, 2012), 11.
220 S. Fuller and L. F. Vosko, "Temporary Employment and Social Inequality in Canada: Exploring Intersections of Gender, Race and Immigration Status," *Social Indicators Research* 88, no. 1 (2008).
221 In Canada, definitions of temporary employment in standard statistical sources are not entirely consistent but normally include contract or term, agency, seasonal and casual (on-call) employment.
222 European Foundation for the Improvement of Living and Working Conditions, *European Working Conditions Survey* (Dublin: European Foundation for the Improvement of Living and Working Conditions, 2007); N. Galais and K. Moser, "Organizational Commitment and the Well-Being of Temporary Agency Workers: A Longitudinal Study," *Human Relations* 62, no. 4 (2009).

of the complexity of the triangular relationship. While rights technically may be the same, the economic and structural realities of the triangular relationship often mean that practically, rights are ephemeral and cannot be accessed.

Employment Standards Act, 2000 (ESA)

Under the ESA, where a THA and person agree, verbally or in writing, that the agency will assign (or try to assign) the person to perform work on a temporary basis for its clients, the agency is deemed to be the employer of record by the ESA. This has been the case legislatively since 2009, and was the program policy before that. The ESA accepts the long-standing industry position that the employer is the agency, not the client.

Once there is an employment relationship between an agency and an assignment worker, the relationship continues whether or not the employee is on an assignment (working) with a client of the agency on a temporary basis. The fact that an assignment ends does not in itself mean that the employment relationship with the agency ends. Assignment workers generally have the same rights as other employees (e.g., regarding minimum wage, overtime, vacation, etc.), but the triangular employment relationship complicates the operation of the Act for such workers.

For example, rights to notice on termination operate differently for an assignment worker and a regular employee hired directly by client. If both employees do the same work at the client's business for 4 months and both are "let go" without notice, the client would be required to pay its direct employee termination pay in lieu of notice of 1 week, but would have no payment obligations[223] to the assignment worker.

The agency also does not have such an immediate obligation to the assignment employee because the loss of work (i.e., assignment) is not technically the end of the employment relationship. If the assignment employee were placed on a temporary layoff instead of being reassigned to another client, termination pay will only be payable by the agency to the assignment worker if the temporary layoff turns into a termination of employment, e.g., the worker is not referred to another client by the agency within 13 weeks (in any period of 20 consecutive weeks).[224]

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223 Termination pay calculation is different for assignment workers than regular employees under the ESA (see Section 74.11.7).

224 Or more than 13 weeks in any period of 20 consecutive weeks, but less than 35 weeks of layoff in any period of 52 consecutive weeks under specific circumstances (for complete list see Section 56(2) of ESA).

(A week would not count as a week of layoff if the assignment employee were assigned to perform work for a client during that week, even for only a day).

The ESA also contains protections and responsibilities specifically for THAs, assignment workers and clients. For example, the ESA:

- prohibits THAs from imposing certain barriers that would prevent or discourage clients of agencies from hiring the agency's assignment workers directly (e.g., an agency not allowed to restrict client from entering into a direct employment relationship with assignment worker);
- prohibits agencies from charging assignment workers (or prospective assignment workers) certain fees (e.g., for becoming an employee of the agency, assigning or trying to assign employee to perform work for a client, providing employee with interview preparation, or for accepting direct employment with an agency client);
- limits to 6 months the time period in which agencies can charge clients for hiring an assignment worker permanently;
- prohibits clients of agencies from taking reprisals against assignment workers for asserting their ESA rights[225];
- requires that a THA provide its assignment workers with certain information about proposed assignments[226]; and
- requires that a THA provide its assignment workers with a Ministry of Labour information sheet on their ESA rights.

As of November 20, 2015, clients are jointly and severally liable for unpaid regular wages, overtime pay, public holiday pay and premium pay. Requirements were also introduced which require both the agency and client to record the number of hours worked by assignment workers (and retain such records for up to 3 years to be available for inspection). There is no liability by the client for termination or severance pay, vacation pay, and unpaid job protected leaves.

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225 Client is not allowed to: intimidate the employee, refuse to have the employee perform work, refuse to allow the employee to start an assignment, terminate the assignment of the employee, or otherwise penalize the employee.

226 Name of client, contact information for client, hourly or other wage rate or commission and benefits associated with assignment, hours of work, general description of work, estimated term of assignment, and pay period/pay day.

Labour Relations Act, 1995 (LRA)

Although the LRA does not speak specifically to THAs, in practice, the OLRB has not treated assignment workers as being employees of the THA. Instead, the determination of who is the employer occurs each time the issue is raised by a party, based on the particular facts. Typically the issue of identifying who is the employer arises in certification applications where the question is whether the client or the THA is the employer. If the assignment workers are employees of the client, they potentially count for the purposes of any vote and are potentially members of any bargaining unit established by the Board[227], but that is not the case if the assignment workers are found to be employees of the THA. Thus, if the assignment workers are considered employees of the THA and not the client, they are unable to unionize at the client workplace level. Although labour relations legislation would technically enable THA employees to organize at the level of the THA, there are numerous challenges to organizing at this level (e.g., assignment employees are dispersed at different client locations or the client may simply use another agency). In any event, unionization at the agency level is almost non-existent in Canada.

Often there is prolonged litigation at the OLRB as to who is the employer; most frequently the client has been found to be the employer based on ordinary employment law tests. In two cases both were found to be related employers.[228]

Workplace Safety and Insurance Act (WSIA)

The agency is deemed to be employer of record for purposes of the WSIA, including paying Workplace Safety and Insurance Board (WSIB) premiums, WSIB experience rating, and return to work obligations. The agency pays WSIB premiums for assignment workers as they move through assignments (i.e., clients do not pay anything to WSIB). These premiums can be charged back to the client directly or indirectly through fees (e.g., as part of the markup).

WSIB experience rating programs are meant to encourage employers to reduce injuries by providing refunds to safe employers and surcharges to employers with high injury rates. WSIB premium-based refunds or surcharges are based on an employer's accident record. In the THA sector, experience rating costs and

227 There are cases where in exercising its jurisdiction to determine the appropriate bargaining unit, at the request of the union, the Board has excluded the assignment workers from the bargaining unit while finding them to be employees of the client.

228 *UFCW Canada v. PPG Canada Inc.,* (2009) CanLII 15058, ON LRB; *Teamsters Local Union No. 419 v. Metro Waste Paper Recovery Inc.,* (2009) CanLII 60617, ON LRB.

benefits are applied to the agency supplying and paying the worker, not the client to whom the worker is supplied. This is the case even though injuries occur at the client workplace, which is controlled by the client who decides what work the assignment workers perform. The experience ratings for the clients, especially those with dangerous work, are generally significantly higher than for a THA. Accordingly, the WSIB premiums paid by agencies are often significantly less than those paid by the clients for their own staff doing the same work. This provides an incentive for the client to use the assignment workers to perform more dangerous work. A client can save money by assigning work that is more likely to give rise to an accident or injury to assignment workers than to its own employees.

The issue that is raised at a general level is whether it is appropriate for there to be economic incentives for clients to use assignment workers, and at a more particular level whether it is appropriate for there to be economic incentives for clients to use assignment workers for more dangerous work.

The *Stronger Workplaces for a Stronger Economy Act, 2014*, provided the government with a regulation-making authority to require that the WSIB, under its experience rating programs, ascribe injuries and accident costs to the clients of the THAs where injuries to agency workers actually occur rather than to the agencies themselves. For these amendments to have any effect, they would need to be proclaimed into force, and a regulation would then need to be established under the amendments. Neither has occurred.

The premium rating system is currently the subject of possible revision, which would result in generally higher premiums for THAs. It is our understanding that the contemplated changes will still make it potentially cheaper for a client to use assignment workers in general and for risky work in its own establishment in particular. For example, if a THA carries a high premium rate because its workers have been subject to numerous accidents or injuries, then the client can reduce its cost by just switching to a new THA with lower premiums. There are few barriers to entry into the THA industry.

WSIA has a vigorous scheme to encourage and promote reintegration of injured workers into the workplace. In the case of an assignment worker, however, the client has no obligation to accommodate and put back to work or reintegrate an injured worker at the client's business following an injury. The only responsibility for reintegration of the injured worker lies with the THA. However, the THA complies with its responsibility by putting the injured assignment worker on the THA's

referral list for up to 1 year, and assigning them, if there another assignment that allows for modified work, or is one that the worker can otherwise perform.

Occupational Health and Safety Act (OHSA)

Under OHSA, where a worker is employed by an agency to perform assignments in the client's workplace, the agency and the client are jointly responsible for taking every precaution reasonable in the circumstances to protect the health and safety of the assignment worker. The client normally has the day-to-day control over the work and working conditions of the workplace to which the workers are assigned. However, an agency is not relieved of its legal duties under the OHSA for the worker's health and safety during an assignment; employer duties in the OHSA apply to both the client and agency. Under typical contracts between agencies and clients, the client agrees to be primarily responsible for compliance with the Act because it controls the facilities in which the assignment worker works, while the agency is supposed to instruct the employee on general safety matters in accordance with information which the client gives the agency.

Other Jurisdictions

Canada

Across North America, some jurisdictions have looked at how to address THA issues. Ontario is in the minority of jurisdictions that specifically addresses THA employment in its legislation. In addition to requiring a licence to operate, Manitoba's *Worker Recruitment and Protection Act* has provisions regulating the operation of the THA sector (e.g., agencies are prohibited from charging assignment workers any fees[229] and from preventing a client from hiring an assignment worker) which are largely similar to regulations in Ontario.

United States (US)

In the US, the use of THAs has grown disproportionately faster than the American economy. While stronger growth in the use of temporary help is a feature of a growing economy, especially as it emerges from recession, the American Staffing Association has commented for some time that disproportionate growth of the staffing industry may be a secular trend reflecting a new approach by employers to managing growth and their workforces by using THAs. Normally the increased use by employers of temporary staffing agencies is followed by a concomitant increase

229 Employees cannot be charged fees for: being hired by agency; working for a client; becoming an employee of the client; any other circumstances as described by regulations.

by employers in direct hiring. However, as the use of temporary hiring's increase in the US, and as permanent hiring fails to keep pace, the view has been expressed by the industry that the trend to the use of temporary help is a long-term trend and that the growth in the use of THAs will in future exceed ordinary employment growth.[230]

The ubiquity of temporary help workers has also led to significant criticism of the industry, much greater regulation by the US federal government, and new legislation in some states where THAs are very prevalent.

Critics, typified by Erin Hatton and the National Employment Law Project (NELP),[231] argue that the greater use of temporary agency work is part of the decline of the middle class.

> *It is almost a cliché to talk about the decline in Americans' work lives over the last decades of the twentieth century. Time and again, newspaper headlines have lamented what the New York Times called the "downsizing of America" wage freezes and massive layoffs; closed factories and jobs moved abroad; permanent employees replaced by contingent workers. Wages stagnated and access to benefits declined. The possibility of lifetime employment was replaced with the likelihood of chronic job insecurity and episodes of unemployment. Career ladders collapsed, with more and more workers finding themselves stuck at the bottom.*
>
> *The temp industry has become a classic symbol of this degradation of work. Temping is the quintessential "bad" job: On average, temps earn lower wages and receive fewer benefits; and they have less job security, fewer chances for upward mobility, and lower morale than those with full- time, year-round employment. What's more, by increasing the flexibility of the labor supply, the temp industry contributes to downward pressure on wages, decreased employment security, and limited upward mobility for all workers, not just temps.*

The NELP also argues that competition between staffing agencies causes significant downward pressure on wages. The US industry is now largely production and material moving jobs as opposed to office and administrative jobs.

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230 Berchem, 22.
231 Hatton, *The Temp Economy: From Kelly Girls to Permatemps in Postwar America.*

In the US, agencies are used directly or indirectly by the vast majority of Fortune 500 companies and racialized workers are disproportionally represented among employees of the agencies. NELP noted studies that say that health of such employees is impacted adversely disproportionately, and that the average wage difference is 22% between other private sector employees and industry workers.

Hatton has criticized the industry in the US for what she describes as its consistent effort to undermine the value of permanent workers and to expand its reach by encouraging business to look upon their employees as disposable liabilities:

> *First, the temp industry's business is literally to sell degraded work: The temp industry provides American employers with convenient, reliable tools to turn "good" jobs into "bad" ones (and bad jobs into worse ones). But the temp industry has also operated on another, equally important level – in the cultural arena, where battles over "common sense" about work and workers take place.*
>
> *The temp industry's high-profile marketing campaigns have had a powerful impact on this cultural battlefield, helping establish a new morality of business that did more than sanction the use of temps; it also legitimized a variety of management practices that contributed to the overall decline in Americans' work lives.*
>
> *These cultural changes in the second half of the twentieth century were indeed remarkable. By the turn of the twenty- first century, even as some corporate executives continued to extol the value of their employees, it became widely acceptable to talk about workers—all workers, from the highly skilled to the day laborer – as costly sources of rigidity in an economy that required flexibility. As Berkeley economist Brad DeLong observed in 2009, companies "used to think that their most important asset was skilled workers…. Now, by contrast, it looks as though firms think that their workers are much more disposable – that it's their brands or their machines or their procedures and organizations that are key assets. They still want to keep their workers happy in general, they just don't care as much about these particular workers." Or, as management guru Peter Drucker said more bluntly in 2002, "Employers no longer chant the old mantra 'People are our greatest asset.' Instead,*they claim 'People are our greatest liability.'"

As noted elsewhere in the context of joint employer liability doctrine under the FLSA[232] and in the context of the joint employer doctrine recently applied by the National Labor Relations Board (NLRB) as set out in the case of Browning-Ferris,[233] the THA industry has attracted the strong and recent attention of regulators in the US. The thrust of this attention is, in effect, to make clients and THAs joint employers. There has also been severe criticism of the treatment of these workers by clients by the US Occupational Safety and Health Administration.[234]

Illinois, Massachusetts and California have all passed laws in the last decade. Illinois requires that third-party clients that contract with day and temporary service agencies for the services of day labourers share all legal responsibility and liability for the payment of wages under state wage payment and minimum wage legislation.[235] Based on the Illinois model, new legislation in California makes clients (with some exceptions) share legal responsibility and civil liability with labour contractors for payment of wages.

California, Illinois and Massachusetts require employees to be provided with a notice of details of the assignment by the time of dispatch. Illinois and Massachusetts both require THAs to be licensed. They have also required that a poster summarizing temporary workers' rights be displayed at agency locations, and deductions from wages be limited.

Finally, to improve working conditions and treatment of temporary workers, NELP has documented the emergence of employee community organizations across the US to challenge THA clients.[236]

European Union (EU)[237]

There was strong antipathy to THAs in the early and mid-1900s in Europe, which led to the outright banning of temporary agencies in some countries, or strict licencing in most. There was a change in attitude in the last part of the last century

232 See section 5.2.2.
233 *Browning-Ferris Industries of California, Inc.,* (2015) 362 NLRB 186.
234 The Director (United States Occupational Safety and Health Administration) as quoted in the New York Times, August 31, 2014: "We've seen over and over again temporary workers killed or seriously injured on their first day at work," Mr. Michaels said. "When we investigate, we see that most employers don't treat temporary workers the way they treat their permanent employees — they don't provide them with the training that is necessary." Available online: http://www.nytimes.com/2014/09/01/upshot/the-changing-face-of-temporary-employment.html.
235 "Day and temporary labor" does not include work of a professional or clerical nature; thus, those occupations are exempt from this legislation.
236 These are described in the NELP Report from pages 22-24.
237 Katherine Gilchrist, *Temporary Help Agencies* (Toronto: Ontario Ministry of Labour, 2016). The material in this section on the EU was taken from a paper prepared for the Ontario Ministry of Labour to support the Changing Workplaces Review.

in the context of a growing movement within the EU since the 1990s towards promoting flexible forms of work (including part-time and temporary work) as a strategy for better meeting the needs of employers and of employees.

This new attitude to temporary work through agencies was made possible by the adoption of the concept of "flexicurity" whereby flexible forms of work are promoted but in a context of the protection of and the provision of security for temporary help workers. Flexicurity is seen by the European Commission as an integrated strategy which promotes flexibility and security in the labour market concurrently. This includes policies which promote lifelong learning and training, adjustments to period of unemployment and transition, and comprehensive social security systems.[238]

While the part-time and limited-term directives were passed in 1997, the issues surrounding THAs were much more controversial as there was much antipathy to the model in many countries. After almost 10 years of EU-level consultation, debate and discussion, a Directive on Temporary Agency Workers (2008/104/EC) was finalized which legitimized agency work, defined private employment agencies as the employer[239] and provided equal treatment for assignment workers as that of clients' directly hired workers.[240] The Directive had three objectives:

1) to better develop flexible forms of work to promote job creation and higher levels of employment through reducing restrictions placed on temporary agencies (the perceived positive role of temporary agency work in bringing people into work and reducing unemployment as well as supporting labour market access of specific target groups was an important rationale

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238 European Commission, Towards Common Principles of Flexicurity: More and Better Jobs through Flexibility and Security (Brussels: European Commission, 2007).
The components of flexicurity are:
- Flexible and reliable contractual arrangements (from the perspective of the employer and the employee, of ''insiders" and ''outsiders") through modern labour laws, collective agreements and work organisation;
- Comprehensive lifelong learning (LLL) strategies to ensure the continual adaptability and employability of workers, particularly the most vulnerable;
- Effective active labour market policies (ALMP) that help people cope with rapid change, reduce unemployment spells and ease transitions to new jobs;
- Modern social security systems that provide adequate income support, encourage employment and facilitate labour market mobility. This includes broad coverage of social protection provisions (unemployment benefits, pensions and healthcare) that help people combine work with private and family responsibilities such as childcare.

239 Apart from the UK, in all EU Member States the assignment worker is generally defined as an employee of the agency working under the managerial authority of the user company (i.e., client). In Czech legislation, both the agency and the client are employers.

240 EU countries have interpreted the TAW Directive differently. Not all EU countries have embraced temporary agencies without certain restrictions on their use. Some countries, including Belgium continue to restrict the sectors in which temp agencies can operate while other have either loosened restrictions in line with the aim of the Directive, or else never had significant restrictions in the first place, such as in the UK.

for adopting regulations on temporary agency work at the European and national levels);

2) an increase in the 1990s in temporary agency work throughout the EU, coupled with very disparate regulations, led to the perceived need for the EU to set common minimum standards for temporary agency work in order to prevent "unfair competition" between different member states and to prevent a "race to the bottom;" and

3) to correct the negative working conditions for temporary workers who suffered a pay gap with those hired directly by the employers, together with the gap in training and in working conditions, as well as greater exposure to physical risks, intensity of work and accidents at work.

In most EU member states, the principle of equal treatment simply means that for the purposes of basic working conditions, the legislation, collective agreements, or other binding agreements (general company pay scales are included, as are company guidelines) applying to the sector of the user company or to the user company itself will apply to temporary agency workers. In a few member states, including in the UK, the working conditions that apply to the temporary agency worker are those that apply to a comparable employee at the same company.[241]

Exceptions from Equal Treatment:

Exceptions, called "derogations," from the equal treatment principle, are permitted for temporary agency workers on open-ended employment contracts providing pay between assignments, to uphold collective labour agreements or based on agreements of "social partners", who are essentially national employer and employee organizations. Any country which opts to derogate from the principle must take measures to prevent misuse:

- five countries, including the UK, permit unequal treatment in pay when temporary agency workers have a permanent contract with a temporary agency, and are paid between assignments. In the UK, temporary agency workers with a permanent contract of employment are not entitled to equal pay for the duration of their assignments, provided that in the period between assignments they are paid at least half the pay to which they were entitled in respect of their most recent assignment, and not less than the national minimum wage;

241 The comparability standard has been seen as potentially problematic or subject to abuse by the company, as it may in fact be a lesser standard where a "dummy comparator" is hired at the company, with considerably lower working conditions than other employees in order to use as the comparator for temporary agency workers.

- ten states, including Germany and the Netherlands, allow collective labour agreements to deviate from equal treatment of agency workers. There has been criticism from academics as well as the European Trade Union Institute that the principle of equal treatment has been rendered moot in such cases; however, in many, if not all, of the ten countries, collective labour agreements have either introduced equal treatment clauses (after qualifying periods in some cases, such as the Netherlands, where it is 26 weeks), or else have negotiated for better wages than had been the cases pre-Directive; and
- a third derogation is permitted by Article 5(4) where member states, in which there is no legal mechanism for declaring collective agreements universally applicable or for extending their provisions to all similar undertakings in a certain sector or geographical area, may, after consulting the social partners at the national level and on the basis of an agreement concluded by them, establish arrangements concerning the basic working and employment conditions which derogate from the principle of equal treatment. Such arrangements may include a qualifying period for equal treatment. In practice only the UK and Malta use this exception. In the UK, agency workers are entitled to full equal treatment at the user undertaking once they have completed a 12-week qualifying period in the same job with the same hirer.

Restricting Abuse of the Derogations:

The Directive further requires states to take appropriate measures to prevent misuse in the application of the exception and in particular, successive assignments designed to circumvent the provisions of the Directive. The risk of circumvention of the principles of equal treatment and equal pay is particularly high if the principles are not applied from the first day of the agency worker's assignment, but only after a qualifying period, as it creates an incentive for the user undertaking to enter into successive short contracts with the agency in order to reset the qualifying period and therefore never face the obligation to pay equal wages.

The UK has adopted detailed measures to avoid misuse of its temporary work agency legislation by providing that, in case of a break of less than 6 weeks by an agency worker on assignment at a user undertaking, the qualifying "clock" is not reset to zero. In Ireland, only a gap of at least 3 months between two assignments would break the link.

Australia

In Australia, regulations are at the state level. Employment agents (i.e., THAs) must be licensed in most states and territories. Licensing involves making an application (i.e., filling forms and paying a licence fee). Assignment workers must receive at least the minimum entitlements in the relevant modern award (awards are in effect the governing terms and conditions of employment for a sector) and National Employment Standards or where the agency has its own enterprise agreement relating to wages and working conditions, that agreement.

Submissions

Employee-representative bodies, advocacy, and labour groups have argued that assignment workers in THAs are fundamentally vulnerable and experience:

- lower pay;
- difficulty understanding and exercising employment rights;
- vulnerability in making complaints;
- increased risk of injury on the job-site;
- job instability;
- deterioration of health;
- unpredictable hours and income insecurity; and
- barriers to permanent employment.

In addition, they suggest many become trapped in a precarious state and clients are increasingly using agencies to avoid employment regulation and other costs.

The differential between what is paid by the agency to the assignment worker and what is charged to the client is said to create an incentive for the agency to keep wages as low as possible and to keep the worker in that vulnerable temporary position for as long as possible. The wage differential between what is paid to the assignment worker and to the client's employees for doing essentially the same work is also criticized as discriminatory and unfair.

Further, it is said that clients are able to avoid paying the real costs of accident and injuries in their workplace because they can pay cheaper WSIB premiums if the work is performed and injuries are sustained by assignment workers instead of

their permanent workers for whom they pay premiums directly. It is also said that injured assignment workers are not properly integrated back into the workforce because the client has no obligation to do so and the agency obligation is fulfilled simply by putting the injured worker on the list for further referral to another client.

Client employers have argued that agencies provide flexibility in an increasingly competitive marketplace (i.e., labour costs savings associated with recruitment, termination and severance, workers' compensation, benefits, training are all covered by the agency, not the client). THAs have been described as offering organizations "just-in-time," "labour-on-tap," or "no strings attached" workers.[242] Some submissions spoke to the important role THAs play in supporting business by matching workers with employers that have short term or finite needs to address peaks or valleys in personnel requirements (e.g., helping employers find coverage for leaves of absence as required by ESA). Such groups expressed concern that restrictions could reduce flexibility and competitiveness. Further, they have argued that the liability for ESA rights should remain with the agency (i.e., recommend not extending joint liability to items not under clients' control such as vacation pay, PEL, termination pay, benefit plans, etc.).

Agency representatives similarly stressed the continued need for the sector to respond to:

- unexpected business growth;
- unexpected and long-term absences;
- the need to bridge permanent replacements;
- special projects; and
- seasonal rushes, and pre-selection of candidates.

They also stressed the advantages that agencies provide to immigrants:

- temporary work allows employers to evaluate employees whose credentials may be otherwise difficult to validate;
- employees develop experience in Canadian job market; and
- employees are able to form contacts with employers.

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242 "Temporary Work Agencies and Workplace Health and Safety," Institute for Work and Health, http://www.iwh.on.ca/topics/temporary-work-agencies.

Agencies represented by ACSESS submitted that the existing ESA requirements introduced in recent years offer appropriate protections and any new protections would cause undue harm to the staffing industry.

ACSESS recommended that the government not legislate any wage parity provisions, arguing that there is no guarantee that temporary employees will be equally qualified to those they are replacing or working with, and that it would be an overreaching response to a complex range of factors.

Options:

(Note: See Chapter 4 for options in the labour relations context).

1. Maintain the status quo.
2. Expand client responsibility:
    a) expand joint and several liability to clients for all violations – e.g., termination and severance, and non-monetary violations (e.g., hours of work or leaves of absence);
    b) make the client the employer of record for some or all employment standards (i.e., client, agency, or make both the client and the THA joint employers).
3. Same wages for same/similar work:
    a) provide the same pay to an assignment worker who performs substantially similar work to workers directly employed by the client unless:
        i. there are objective factors which independently justify the differential; or
        ii. the agency pays the worker in between assignments as in the EU; or
        iii. there is a collective agreement exception, as in the EU; or
        iv. the different treatment is for a limited period of time, as in the UK (for example, 3 months).
4. Regarding mark-up (i.e., the difference between what the client company pays for the assignment worker and the wage the agency pays the assignment worker):
    a) require disclosure of mark-up to assignment worker;
    b) limit the amount of the mark-up.[243]

243 A private member's bill (PMB) 143, *Employment Standards Amendment Act (Temporary Help Agencies), 2015* was recently introduced on November 18, 2015 that would (if passed) require that agencies pay assignment workers 80% of the fee charged to clients.

5. Reduce barriers to clients directly hiring employees by changing fees agencies can charge clients:
    a) reduce period (e.g., from 6 to 3 months);
    b) eliminate agency ability to charge fee to clients for direct hire.
6. Limit how much clients may use assignment workers (e.g., establish a cap of 20% on the proportion of client's workforce that can be agency workers).[244]
7. Promote transition to direct employment with client:
    a) establish limits or caps on the length of placement at a client (i.e., restrict length of time assignment workers may be assigned to one particular client to 3, 6, or 12 months, for example);
    b) deem assignment workers to be permanent employee of the client after a set amount of time or require clients to consider directly hiring assignment worker after a set amount of time;
    c) require that assignment workers be notified of all permanent jobs in the client's operation and advised how to apply; mandate consideration of applications from these workers by the client.
8. Expand Termination and Severance pay provisions to (individual) assignments:
    a) require that agencies compensate assignment workers termination and/or severance pay (as owed) based on individual assignment length versus the duration of employment with agency (as is currently done). For example, if an assignment ends prematurely and without adequate notice provided but has been continuous for over 3 months or more, the assignment worker would be owed termination pay;
    b) require that clients compensate assignment workers termination and/or severance pay (as owed) based on the length of assignment with that client. Assignment workers would continue to be eligible for separate termination and severance if their relationship with agency is terminated.
9. License THAs[245] or legislate new standards of conduct (i.e., code of ethics for THAs).

244 PMB 143 includes a similar provision (e.g., maximum 25% of total number of hours worked are by assignment workers).
245 PMB 143 includes a provision whereby agencies are prohibited from operating without a licence.

5.4 Other Standards and Requirements

5.4.1 Greater Right or Benefit

Background

Employees and employers cannot contract out of ESA standards. Section 5(1) prohibits an employer and an employee from contracting out of, or waiving, an employment standard and provides that and any such contracting out or waiver is void.

However, the ESA does contemplate an employer providing employees greater rights or benefits than the standards in the Act. Section 5(2) of the ESA provides:

> *if one or more provisions in an employment contract or in another Act that directly relate to the same subject matter as an employment standard provide a greater benefit to an employee than the employment standard, the provision or provisions in the contract or Act apply and the employment standard does not apply.*

This means that if established employer policies in a non-union workplace or collective agreements provide a greater right or benefit than a specific standard in the ESA, the terms of the policy or the collective agreement apply instead of the ESA provisions. The greater right or benefit provisions do not provide for all benefits provided by an employer to be compared with all benefits required by the ESA. An employer cannot rely on a greater benefit with respect to one standard to offset a lesser benefit with respect to another. This has not been permitted because the result would be that employees would be deprived of the benefit of some standards. Accordingly, when comparing benefits to assess greater right or benefit, the comparator must relate to the same subject matter. For example, the purpose of rest periods is to provide employees time off work and it is not a greater benefit for an employee to receive payment in lieu of the required rest periods.

Submissions

Employers in the context of PEL have commonly raised the issue of greater right or benefit. Some argue that, as a bundle, their leave policies are more generous than PEL even if they do not cover all the specific instances that PEL can be taken (see sections 5.3.4 – PEL and 5.3.5 – Paid Sick Days).

During consultations, some employers suggested that collective agreements or employer policies, taken as a whole, should be assessed to determine whether the contract provides greater rights or benefits than the ESA standards, taken as a whole. Opponents of this approach argue that the main purpose of the ESA is to mandate statutory minimum terms and conditions of employment for employees. Adopting this approach to measuring greater rights or benefits would mean that some legislated minimum standards would not be available to employees on the basis that the benefit package provided by their employer provides greater benefits than the ESA. Furthermore, opponents of this approach argue that measuring whether a package of rights and benefits provided to employees by an employer provides greater rights or benefits would be a difficult – perhaps impossible – task. Employees have different needs and circumstances. What is an essential entitlement for one employee may be of no moment to another.

Options:

1. Maintain the status quo.
2. Allow employers and employees to contract out of the ESA based on a comparison of all the minimum standards against the full terms and conditions of employment in order to determine whether the employer has met the overall objectives of the Act.

5.4.2 Written Agreements Between Employers and Employees to Have Alternate Standards Apply

Background

Some of the employment standards established by the ESA consist of one rule that applies automatically unless the employer and employee agree that another rule applies. The rule that applies automatically is often referred to as the "default standard"; the rule that applies if the employer and employee agree is referred to as the "alternate standard."

Agreements to an alternate standard between employees and the employer can be made for a number of employment standards, including:

- how and where wages can be paid;
- limits to the hours of work limits;

- minimum rest periods;
- the formula for determining when overtime pay is earned;
- taking overtime as paid time off instead of pay;
- whether an employee works on a public holiday; and
- when vacation pay and vacation time are provided.

The Act currently provides for agreements to be entered into in 20 different contexts. This section discusses the application and appropriateness of individual agreements to alternate standards generally, but not the specific advisability of the agreements in a particular context. For example, the advisability of employee agreement to variations in hours of work is discussed in section 5.3.1 – Hours of Work and Overtime Pay.

The Act requires that an agreement between an employee and employer to have an alternate standard apply must, with one exception, be set out in writing. Only agreements to split the mandatory 30-minute eating period into two shorter periods do not have to be in writing.

Additional requirements apply to some types of agreements (e.g., employers must provide employees with a Ministry-prepared information document before the employee agrees to work excess daily or weekly hours, and sometimes they must also obtain approval from the Director of Employment Standards (see section 5.3.1 for more on Director approvals and Hours of Work and Overtime Pay)).

The policy of the ES Program is that electronic agreements can constitute an agreement in writing.

The requirement to have agreements in writing aids the administration and application of the Act. Precisely written agreements help to avoid misunderstandings between the parties as to what they agreed to and provide evidence of the mutual intention of employers and employees. Such agreements help to ensure that the employer and employee are aware of the consequences of their agreement and further decrease the likelihood that the validity of an agreement will be challenged by an employee claiming lack of informed consent. Finally, such agreements provide a permanent record and allow an ESO to readily determine which standard is to be enforced, the default or the alternate.

Unless the Act provides otherwise, employees are entitled at any time to revoke their written agreement to the alternate standard and revert to the default standard. In some cases, the employer and employee must both agree in order to revoke the agreement (e.g., overtime averaging agreements) or the employee must provide the employer with advance written notice (e.g., agreements to work excess daily or weekly hours).

The ESA's anti-reprisal provision prohibits employers from threatening or otherwise penalizing employees for refusing to enter into an agreement or for revoking an agreement.

Submissions

We heard from employee advocates that, because employees do not have equal bargaining power with their employers, employees' agreements are not always voluntary – they enter into them because they are afraid that they will lose their jobs or otherwise be sanctioned if they refuse. They suggest that this is particularly problematic in the overtime averaging context and with respect to agreements entered into by assignment employees. A recommendation was made that the Act be amended to remove the ability to enter into agreements.

Employer groups generally recommended that the flexibility needs to be maintained and enhanced. Rules concerning hours of work and overtime were cited in particular as needing additional flexibility.

Several employer groups suggested that the ESA should be amended to permit employees and employers to enter into agreements in electronic form. It may be that the stakeholders who made this submission were unaware of the existing policy that permits this or would like to see it codified in the ESA.

Options:

1. Maintain the status quo.
2. Amend the ESA to reflect the Ministry of Labour ES Program policy that electronic agreements can constitute an agreement in writing.
3. Amend the ESA to remove some or all of the ability to have written agreements.

5.4.3 Pay Periods

Background

The ESA requires employers to establish a recurring pay period and a recurring pay day, and to pay all of the wages that were earned during each pay period (other than accruing vacation pay) no later than the pay day for that pay period.[246]

With the one exception described below, the ESA does not prescribe any limits as to how long or short a pay period can be, or the days of the week that it can start and finish.

Common pay periods are weekly, bi-weekly, semi-monthly, and monthly.

Several employment standards refer to a "work week." For example, the entitlement to overtime pay is triggered after working a certain number of hours in a work week, the amount of public holiday pay an employee is entitled to is determined on the basis of wages earned and vacation pay payable over a 4-work week period, and the weekly/biweekly rest rule and maximum number of weekly hours an employee is permitted to work are determined with reference to the work week.[247] "Work week" is defined as a recurring period of 7 consecutive days selected by the employer for the purpose of scheduling work; if the employer has not selected such a period, the work week will be a recurring period of seven consecutive days running from Sunday to Saturday.[248]

The employer's work week may or may not correspond to the employer's chosen pay period.

A special rule with respect to pay periods applies to the commission automobile sales sector.[249] This rule, which applies to employees who sell automobiles partially or exclusively on a commission basis:

- provides that pay periods are not to exceed 1 month;
- establishes reconciliation periods of 3 months' duration;

246 See Section 11 of the ESA.
247 See Sections 22(1), 24(1)(a), 17(1)(b) and 18(4) of the ESA.
248 See Section 1 of the ESA.
249 See Section 28 of O. Reg. 285/01.

- where a commission automobile sales employee receives wages in the form of a "draw" or advance against commissions earned, the employer is required to reconcile at the end of each reconciliation period the amount advanced with the amount of commissions that the employee earned (the reconciliation cannot result in the employee being paid less than the minimum wage for each pay period, and the balance at the end of each reconciliation period cannot be carried forward into the next reconciliation period):
  - if the employee earns more in commissions than he or she received in draws during a particular reconciliation period, the surplus is to be paid to the employee – it cannot be carried forward past the end of the reconciliation period in order to offset any deficit that may accrue on the employee's account during later reconciliation periods;
  - similarly, if the employee earns less in commission than he/she received in draws during a particular reconciliation period, the "deficit" may not be carried forward past the end of the reconciliation period in order to offset commissions earned in later reconciliation periods. (The employer may be able to recoup the amount of the deficit by making deductions from wages earned in the next reconciliation period if the employee provides written authorization to do so, if it does not result in the employee earning less than the minimum wage for each pay period).

Submissions

Pay period issues did not receive attention in stakeholder submissions.

We heard from Ministry staff that:

- where an employer's pay period does not correspond to the employer's work week, it takes substantially more time for ESOs to determine whether there has been compliance with standards that are based on the employer's work week. This is more acute in the proactive inspection context because of the number of payroll records that officers review; and
- determining whether there has been a contravention could be made simpler and more efficient if the ESA required pay periods and work weeks to be harmonized (e.g., by permitting only weekly or bi-weekly pay periods).

Options:

1. Maintain the status quo.
2. Amend the ESA to require employers to harmonize their pay periods with their work weeks by, for example, permitting only weekly or biweekly pay periods, and requiring the start and end days of the pay period to correspond to the employer's work week.
3. Extend, either as-is or with modifications, the application of the special rule that applies only to the commission automobile sales sector to other sectors in which wages are earned by commission (e.g., appliance, electronics, furniture sales).

5.5 Enforcement and Administration

5.5.1 Introduction and Overview

While we have not reached conclusions about the specific policy responses on enforcement that we will recommend, we conclude that there is a serious problem with enforcement of ESA provisions. While most employers likely comply or try to comply, with the ESA, we conclude that there are too many people in too many workplaces who do not receive their basic rights. Compliance with ESA standards ought to be a fundamental part of the social fabric. Indeed, attaining a culture of compliance with the ESA in all workplaces is one of the fundamental policy goals guiding our recommendations in this Review.

In a society where there is a culture of compliance with ESA standards, both employers and employees would be reasonably aware of their legal rights and responsibilities, while the law would be easy to access, to understand and to administer. It would be culturally unacceptable not to provide workers with the minimum requirements that the law demands, employees would be aware of their rights and would feel safe in asserting them. Widespread blatant abuse of basic rights would not only be legally impermissible but culturally and socially unacceptable. There would be a strong element of deterrence in the system as those who engaged in deliberate flouting of the law would be dealt with by not only having to make restitution and but also being liable for significant administrative monetary penalties.

Enforcement and the need for widespread compliance is one of the critical requirements of a system of employment standards. As Professor Harry Arthurs said:

> *Labour standards ultimately succeed or fail on the issue of compliance. Widespread non-compliance destroys the rights of workers, destabilizes the labour market, creates disincentives for law-abiding employers who are undercut by law-breaking competitors, and weakens public respect for the law.*[250]

Over 90% of the approximately 15,000 complaints made every year are by people who have left their jobs voluntarily or after they have been terminated.[251] When the Ministry investigates those complaints, of the claims that are not settled or withdrawn, they conclude about 70% of the complaints are valid. In addition, when the Ministry proactively carries out inspections of workplaces, they commonly find violations of the Act. In the three years between 2011-12 to 2013-14, the Ministry found violations 75-77% of the time. Where an inspection of the employer was carried out after a complaint was made, violations were found over 80% of the time.[252]

The literature in this area is clear that fear of reprisals reduces the number of complaints that are made. Therefore, absence of complaints from some sectors of the economy or from some workplaces may be as consistent with non-compliance as it is an indication of substantial compliance.

It is apparent there is substantial non-compliance. Misclassification (including illegal unpaid internships) appears to have become widespread and along with some of the most frequent violations of the ESA – failing to pay wages on time or not paying overtime pay – is evidence that there is significant non-compliance with basic legal obligations.

A variety of factors contribute to non-compliance.

Ignorance by both employees and employers of their rights and obligations contributes to non-compliance. Many small employers and employees have no idea what the ESA requires. Educating employers about their responsibilities is as important as educating employees about their rights.

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250 Arthurs, *Fairness at Work: Federal Labour Standards for the 21st Century,* 53.
251 Leah Vosko, Andrea M. Noack, and Eric Tucker, *Employment Standards Enforcement: A Scan of Employment Standards Complaints and Workplace Inspections and Their Resolution under the Employment Standards Act, 2000* (Toronto: Ontario Ministry of Labour, 2016), 5. Prepared for the Ontario Ministry of Labour to support the Changing Workplaces Review.
252 Vosko, Noack, and Tucker, 5.

The complexity of the law may contribute to a lack of understanding of the rights and obligations in the ESA, thereby exacerbating non-compliance.

Some employers have an uncaring attitude towards their obligations and responsibilities and do not regard them as important enough to ensure compliance.

Some employers violate the law as part of a deliberate business strategy or because they think their competitors are not complying.

Some employers are confident that because their employees will not complain, and the likelihood of government inspection is very low, non-compliance is a risk worth taking calculating that if they are caught, they can extract themselves from the legal consequences of non-compliance without much difficulty and with trivial costs.

It is all too common for some non-compliant employers to attempt to avoid liability by abandoning their company with no assets and starting up the same business using another incorporated entity.

Unfortunately, there is a widespread fear among employees of reprisals if they complain about violation of their ESA rights[253] and this inhibition contributes to non-compliance.

Accordingly, in considering our recommendations, we need to assess the existing system and try to address in a significant way all the causes of the current state of non-compliance. We will consider the following:

- whether to recommend measures that contribute to education and knowledge by both employers and employees of rights and obligations in the workplace;
- whether to recommend changes that remove or reduce barriers to complainants;
- what can be done to try to deal with the fear of reprisals by providing speedy and effective adjudication of reprisal claims;
- how to provide greater access to justice for employees and employers;

253 Ibid., 21. Numerous scholarly and other works have suggested that fear of reprisals is widespread and the research study done for this Review confirms those facts.

- the desirability of providing for greater deterrence for employers who do not comply with the ESA; and
- the need to find more efficient and effective ways to collect monies owing to employees.

Finally, it is necessary to consider a new strategic approach to enforcement because of many fundamental changes in the workplace. There are many employees in precarious jobs whose basic employment rights are being denied, at the same time as there are limited government resources. Below we explore some dimensions of a strategic shift.

5.5.1.1 Academic Reviews of the Enforcement Regime

As part of the Review, two reports were commissioned on the issues of compliance, enforcement and administration. The first report[254] contains many options to consider regarding compliance and enforcement strategies based on a review of the academic literature. The second report[255] contains options to consider based upon a review and analysis of Ministry data regarding the enforcement and administrative processes.

We will carefully consider both reports and their recommendations. In addition to the options and ideas specifically referred to in this Chapter, we invite interested stakeholders and members of the public to review the reports and comment to us as they see fit.

5.5.1.2 Overview of the Employment Standards Enforcement and Administration

The Employment Standards Program

The ESA is administered and enforced through the Ministry of Labour Employment Standards Program.[256] This program consists of the Employment Practices Branch in Toronto, and five regional operating areas. The Program's centralized intake centre, the Provincial Claims Centre, is in Sault Ste. Marie.

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254 Kevin Banks, *Employment Standards Complaint Resolution, Compliance and Enforcement: A Review of the Literature on Access and Effectiveness* (Toronto: Ontario Ministry of Labour, 2015). Prepared for the Ontario Ministry of Labour to support the Changing Workplaces Review.

255 Vosko, Noack, and Tucker, *Employment Standards Enforcement: A Scan of Employment Standards Complaints and Workplace Inspections and Their Resolution under the Employment Standards Act, 2000.*

256 Employees may choose to pursue their ESA rights through the civil courts rather than the ES Program. Employees who are covered by a collective agreement work through their union to enforce their ESA rights.

The Minister of Labour appoints a Director of Employment Standards to administer the Act. The Director of Employment Standards and the Regional Directors report to the Assistant Deputy Minister of the Ministry's Operations Division.

One of the ES Program approaches to administering and enforcing the Act centres on education and outreach, recognizing that education and compliance go hand-in-hand. These educational and outreach activities seek to create an environment where employees and employers (and others with obligations under the ESA) understand their statutory rights and obligations, and employers have compliance tools and resources.

Employment Standards Officers' Powers

Ministry ESOs reactively investigate claims filed by employees who believe their current or former employer has contravened the ESA, and proactively inspects workplaces to check compliance. ESOs are empowered, among other things, to:

- enter and inspect any place (except for a personal dwelling, which requires a warrant or consent);
- interview/question any person on matters that may be relevant;
- demand the production of records and to examine those records and remove them for review and/or copying; and
- require parties to attend meetings with the ESO for purposes of advancing the investigation of a claim or an inspection.

People are required to answer an ESO's questions and are prohibited from providing information that they know is false or misleading or from interfering with an ESO's inspection or investigation.

If an ESO determines that there was a monetary contravention, the employer (or other entity who has been found liable under the ESA) is often given the opportunity to pay the amount owing without an order being issued (this is referred to as voluntary compliance). If the employer does not voluntarily comply, the ESO has the authority to issue an order requiring payment. An administrative fee of 10% of the amount owing (or $100, whichever is greater) is added on to the amount of the order. Orders to Pay Wages are the most frequently issued sanction when employers do not voluntarily comply.[257]

257 Vosko, Noack, and Tucker, 6.

Employees can generally recover money owing under the Act through an Order as long as a claim is filed within 2 years of the contravention. In an inspection, ESOs can issue an Order to recover money owing up to 2 years before the date that the inspection was commenced. There is no statutory limit on the amount of money that can be recovered for employees.[258]

Directors of corporations that fail to pay its employees can be held liable under the ESA for some of the unpaid wages (up to 6 months' wages and 12 months' vacation pay, but not termination or severance pay). The ESA's director liability provisions generally mirror those in the OBCA but provide for enforcement through the ES Program rather than through court proceedings that are typically more protracted and expensive (see section 5.2.2 for the discussion on director liability).

ESOs may also issue compliance orders ordering that a person cease contravening the Act, directing what action (other than the payment of money) the person shall take or not take to comply with the Act, and specifying a date by which the person must do so. Compliance orders may be enforced by injunction obtained in the Superior Court of Justice. Compliance Orders are the primary tool used in response to violations found in workplace inspections.[259]

In some circumstances, for example in cases of reprisal, the ESO can issue an order to compensate and – if the reprisal took the form of a termination – reinstate an employee. The types of damages that can be included in a compensation order include amounts representing the wages that the employee would have earned had there been no reprisal, damages for emotional pain and suffering and other reasonable and foreseeable damages.[260]

The Act also allows separate but associated or related legal entities to be treated as one employer if certain statutory criteria are met, and authorizes ESOs to issue Orders to entities other than the direct employer. This provision may create another source ("deep pocket") for satisfying an employer's monetary ESA obligations

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258 The time limits on recovery through an order and the limit on the amount that can be the subject of an order were amended effective February 20, 2015: the $10,000 cap on an Order to pay wages for a single employee was removed, and the provision that limited Orders to covering only those wages that became due in the 6 months prior to the date the claim was filed (or 12 months in the case of vacation pay and repeat contraventions) was changed to two years. The previous limitations apply only with respect to wages that became due prior to February 20, 2015.

259 Vosko, Noack, and Tucker, 6.

260 For example, damages representing the loss of an employee's reasonable expectation of continued employment with the former employer, expenses incurred in seeking new employment, and damages representing lost benefit plan entitlements that an employee was wrongfully deprived of.

when the direct employer is insolvent or has minimal assets (see section 5.2.2 for the discussion on the "related employer" provision).

ESOs are empowered to issue a NOC, which involves the imposition of an administrative monetary penalty, where the ESO finds a contravention of the Act. The penalty is payable to the Ministry of Finance (MOF) and becomes part of the province's general revenues. Details on the NOCs are set out in the remedies and penalties section below.

ESOs may initiate a prosecution under Part I ("tickets") of the Provincial Offences Act (POA). The ESO may recommend a prosecution under Part III of the POA but the final decision to prosecute under that Part rests with the Ministry of the Attorney General (MAG). Details on the factors considered by ESOs under each Part and the penalties are detailed below in the remedies and penalties section. In general, deterrence tools such as NOCs and POA prosecutions are used less frequently than measures that bring employers into compliance.[261]

Applications for Review

Employers, corporate directors and employees who wish to challenge an order issued by an ESO or the refusal to issue an order are, in most cases, entitled to apply for a review of the order by the OLRB. The OLRB is an independent, quasi-judicial tribunal that mediates and adjudicates a variety of employment and labour relations matters under a number of Ontario statutes, including the ESA. The details regarding the review process are found in detail below in the section on reviews.

Collections

Many employers, corporate directors and others who are issued Orders or NOCs pay the required amounts without delay. Some, however, do not, and debt collection becomes a necessary part of enforcing the ESA.

The ESA contains several provisions that facilitate the collection of unpaid Orders and NOCs. These provisions:

- allow the Ministry to demand payment from persons who are believed to owe money to, or who hold money for, an employer, corporate director or other person who owes money under the ESA (bank accounts, accounts

261 Vosko, Noack, and Tucker, *Employment Standards Enforcement: A Scan of Employment Standards Complaints and Workplace Inspections and Their Resolution under the Employment Standards Act, 2000*, 6.

receivable, and rental and royalty payments are common sources of funds that are subject to these third party demands);

- allow the Ministry to file a copy of an Order to pay in court (filing the Order makes available creditors' remedies such as writs of seizure and sale, garnishments, and directions to enforce by sheriffs or bailiffs. In order to ensure coordinated oversight of the debt, only the Ministry – not the employee who is owed the wages – is able to file the Order in court).

Historically, all collection activity was performed by the Ministry of Labour. In 1998, this function was delegated to private collection agencies. In 2014 the MOF became the designated collector. MOF is authorized to collect a reasonable fee and/or costs from the debtor, which are added to the amount of the debt.

From 1991 to 1997, employees were able to access a provincial EWPP. The purpose of the EWPP was to guarantee employee wages up to a specified maximum (initially $5,000, subsequently reduced to $2,000) where an order for those wages went unpaid by an employer. The program was administered through the Ministry of Labour and funded from provincial general revenues. The government subsequently attempted to recover funds from employers whose employees received money from the EWPP. Further details concerning collections are found in the collections section below.

5.5.2 Education and Awareness Programs

Background

The Ministry engages in several educational and outreach initiatives that are designed to help employees and employers understand the rights and obligations that are set out in the ESA. These include: the provision of videos and explanatory materials on the Ministry website; a call centre to provide general information about the ESA in multiple languages; the giving of seminars to employee and employer groups; and a Policy and Interpretation Manual that sets out in detail the policies and interpretations of the Director of Employment Standards.[262]

262 Employment Standards Officers, who are charged with enforcing the Act, are required to follow the Director's policies. The Manual, which is written by ES Program staff, is currently published by a legal publishing firm and is available for purchase by external stakeholders such as clinics, law firms, unions, employers and human resource professionals. Effective summer 2016, the Ministry will publish the Manual electronically in-house. As of the date of writing the Ministry had not settled on whether the Manual will be publicly available.

The Act requires employers to post and provide employees with a statutory ESA poster that provides a brief description of the Act and provides the Ministry's web address and phone number if employees or employers wish to obtain more information.

ESA education is not part of the provincial high school curriculum, whereas occupational health and safety education has been part of the provincial high school curriculum since 1999.

Employee advocacy groups, unions and employers have all called on the government to improve educational activities.

Employee advocacy groups and unions recommended that the government ensure that educational materials are easy to understand and are provided in multiple languages. They suggested launching extensive public awareness campaigns about the ESA, with a particular focus on the anti-reprisal protection and the issue of misclassification of employees as self-employed workers. They also suggested that all newly registered businesses be provided information about their ESA obligations and that ESA training be made mandatory for employers, managers and supervisors. Recommendations were also made to make ESA training mandatory for employees and to fund employee advocacy groups to provide educational programs for employees.

Employers argued that the ESA's complexity makes it difficult for employers to comply. Some employers suggested:

- ensuring that the Ministry uses simple, clear language in all communications that explain the ESA;
- public ESA information campaigns in multiple languages;
- working more with community agencies to maximize outreach;
- providing easy access to the Ministry's Policy and Interpretation Manual; and
- providing links in the online ESA to clear and concise interpretations of the provisions.

It 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. We welcome specific ideas in this regard that anyone may wish to advance.

5.5.3 Creating a Culture of Compliance

Background

Multiple factors contribute to non-compliance with employment standards. Achieving a higher level of compliance will not likely occur merely by amending the legislation or by increasing penalties for non-compliance. There needs to be improved education and outreach to achieve better understanding of workplace rights and obligations. Employees must be able to assert his/her workplace rights without fear of reprisal and the process to access those rights must be fair and effective. In this section we discuss possible new approaches that could assist in achieving greater awareness of rights and obligations directly in the workplace itself by making employers and employees responsible for compliance.

Internal Responsibility System (IRS)

To create a culture of workplace compliance with the ESA, it is necessary to find ways to bring greater responsibility for compliance directly into the workplace itself. Rather than leaving it only to government to carry out inspections to test if there is compliance, and rather than leaving it only to employees to file complaints with the government (which mostly occurs only after they are no longer employed), we will consider a new system in which responsibility is placed directly on employers and employees to increase awareness and compliance.

The impetus for this approach comes largely from the IRS established by the OHSA that has been effective in making Ontario's workplaces safer and healthier. Under OHSA, both employers and employees have responsibility for health and safety in the workplace and both play a role in endeavoring to achieve compliance with the Act. In this regard, joint health and safety committees or, in smaller workplaces health and safety representatives, have proven generally effective in strengthening the health and safety culture than would otherwise be the case. They have raised employee and employer awareness of health and safety issues and in many workplaces have contributed to the identification and elimination of hazardous conditions and to a safer workplace.

Options:

1. Implement an ESA Committee, as an expansion of the Joint Health and Safety Committee.

   An Employment Standards compliance IRS could be accomplished by expanding the jurisdiction of existing joint health and safety committees and representatives (a committee is generally not required in small workplaces with fewer than 20 workers; a workplace representative is generally required only in workplaces with 6 to 19 workers):

   - to give them authority to deal with ESA matters; or
   - to have other committees/representatives appointed in the workplace with jurisdiction to deal with ESA compliance.

   It would not be necessary for every member of a health and safety committee to take on responsibility for both health and safety matters as well as ESA matters as some members could be added to deal only with ESA matters. ESA training would have to be made available to committee members and representatives that deal with ESA matters.

   Unlike health and safety committees, there would be no obvious need for an ESA Committee in unionized workplaces as the union already has the responsibility to deal with ESA issues and to monitor compliance. Accordingly it would not appear to be necessary to have an internal ESA responsibility system in unionized workplaces.

   The fundamental obligations of the employer would be:

   - to conduct a simplified self-audit developed and prescribed by the Ministry, to check that the employer is complying with the ESA; and
   - to meet with the committee/representative and review the employer's compliance audit.

   A copy of the compliance and confirmation of the meeting with the committee/representative may be required to be sent to the Ministry.

Conducting the simplified audit and meeting with the committee/ representative should mean the employer would not only be aware of the requirements of the Act but also review compliance with the representative or the committee. This would raise not only awareness of rights and obligations but also compliance.

Two possible models for the ESA Committee – a basic model and an enhanced model – are set out for discussion.

a) Basic Model:

Under this model, the basic requirement of the committee/ representative would be to meet with the employer to receive and review the employer's compliance audit.

In addition, if the employee committee members/representative requested that the employer address ESA issues or complaints, the employer would be obligated to do so, but the committee would have no on-going duty to monitor compliance or to investigate any alleged violations discovered by them or brought to their attention.

b) Enhanced Model:

Under an enhanced model, in addition to the requirement to review with the employer its compliance audit, the committee/representatives would have an on-going responsibility to promote awareness of – and compliance with – the ESA.

Committees/representatives would be authorized under the Act to look into any ESA matter identified by them, the employer or by any employee(s) and have the right to be provided by the employer with all information necessary to establish whether there is compliance with the ESA.

The committees/representatives would have an on-going duty to monitor compliance, to meet regularly with the employer, to communicate to employees and to look into any alleged violations discovered by them or brought to their attention.

2. Require employers to conduct an annual self-audit on select standards with an accompanying employee debrief.

   Pursuant to this option, employers would be required to audit compliance with select standards identified by the Ministry (e.g., the Ministry may select 1, 2 or 3 standards per year). These standards would be announced to employers and employees in advance with targeted communications and education. To promote accountability and awareness, the results of these audits would be shared with all employees.

5.5.4 Reducing Barriers to Making Claims

5.5.4.1 Initiating the Claim

Background

Employees not covered by a collective agreement can file a claim with the Ministry of Labour if they believe their employer (or former employer) has not complied with the ESA. Unionized employees must generally enforce their ESA rights under the grievance and arbitration provisions of the collective agreement.

In 2010 the Act was amended so that the Director of Employment Standards could require that a complainant employee first contact his or her employer about the employment standards issue before a claim will be assigned to an ESO for investigation. There are template letters and other supporting material on the Ministry's website that employees can use. This has been referred to as the "self-help" requirement.

As a matter of Ministry policy, there are exceptions to the general rule that employees first contact their employer. These exceptions are identified on the claim form and in Ministry material explaining the claims process and include situations where an employee is afraid to do so because of fear of reprisal. As a practical matter, we are advised that claims are not rejected by the Director because the employee has not contacted his or her employer first, although the claims processor typically asks for the reason the employer was not contacted.

The research study commissioned for this Review suggested that there has been a significant decline in the number of claims filed over a period of years and that some of this decline may be associated with the introduction of the self-help requirement. Indeed the authors of the study concluded that:

> *The balance of evidence suggests that the decline in complaints corresponds to the introduction of the OBA [the self-help provision] the requirements of which may be dissuading workers from pursuing their rights.*[263]

Employees who file an ES claim must provide their name, which is shared with the employer during the claims process. At one time, the Ministry permitted employees to file a claim confidentially (i.e., where the employee's name was known to the Ministry, but not the employer). This practice was changed in response to an OLRB ruling that employees would have to identify themselves to enable the employer to know the case it had to meet[264]. In comparison, the Wage and Hour Division (WHD) of the US DOL indicates that its policy is to protect the confidentiality of the complainant in their investigations, with some exceptions.[265]

Outside the claims process, individuals can anonymously provide information to the Ministry about possible ESA violations. This information is passed on to Ministry staff for review and could, but does not necessarily, lead to a proactive inspection.

When an employee files an ES claim, he or she can authorize a third party (e.g., legal counsel, family member, or any other person) to act on his or her behalf with respect to the claim.

The majority of ESA claims are filed by former employees after they have quit or their employment has been terminated.[266]

The ESA currently provides broad protection for employees against reprisal by an employer for exercising his/her rights under the ESA, including filing a claim. Reprisal protection is dealt with further in section 5.5.4.2.

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263 Vosko, Noack, and Tucker, 19.
264 *Cineplex Odeon Corporation v. Ministry of Labour,* (1999) CanLII 20171, ON LRB.
265 "Wage and Hour Division Fact Sheet #44: Visits to Employers," United States Department of Labor, http://www.dol.gov/whd/regs/compliance/whdfs44.htm. The name of the complainant and the nature of the complaint are disclosed when it is necessary to reveal a complainant's identity, with his or her permission, to pursue an allegation, and when the Wage and Hour Division is ordered to reveal information by a court. The Wage and Hour Division's Frequently Asked Questions are available online: http://www.dol.gov/wecanhelp/howtofilecomplaint.htm.
266 Vosko, Noack, and Tucker, *Employment Standards Enforcement: A Scan of Employment Standards Complaints and Workplace Inspections and Their Resolution under the Employment Standards Act, 2000.*

The number of claims filed with the ES Program and the number of investigations that were completed in recent years is as follows:[267]

Fiscal Year	Complaints Filed	Complaints Completed
2006/07	22,620	15,995
2007/08	20,789	18,533
2008/09	23,286	21,304
2009/10	20,381	20,764
2010/11	17,094	27,637
2011/12	16,140	19,032
2012/13	15,016	12,344
2013/14	15,485	14,656
2014/15	14,872	17,453

As can be inferred from the data, the Ministry has taken special measures at various times, as in 2010-11, to deal with backlogs of complaints.

In the discussion below regarding inspections, we discuss the possibility of a strategic approach to both complaints and to inspections that could have consequences for the complaints process. That section should be read in conjunction with this one.

Submissions

Unions and employee advocates assert that fear of reprisal can significantly deter employees from making timely complaints and that a requirement to inform the employer before filing a complaint exacerbates the problem of accessing ESA entitlements. They point to the large number of claims that are made by employees after they have left the employ of the employer as evidence supporting a conclusion that the obligation to inform their employer is a barrier to accessing justice.[268] They would like to see the requirement eliminated. In addition to suggesting more robust anti-reprisal protection (dealt with in section 5.5.4.2),

267 This data is provided by the Ontario Ministry of Labour.
268 Vosko, Noack, and Tucker, *Employment Standards Enforcement: A Scan of Employment Standards Complaints and Workplace Inspections and Their Resolution under the Employment Standards Act, 2000.*

these advocates recommend that the ESA be amended to permit the Ministry to receive and investigate anonymous complaints and that employee representatives such as legal clinics or unions be permitted to file claims of alleged violation without specifically naming employees who have allegedly been denied their ESA entitlements.

Employers likely will argue that most small and medium employers do not have readily accessible human resources expertise or employment law advice and that most non-compliance is as a result of innocent inadvertence or lack of knowledge of the technicalities of the law. As a result, it is likely that they prefer an opportunity to resolve issues directly with their employees – a practice consistent with good employee relations and which should lead to increased compliance and to increased education of both employers and employees in a non-adversarial environment.

If anonymous or third party complaints are specifically provided for in the ESA, it is clear that employers will have to be advised of the details of alleged non-compliance in order to respond to the case they have to meet and in order to rectify the problem, if any. The facts of alleged violation, including the names of employees allegedly adversely affected, will have to be made known to the employers regardless of how the complaint is initiated. Whether the name of the complainant must be provided to the employer is a separate issue.

Options:

1. Maintain the status quo with a general requirement to first raise the issue with employers but at the same time maintain the existing policy exceptions and maintain current approach of accepting anonymous information that is assessed and potentially triggers a proactive inspection.
2. Remove the ESA provision allowing the Director to require that an employee must first contact the employer before being permitted to make a complaint to the Ministry.
3. Allow anonymous claims, it being understood that the facts of the alleged violation must be disclosed to the employer by an ESO in order to permit an informed response.
4. Do not allow anonymous complaints, but protect confidentiality of the complainant, it being understood that the facts of the alleged violation must be disclosed to the employer by an ESO in order to permit an informed response.

5. Allow third parties to file claims on behalf of an employee or group of employees, it being understood that the facts of the alleged violation must be disclosed to the employer by an ESO in order to permit an informed response.

5.5.4.2 Reprisals

Background

The current ESA provides broad protection to employees against reprisal.

The Act prohibits employers, and anyone acting on their behalf, from intimidating, dismissing or otherwise penalizing an employee or threatening to do so because the employee attempted to exercise, or did exercise, his or her rights under the ESA. More particularly, an employee is protected against any reprisal if he or she engages in any of the following activities:

- asks the employer to comply with this Act and the regulations;
- inquires about his or her rights under this Act;
- files a complaint with the Ministry under this Act;
- exercises or attempts to exercise a right under this Act;
- gives information to an ESO;
- testifies or is required to testify or otherwise participates or is going to participate in a proceeding under this Act; or
- participates in proceedings respecting a by-law or proposed by-law under section 4 of the *Retail Business Holidays Act*;
- Employers are also prohibited from penalizing an employee in any way because the employee;
- is or will become eligible to take a leave;
- intends to take a leave or takes a leave under Part XIV of the ESA; or
- because the employer is or may be required, because of a court order or garnishment, to pay to a third party an amount owing by the employer to the employee.

The burden of proof that an employer did not engage in a reprisal against an employee is on the employer.

Assignment workers of THAs are protected from reprisal by both the THA and the client to whom they are assigned to perform work.

Employees who believe they have been subject to reprisal may file a claim with the Ministry, which will investigate.

If an ESO determines that a reprisal occurred, the officer may order that the employee be compensated for any loss incurred as a result of the contravention or that the employee be reinstated, or may order both compensation and reinstatement.

Reprisal claims are currently not given priority by the Ministry. It takes approximately 90 days before claims are assigned to a Level 2 ESO for investigation, and on average it takes approximately 51 days to conclude an investigation.

In recent years, approximately 12% of claims[269] contained an allegation of reprisal (or leave of absence, which almost invariably entails a reprisal allegation). The majority of these involve a termination. Approximately 20% of cases result in a finding of a contravention;[270] however the percentage of contraventions may be higher given that a substantial number of them are settled or withdrawn.

In the Ministry's experience, most employees who have been terminated do not seek reinstatement.

Submissions

Employee advocates and unions:

- observe that rights and protections afforded by the ESA are meaningless without effective anti-reprisal protection;
- are critical of the current system of enforcement; and
- generally agree that, currently, the cost of reprisal to employers is not a significant deterrent.

Employee advocates assert that many employees do not raise ESA issues with their employer or file a complaint because of fear of reprisal notwithstanding the protections contained in the ESA with the result that many work in substandard conditions.

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269 Vosko, Noack, and Tucker, 24.
270 Ibid., 30.

Employee advocates and unions advocate creating an expedited process for reprisal investigations in order to prevent compounding contraventions and to minimize the chilling effect of the reprisal on other employees. They also assert that an expedited process for reprisal complaints would emphasize to employers the importance of the anti-reprisal provisions of the ESA and may increase the numbers of successful employee reinstatements.

Options:

1. Maintain the status quo.
2. Require ESOs to investigate and decide reprisal claims expeditiously where there has been a termination of employment (and other urgent cases such as those involving an alleged failure to reinstate an employee after a leave).
3. Require the OLRB to hear applications for review of decisions in reprisal on an expedited basis if the employee seeks reinstatement.

5.5.5 Strategic Enforcement

Strategic enforcement is increasingly important when the workplace environment is becoming more complex and governments with limited resources are faced with high public expectations. In this section we will canvass different strategies for enforcing the ESA.

5.5.5.1 Inspections, Resources, and Implications of Changing Workplaces for Traditional Enforcement Approaches

Background

Inspections

An "inspection" is where an ESO proactively attends an employer's place of business to ensure compliance with certain parts of the ESA[271]. This typically involves the officer reviewing the employer's payroll records and conducting

271 Inspections typically ensure compliance with these employment standards: poster requirements, wage statements, unauthorized deductions, record keeping, hours of work, eating periods, overtime pay, minimum wage, public holidays, vacation with pay, and the rules regarding temporary help agencies charging assignment employees fees and requiring agencies to provide assignment employees information. Inspections do not typically address termination and severance pay, reprisal, or leaves of absence issues. Misclassification issues where employers treat employees as independent contractors are typically not addressed during an inspection unless the issue is widespread in that workplace.

interviews of employees and the employer. Proactive inspections are intended to discover and remedy contraventions and bring the employer into compliance going forward as well as to heighten awareness and understanding of rights and obligations. In addition, an effective proactive inspection program should deter non-compliance. Contraventions were detected in 75-77% of inspections in the years between 2011-12 and 2013-14, and 65% in 2014-15.[272]

Until recently, ESOs conducted either inspections or investigations – they did not do both. Most now investigate and inspect.

In determining which employers to inspect, the Ministry relies on a variety of criteria. For example, an employer may be inspected because:

- an ESO who conducted an investigation believes that there may be contraventions with respect to employees other than the claimant;
- it has a history of contravening the ESA;
- a "tip" was received from the public (including employees who may be afraid of reprisal) or from Ministry staff;
- it is part of a sector that has been targeted for inspection.

The ES Program determines sectoral targets (often termed "blitzes") based on:

- input from employee and employer groups;
- a review of public policy and research papers;
- analysis of the Program data on sectors contravention profiles; and
- government priorities.

The Ministry typically announces blitzes in advance on the theory that an industry that knows it will be under scrutiny will move on its own in advance to comply. The ES Program also employs what is called a "compliance check": an online self-assessment tool that asks employers about their compliance with seven non-monetary standards.

There are more than 400,000 workplaces in Ontario. An average of approximately 2,500 inspections have been conducted annually in recent years. This means that only about 0.6% of workplaces are inspected annually.

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272 See, for example, the 1991, 2004 and 2006 Annual Reports of the Office of the Provincial Auditor of Ontario.

Best Use of Limited Resources

There is general consensus that proactive enforcement is a more effective mechanism for ensuring ESA compliance than relying on individual employees to file claims. It has long been a goal of the Ministry of Labour to continually increase the number of proactive inspections it conducts. That goal is, however, balanced with the need to limit wait times for claim investigations. More resources are currently allocated to reactive rather than proactive measures.

There is great pressure on the Ministry to use its limited resources efficiently and to strike the right balance between reactive (claim investigations) and proactive (inspections) work. The wait times for investigations and the number of inspections have both previously been the subject of comment by the Provincial Auditor.[273] The Program continuously revisits its processes and policies with a view to having faster and more streamlined services that will result in shorter wait times for claim assignment, quicker resolution of complaints, and increased proactive activity.

The ESA contemplates that the Ministry will investigate all claims that are filed, as long as the claimant has taken the specified steps to facilitate the investigation. Where a claimant has not taken the specified steps within 6 months of filing the claim, the officer is deemed to have refused to issue an order. The claimant has the right to apply to the OLRB for a review of the refusal. In a world where financial constraints are a constant, budgetary considerations do not permit the hiring of enough ESOs to complete the investigation of all complaints in a timely fashion while also maintaining a significant proactive presence. The result is that there is a backlog of uninvestigated and unresolved complaints.

Quarterly, between 2011-12 and the first two quarters of 2015-16:

- the average wait time for assignment to a Level 1 ESO ranged from 2 days to 67 days, with an average of 35.4 days. Over the past four quarters in this period the average was 38 days;
- the average wait time for assignment to a Level 2 ESO for investigation has ranged from 54 days to 189 days, with an average of 119.6 days. Over the past four quarters in this period the average was 89 days.

273 See, for example, the 1991, 2004 and 2006 Annual Reports of the Office of the Provincial Auditor of Ontario.

This problem is not unique to Ontario. In the US in 2010, David Weil described the situation as follows:

> *The challenges facing the major agencies in the US Department of Labor (DOL) that regulate conditions in the workplace are daunting. Public policies on health and safety, discrimination, and basic labor conditions cover millions of workers, and have to be implemented in hundreds of thousands of disparate workplaces in differing geographic settings. Conditions within those workplaces vary enormously – even within a single industry – and employers often face incentives to make those conditions as opaque as possible. Workers in many of the industries with the highest levels of non-compliance are often the most reluctant to trigger investigations through complaints due to their immigration status, lack of knowledge of rights, or fears about employment security. Even the laws, which set forth the worker protections DOL agencies are charged with enforcing, have limitations in the 21st- century business community. Compounding all of the above, agencies charged with labor inspections have limited budgets and stretched staffing levels, coupled with a very complicated regulatory environment.*
>
> *These challenges, however, reach beyond the number of investigators available to the DOL or to the Wage and Hour Division (WHD) in particular. Profound changes in the workplace, including the splitting up of traditional employment relationships, the decline of labor unions, and the emergence of new forms of workplace risk make the task facing DOL agencies far more complicated. In addition, expectations and demands on all regulatory agencies to demonstrate progress toward achieving outcomes and the resulting impacts on how government agencies are overseen by Congress, accountability agencies, and the public have created intensified pressure and scrutiny.*[274]

The Changing Workplace and Implications for Traditional Enforcement Approaches

- Revisit approach of investigating all claims:

  There have been fundamental changes in the workplace. The number of employees represented by trade unions has declined. There has been a major change in how many businesses organize their affairs as the direct

274 David Weil, *Improving Workplace Conditions through Strategic Enforcement, a Report to the Wage and Hour Division* (Boston: Boston University, 2010), 1.

employment of employees has been shifted to other business entities including subcontractors, temp help agencies and franchisees. It is argued that there are many more vulnerable employees in precarious jobs whose basic employment rights are being denied. This denial of rights and protections occurs for many reasons including fear of reprisal, employees' ignorance of their rights and for a multiplicity of other reasons. However, it is exacerbated by the overwhelming number of complaints and by the lack of resources required to make timely investigation of all complaints.

This leads to the question as to whether the traditional approaches to enforcement are sufficient. Ontario may be well advised to consider different enforcement strategies to ensure compliance with the ESA. As Weil concludes: "fissuring means that enforcement policies must act on higher levels of industry structures in order to change behavior at lower levels, where violations are most likely to occur."[275] New enforcement sector-based strategies may need to be designed to change employer behavior and improve compliance with priority being given to those sectors where non-compliance is most problematic.

Administrative programs like Ontario's, which involves government officials investigating and ruling on claims, are in place across Canada. In other jurisdictions, such as the UK, employees are responsible for presenting their own case to an employment tribunal. In the context of new and different enforcement strategies, more worker outreach and education of both employers and employees, the policy of investigating every complaint may have to be modified so that not all complaints are investigated. This does not imply that there should be no avenue for redress for individuals with complaints, nor does it mean that individual complaints would not be important in assisting the Ministry in initiating targeted and proactive inspections. It may mean that some complainants would have to file claims:

- in small claims court, or if there is a more broadly based OLRB presence for ESA matters (described below);
- directly with the OLRB; or
- in some other simplified expedited dispute resolution process where there is either no investigation or a less onerous investigative process.

275 Ibid., 1.

- Focusing on the "top of industry structures" and other strategies:

  Any policy shift away from the investigation of all complaints must be accompanied by new enforcement strategies. It has been argued by David Weil and others that changes in the structure of the economy and in the complexity of employment relationships together with the decline in unionization have meant that the traditional complaint driven approach to enforcement is less and less effective. Weil put it this way:[276]

  > *The employment relationship in many sectors with high concentrations of vulnerable workers has become complicated as major companies have shifted the direct employment of workers to other business entities that often operate under extremely competitive conditions. This "fissuring" or splintering of employment increases the incentives for employers at lower levels of industry structures to violate workplace policies, including the FLSA. Fissuring means that enforcement policies must act on higher levels of industry structures in order to change behavior at lower levels, where violations are most likely to occur.*

  Weil recommended designing sectoral enforcement strategies, a central purpose of which – as with all enforcement strategies – is to deter violations before they occur. This involves analysing and understanding the structure of industries to provide insights into why there are higher levels of non-compliance in some industries than in others and to help inform sector-based enforcement strategies designed to improve compliance. It is his view that understanding supply-chain relationships, franchising and other industry structures is an essential first step to the development and implementation of effective enforcement strategies.

  Such an approach would enable focusing at the top of industry structures – the top of the supply chain for example – where decisions are made that affect compliance by those lower in the chain. Weil suggests that education, persuasion as well as the use of other regulatory tools (like hot goods provisions and other penalties) can found the basis of agreements that will have impact on all the employers in the supply-chain. The strategic use of proactive investigations on a geographic and/or industry basis is also recognized as an essential component of any overall strategy designed to assist in improving compliance. Complaints of individual workers (or their

276 Weil, 1.

silence) should be used to help set priorities for strategic enforcement initiatives. This may involve developing special complaint procedures for employees in targeted sectors or industries to obtain information about compliance in order to leverage complaint investigations more strategically. Finally, Weil focuses on the sustainability of enforcement and the importance of changing employer behaviour on an on-going basis by combining state enforcement initiatives with private monitoring.

Given the similarities between the structural changes in the US economy and those in the Ontario economy, the strategic approach of Dr. Weil warrants serious consideration.

Submissions

Employee and labour advocates expressed very strong support for proactive inspections. Their recommendations focused on expanding the scope of what is included in targeted inspections. Some have argued that the Ministry should not give advance notice of inspections to an industry arguing that this allows other industries to know they are not being inspected and also undermines the effectiveness of the inspections in the targeted industry.

More specifically, it has been recommended that the Ministry:

- inspect all employers that have been found in a claims investigation to have contravened the Act;
- work with federal agencies to map sectors where the practice of employers falsely classifying or misclassifying employees as independent contractors is widespread or growing, focus inspections on those sectors, and have officers look into the issue of misclassification during inspections;
- focus proactive inspection resources on workplaces with migrant and other vulnerable and precariously employed workers;
- hire more officers to increase the capacity to conduct proactive inspections, and/or shift away from the current complaint-driven enforcement process, and allocate more resources to pro-active enforcement initiatives (including spot checks, audits, and inspections).

Some employer groups expressed support for effective enforcement of the ESA. Generally, they spoke of the desirability of providing education and assistance to employers who want to comply and targeting those who are deliberately

contravening the Act. Consistent enforcement of the ESA supports a competitive environment based on a level playing field. More specifically, they recommended the Ministry:

- focus inspections on those with a bad compliance history;
- facilitate a more consistent approach by officers; and
- use the inspection process to educate employers.

Options:

1. Maintain the status quo.
2. Focus inspections in workplaces where "misclassification" issues are present, and include that issue as part of the inspection.
3. Increase inspections in workplaces where migrant and other vulnerable and precarious workers are employed.
4. Cease giving advance notice of targeted blitz inspections.
5. Adopt systems that prioritize complaints and investigate accordingly.
6. Adopt other options for expediting investigation and/or resolution of complaints.
7. Develop other strategic enforcement options.

5.5.5.2 Use of Settlements

Background

The Act permits parties to settle their ESA issues in a number of different circumstances.[277]

Settlements can be facilitated by ESOs, or parties can settle the matter themselves and inform the ESO. If the employee and employer comply with the terms of the settlement, the settlement is binding, any complaint filed is deemed to have been withdrawn and any order made by an ESO in respect of the contravention or alleged contravention is void (except a compliance order).[278]

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277 Settlements are void if the employee (or in the case of a settlement facilitated by an ESO, the employer) demonstrates that it was entered into as a result of fraud or coercion.

278 Approximately 15% of claims were settled with the assistance of an ESO or by the parties themselves in the 2014/15 year. Even where a settlement occurs, the Ministry may still choose to continue prosecution proceedings against the employer if a violation was found.

Labour Relations Officers (LROs) at the OLRB attempt to effect a settlement of applications for review of an officer's decision. Approximately 80% of ESA reviews are settled. In employer-initiated reviews, we are advised that employees often settle for less than the amount that was ordered by the ESO.

The MOF, as the designated collector of unpaid orders and notices, is authorized to enter into a settlement with the debtor, but only with the agreement of the employee. If the settlement would provide the employee less than 75% of the amount he or she is entitled to, the approval of the Director of Employment Standards must be obtained.

Academic research suggests that the vulnerabilities of employees diminishes the value of ESA settlements that they negotiate.[279]

Submissions

A criticism we heard frequently related to the settlement process at the OLRB. The OLRB has a professional cadre of mediators – LROs – who are assigned to assist the parties to help resolve matters in advance of hearings. The success of this settlement process is very important to the smooth functioning of the tribunal as a high rate of settlement is a critically important part of any adjudicative system. Without settlements, too many cases would go on for too long and there would be an excessive burden on already strained adjudicative resources. Without the possibility of settlements, any legal process becomes more time consuming and more expensive for the parties and for society as a whole.

In labour relations matters the Board officers responsible for mediating interact mostly with sophisticated parties and legal counsel in helping to effect settlements. In ESA cases, however, they often deal with unsophisticated and unrepresented complainants and respondents. One common issue cited to us is that complainants are often very dissatisfied with the settlement process. They may feel out of their depth, unduly influenced, and even pressured in many circumstances to settle in a way that they feel is inappropriate. We are not surprised that this feeling exists. Settlement is never an easy process. It requires honest reflection on the merits of the case and weighing of options. It is especially hard when you are unrepresented and have no advice you can rely on. One of the most important skills lawyers and paralegals bring to clients in the legal process is the ability to help clients assess the strength of their case and to negotiate an appropriate

279 Banks, 30.

outcome. If more complainants were represented in the settlement process, there would still be some degree of dissatisfaction – as there usually is – but as a society we could expect that overall it would be regarded by all those who participate as a better process.

We heard concerns that employees often compromise claims even where there appears to be strong evidence supporting their entitlement to a higher amount. Unions and employees advocates argue that the likelihood of settlement creates a perverse incentive to violate minimum standards because non-compliant employers, when faced with a valid complaint, are often able to settle claims for less than the cost of compliance.

Employers have not made submissions on this point. It may be that employers, particularly small employers, will express concern about the diversion of resources to litigation if there is a substantive interference with the ability of the parties to settle a case. They are likely to point out that the time, cost and risk associated with litigation often compel parties to consider settlement that is preferable to trial. The reasons why an employee or an employer might prefer a timely settlement are numerous. There are cases where facts are disputed and/or credibility is an issue or where the application of the law to agreed facts is disputed. It would be costly and inefficient to prohibit settlements in such circumstances. Suffice to say, employers are likely to view settlements as a smart and efficient dispute resolution mechanism that should be available to the parties.

Options:

1. Maintain the status quo.
2. In addition to the current requirement that all settlements be in writing, provide that they be subsequently validated by the employee in order to be binding. For example, provide that a settlement is binding only if, within a defined period after entering into the settlement, the employee provides written confirmation of her or his willingness to settle on the terms agreed to and acknowledges having had an opportunity to seek independent advice.
3. Have more legal or paralegal assistance for employees in the settlement process at the OLRB as set out below in section 5.5.6.

5.5.5.3 Remedies and Penalties

Background

Enforcement mechanisms that encourage compliance, deter non-compliance and provide appropriate and expeditious restitution to employees whose ESA rights have been violated are an essential part of an effective compliance strategy.

Thousands of complaints are filed with the Ministry of Labour for ESA violations every year. Approximately 70% of assessed complaints lead to confirmed violations of the ESA.[280]

The Act provides these enforcement tools when an employer[281] is found to have contravened the Act:

Tool	Primary Purpose	Details
"Voluntary Compliance"	Restitution	Employer pays the employee the amount that was owing without an Order being issued. With voluntary compliance (rather than an Order) the employee may receive the money sooner and the employer abandons its right to apply to review the determination. Approximately half of the claims where a contravention was found are resolved through voluntary compliance.
Order to Pay Wages (or Fees)	Restitution	The Ministry orders the employer to pay the employee the amount that was owing, plus pay an administrative fee to the government of 10% of the amount owing (or $100, whichever is greater).
Order for Compensation	Restitution	Available only for certain contraventions (e.g. reprisal, leaves of absence). The Ministry orders the employer to financially compensate the employee (i.e., pay the employee damages for the wages that the employee would have earned, the value of the lost job, emotional pain and suffering, and other reasonable and foreseeable damages) plus pay an administrative fee to the government of 10% of the amount of damages (or $100, whichever is greater).

280 Vosko, Noack, and Tucker, 5.
281 "Employer" is used here to capture anyone who may be issued an enforcement tool, i.e., those who are not the "employer" but who have ESA liabilities (e.g., corporate directors, clients of temporary help agencies).

(...continued)

Tool	Primary Purpose	Details
Order for Reinstatement	Restitution	Available only for certain contraventions (e.g., reprisal, leaves of absence) where the employee's employment was terminated. The Ministry orders the employer to reinstate the employee.
Director's Order to Pay Wages	Restitution	The Ministry orders director(s) of a corporation that has not paid the employee to pay some of the unpaid wages (up to 6 months' wages and 12 months' vacation pay, but not termination or severance pay).
Compliance Order	Bring into Compliance	The Ministry orders the employer to take or refrain from taking actions in order to comply with the Act. (The order cannot require that money be paid). This may be used for monetary and non-monetary contraventions.
Notice of Contravention ("NOC")	Penalty & Deterrence	The Ministry orders the employer to pay an administrative monetary penalty, ranging from a flat $250 upwards to $1,000 per employee affected by contravention.[282] Penalty is paid to the government. Employers do not have to pay the amount of the NOC into trust in order to apply to have it reviewed by the OLRB. On review, the Director of Employment Standards has the onus to establish on a balance of probabilities that a contravention occurred; the OLRB usually considers documentary evidence insufficient proof and requires the attendance of the issuing officer at the hearing. Primarily because of the costs associated with this, the policy of the ES Program is for officers to issue "tickets" under the POA where possible, rather than an NOC. In 2014/15, 65 NOCs were issued in the claim investigation context and 34 were issued in the inspection context.[283]

282 The amount of the NOC for failing to post or provide the Ministry's ESA poster, or to keep proper payroll records or make them readily available for an ESO are: $250 for a first contravention; $500 for a second contravention in a 3-year period; and $1000 for a third or subsequent contravention in a 3-year period. For contraventions of other provisions of the ESA, the penalties are: $250 for the first contravention multiplied by the number of employees affected; $500 for a second contravention in a 3-year period multiplied by the number of employees affected; and $1000 for a third or subsequent contravention in a 3-year period multiplied by the number of employees affected.

283 Vosko, Noack, and Tucker, Table 4.1 and 4.2.

(...continued)

Tool	Primary Purpose	Details
Provincial Offences Act prosecution – Part I	Penalty & Deterrence	Prosecution for contravening ESA. ESOs consider the following factors when deciding whether to initiate a prosecution under Part I of the POA: the seriousness of the offence, whether there is a history of non-compliance; mitigating circumstances (for example, whether full and timely restitution has been made for employees affected by the contravention), and whether other steps can be taken to effectively deter future non-compliance. Generally, Part I prosecutions are used for first offenders where the offence is viewed as being less serious. Part I prosecutions are commenced by serving the defendant with either an offence notice ("ticket") or a summons within 30 days of the alleged offence. Although a summons can result in a $1000 fine, the ES Program practice is to proceed by way of a ticket in most cases, which can result in a $360 fine. In 2014/15, 340 tickets were issued.[284]
Provincial Offences Act prosecution – Part III	Penalty & Deterrence	Prosecution for contravening ESA. Used to prosecute corporate directors, for serious offences, and for repeat or multiple offenders or if Part I is not seen as a sufficient deterrent. Commenced by the laying of an information. Requires a court appearance. Conviction carries a fine up to $100,000 for a first offence for a corporation, $250,000 for a second offence and $500,000 for a third or subsequent offences, or up to $50,000 and imprisonment up to 12 months for an individual.

Whether or not a contravention is found, ESOs can require an employer to post in its workplace any notice the ESO considers appropriate or any report concerning the results of an investigation or inspection. In practice, ESOs order employers to post documents only in the inspection context, not in the claim investigation context.

The Ministry publishes the name of anyone convicted under the POA of contravening the ESA on its website.

284 Vosko, Noack, and Tucker, Table 4.4.

Despite the high rate of confirmed ESA violations, relatively few penalties are issued, as the numbers in the chart above demonstrate.

On some occasions, employers provide the statutorily required payments to an employee after a claim is filed and the employee withdraws the claim and, as a result, the Ministry closes the claim without an investigation. Without a finding that the employer contravened the Act, enforcement tools are not available. Similarly, if the parties enter into a binding settlement, the claim is deemed to be withdrawn and any order made in respect of the contravention or alleged contravention is void. Approximately 14% of claims were settled in the 2014-15 year. Settlements do not terminate prosecutions.

In addition to the above, the ESA provides that the Director of Employment Standards may, with the approval of the Minister of Labour, determine a rate of interest and manner of calculating interest for the purpose of the Act[285] and sets out circumstances in which interest may be payable pursuant to those determinations: when an ESO issues a Director Order to Pay, when the OLRB makes, amends or affirms an Order, and where money is paid from the Ministry's trust fund.[286] (There is no provision addressing interest awards by ESOs against employers). To date, the Director has not made these determinations. The effect of this is that no interest is payable in any of the circumstances in which the Act mentions interest.

Part III prosecutions are relatively rare. When Part III prosecutions do occur, they are usually for failure to comply with an order to pay.

Submissions

We heard little from employers on how the remedies or penalties might be amended. However, it would seem that employers generally recognize the benefits of effective enforcement and increased compliance. Some supported the imposition of higher penalties on those who intentionally contravene the ESA. Some recommended that warnings should be issued to first time offenders who unintentionally contravene the Act.

This topic received a significant amount of attention in other stakeholders' submissions. The general thrust of many submissions by employee advocacy groups and labour groups is that the current remedies set out in the ESA are

285 See Section 88(5).
286 See Sections 81(8), 119(12), 88(7), 117(3) and 117(4).

inadequate for protecting Ontario workers in an increasingly turbulent and precarious labour market and that this weakness in legal standards is exacerbated by a consistent failure to effectively enforce the employment standards which are already in place.

It has been submitted, for example, that the current remedies, monetary value of penalties, and ES Program procedures:

> *…create a perverse incentive for employers to violate the minimum standards of their workers. It is more financially lucrative for employers to withhold or fail to pay a worker their minimum entitlements under the ESA, and if the employee should launch a successful complaint, be put in a position where the employer can potentially settle the debt owed to the aggrieved worker for cents on the dollar, potentially below the minimum standard set by the Legislature.*

Unions and employee advocacy groups submitted that penalties for non-compliance should be increased to deter employers from willfully violating the minimum standards under the ESA.

Options:

1. Maintain the status quo.
2. Increase the use of Part III prosecutions under the POA particularly for repeat or intentional violators and where there is non-payment of an Order.
3. Increase the frequency of use of NOCs by the ES Program. This could be supported by:
    a) requiring employers to pay an amount equal to the administrative monetary penalty into trust in order to have a NOC reviewed by the OLRB;
    b) removing the “reverse onus” provision that applies to the Director of Employment Standards when a NOC is being reviewed at the OLRB.
4. Require employers to pay a financial penalty as liquidated damages to the employee whose rights it has contravened, designed to compensate for costs incurred because of the failure to pay (i.e., borrowing costs), in a specified amount or an amount that is equal to or double the amount of unpaid wages and a set amount for non-monetary contraventions.

5. Increase the dollar value of NOCs.
6. Increase the administrative fee payable when a restitution order is made, to include the costs of investigations and inspections.
7. Use the existing authority of officers to require employers to post notices in the workplace where contraventions are found in claim investigations.

Interest

8. Have the Director of Employment Standards set interest rates pursuant to the authority to do so in section 88(5) so that interest can be awarded in the circumstances currently allowed for.
9. Amend the Act to allow employers to be required to pay interest on unpaid wages.

Other Options (as discussed below):

10. Make access to government procurement contracts conditional on a clean ESA record.
11. Grant the OLRB jurisdiction to impose administrative monetary penalties.

Since compliance is an important public policy objective, it has been suggested that employers who have a record of contravention of the ESA should be denied the ability to bid on government contracts. It is argued that such a policy would ensure that non-compliant employers are not "rewarded" and that bidders do not build non-compliance into costing estimates. There has been little discussion about this option. Should stale-dated records of non-compliance always disqualify an employer? Should inadvertent non-compliance by an employer who has quickly remedied any issue of non-compliance operate as a disqualifier? There may be many questions that require thoughtful consideration before any policy is recommended. We welcome comments from stakeholders.

As a result of some of the submissions received, there have been discussions about the advisability of giving the OLRB jurisdiction to impose, where appropriate, significant administrative penalties on non-compliant employers. This would be in addition to other remedial authority, for example, the authority to make orders to compensate employees where violations are shown to have occurred and to issue prospective compliance orders.

One of the advantages of giving the OLRB such jurisdiction would be that the Board could – over time – develop consistent jurisprudence and clearly articulate circumstances where non-compliance may result in an administrative monetary penalty against a non-compliant party as well as other remedies to rectify the wrongdoing. This would not only allow the thoughtful and reflective development of jurisprudence by the tribunal with the relevant expertise but also the imposition of administrative monetary penalties in appropriate cases would act as a significant deterrent to all employers as well as providing a penalty for non-compliance to a particular employer.

It may not be prudent or appropriate to give the OLRB jurisdiction to impose administrative monetary penalties in litigation between private parties. The imposition of an administrative monetary penalty would then be seen as an outcome that should be the result of state action and in the public interest. Therefore, we have been considering a model in which complaints could be initiated directly by the Ministry of Labour or by the MAG against a named respondent or respondents where an administrative monetary penalty is one of the remedies sought. Some office, perhaps a Director of Enforcement, would be given responsibility to determine when to initiate a case in which an administrative monetary penalty is sought and to take carriage of such cases as the applicant in the proceedings.

With thousands of contraventions found every year, it is impractical for a Director of Enforcement to have carriage of each complaint that appears meritorious. If a Director of Enforcement were given the authority to have carriage of and to take cases directly to the OLRB, the Director could limit the cases taken on to those where, after receiving advice from the Director of Employment Standards, he/she determines that there is a public policy interest in achieving an outcome that would better reflect the seriousness of the violation(s) alleged, for example – where after an investigation:

- it appears that there are reasonable and probable grounds to believe a serious reprisal has occurred; or
- in any other case where the Director of Enforcement determines it is appropriate and advisable to proceed directly to the OLRB (for example, where there are multiple violations disclosed either by an ESO investigation or by an inspection or an audit or where the employer has been found to have violated the ESA on previous occasions).

An employer or other respondent would know in advance the potential risks arising from a Ministry initiated complaint. If the Director of Enforcement were going to seek an administrative monetary penalty over and above a remedy for the claimant(s) or other employees whose rights have been violated, the respondent would be advised not only of the details of the alleged violations but also of the amount of the administrative monetary penalty that is being sought by the Director. At any hearing, the burden of proof would be on the Ministry.

The current complaints driven process is essentially a two-party process with the complainant and a respondent employer/corporate director being the parties. With some exceptions, the parties are therefore in a position to resolve their own litigation. A settlement with respect to one or more employees should not bar the Director from assuming carriage of a case and taking it to the OLRB to seek an administrative monetary penalty and/or compensation for employees with whom there is no settlement and for whom no complaint has been made – for example compensation for others if violations are uncovered during an inspection or during the investigation of an individual claim. In a process where the Director of Enforcement decided to take carriage of a complaint or to initiate a complaint, the employee claimant(s) would not be responsible for preparing the case or for taking the matter to a hearing before the OLRB. Carriage of the case would be the responsibility of the Director.

A complaint initiated by the Director of Enforcement would not – and should not – preclude a settlement agreement between the Director and the employer on the question of remedy for adversely affected individuals and on the question of the administrative penalty – the latter perhaps subject to the approval of the OLRB. The Director will be in the best position to assess the strengths and weaknesses of the case, to assess how best to serve the public interest and to take into account the views and the rights of adversely affected employees all of which would – of necessity – be taken into account by the Director of Enforcement in deciding whether and on what terms to settle. One would assume that – as a matter of policy – counsel acting on behalf of the Director of Enforcement would do his/her best to ensure that the claimants received what they ought to receive based on the proper application and interpretation of the ESA.

Giving the OLRB jurisdiction to impose monetary sanctions for violation of employment standards law would not only underscore the important public policy objectives of compliance, but would also act as a deterrent to respondents and others from engaging in future conduct that violates the ESA.

Other tribunals have statutory authority to impose administrative monetary penalties. The Securities Commission, if in its opinion it is in the public interest to do so, may make an order requiring the person or company to pay an administrative penalty of not more than $1 million for each failure to comply with Ontario securities law (see section 127(1)(9) of the *Securities Act*). The Securities Commission also has jurisdiction in appropriate cases, after conducting a hearing, to order a respondent to pay the cost of the investigation and the cost of the hearing incurred by the Commission.

Finally, the *Securities Act* provides that revenue generated from the exercise of a power conferred or a duty imposed on the Commission does not form part of the Consolidated Revenue Fund but can be used for various purposes including: for use by the Commission for the purpose of educating investors or promoting or otherwise enhancing knowledge and information of persons regarding the operation of the securities and financial markets. In *Rowan v. Ontario (Securities Commission*, 110 O.R. (3d) 492, 350 D.L.R. (4th) 157), at para. 52, the Court of Appeal approved the following statement of the Commission:

> *In pursuit of the legitimate regulatory goal of deterring others from engaging in illegal conduct, the Commission must, therefore, have proportionate sanctions at its disposal. The administrative penalty represents an appropriate legislative recognition of the need to impose sanctions that are more than "the cost of doing business". In the current securities regulation and today's capital markets context, a $1,000,000 administrative penalty is not prima facie penal.*

This is language that may resonate with others trying to create a workplace environment in which compliance is the norm and non-compliance is the exception. Unfortunately, non-compliance with the ESA currently affects thousands of Ontarians and is a significant societal problem. Giving the OLRB jurisdiction to impose monetary penalties may have the desired effect and be, as the Securities Commission stated, "appropriate legislative recognition of the need to impose sanctions that are more than the cost of doing business."

If the OLRB were to be given an expanded jurisdiction to impose significant monetary sanctions up to $100,000 per infraction, there is also reason to consider giving the OLRB jurisdiction to order an unsuccessful respondent to pay the cost of the investigation and the costs of the hearing incurred by Director of Enforcement. Similarly, it may be prudent to consider stipulating that revenue

generated from the exercise of a power conferred or a duty imposed on the OLRB does not form part of the Consolidated Revenue Fund but could be used for various purposes including:

- paying any outstanding orders against the respondent;
- paying unpaid wages to any other employee of the respondent who has not received his/her entitlement under the ESA;
- educating employees and employers about their rights and obligations under the ESA;
- funding legal and other support for employees who wish to file complaints including funding representation costs at before the OLRB; and
- using the revenue generated by fines and penalties to help fund increased enforcement activity.

5.5.6 Applications for Review

Background

Employers, corporate directors and employees who wish to challenge an order issued by an ESO or the refusal to issue an order are, in most cases, entitled to apply for a review of the order by the OLRB.

The application for review must be made in writing to the OLRB within 30 days after the day on which the order, or notice of the refusal to issue an order, was served on the party wishing to apply for review. The OLRB has jurisdiction to extend the time for applying for review if it considers it appropriate to do so.

In the case of an order directed against an employer, the employer must first pay the amount owing as determined by the ESO, plus the administrative fee, to the Director of Employment Standards in trust.[287] This requirement ensures that the ordered amount will be available to be paid to the employee if the appeal fails.

The OLRB applies a "self-delivery" model to ESA appeals. Under this model, applicants are required to deliver a copy of the application and supporting documents to the responding parties, including the Director of Employment Standards before filing them with the OLRB. If the case is scheduled for a hearing

287 Exception: the amount that has to be paid into trust to appeal a compensation order is limited to $10,000.

the parties are required – no later than 10 days before the hearing – to deliver to the other parties and file with the OLRB copies of all documents they will be relying on in the hearing.

The OLRB assigns a LRO to work with the parties to attempt to settle the case. Approximately 80% of ESA reviews are settled. If the parties do not settle, it will be referred to a hearing. Recently, hearing dates have been set approximately 4 months after the settlement meeting.

In recent years, approximately 735 review applications have been filed annually (representing an appeal rate of approximately 6.5% of claims in which an officer made a decision). A majority of the review applications are made by employers and directors of companies but a substantial share is made by employees. Approximately 80% of ESA appeals are settled. Of those cases that do not settle and a determination on the merits is made, almost twice as many applications were dismissed than were granted.

The OLRB is required to give the parties full opportunity to present their evidence and make submissions. In essence, the review hearing before the OLRB is like a trial with evidence-in-chief, cross-examination and documentary evidence. This means that if a party wants the OLRB to consider any documentary or other information (including information that he or she gave to the ESO), the party will have to adduce evidence before the OLRB. The OLRB makes its determination based on the evidence and argument that the parties present to the OLRB. The OLRB on a review of an order, may amend, rescind or affirm the order or issue a new order; on a review of a refusal to issue an order, the Board may issue an order or affirm the refusal.

The Board may dismiss an application for review if the applicant does not make out a case for the orders or remedy requested, even if all of the facts stated in the application are assumed to be true. This is a summary dismissal based on the application material filed.

The OLRB generally processes ESA reviews in the order that they are received and ESA cases are not given priority. The Ministry's Director of Employment Standards is a party to the appeal and the Director's representative participates in some but not all hearings. The Director's representative does not directly support either workplace party but advocates for an application of the ESA that is consistent with the Director's interpretation of the relevant section(s).

Parties to the review may retain a legal advisor. In practice, we are advised that most parties are self-represented.

The OLRB does hear some cases in regional centres in Ontario but there are few, if any, vice-chairs resident in these communities. The cost of travel including the time consumed in travel by vice-chairs from Toronto makes these hearings outside Toronto expensive and impractical for the volume of cases where the vice-chairs always have to travel. For employees and employers living outside Toronto and far from locations where the OLRB holds ESA review hearings, attending such hearings is a very expensive and time-consuming process.

The current regime is essentially a two-party process with a complainant employee and a respondent employer being the parties to the dispute with responsibility for the litigation at the review stage of the OLRB. With some exceptions, the parties are therefore in a position to resolve their own litigation.

Currently the ESA review process is a de novo process meaning that the parties can call evidence and what occurred at the ESO stage does not strictly matter. This distinguishes an ESA review from a pure appeal where, save in very unusual circumstances, an appellate tribunal does not hear evidence but decides an appeal on the basis of the written record which often includes a record of the evidence heard by the court or tribunal whose order is being appealed.

The ESOs, in fulfilling their roles to investigate alleged ESA violations, do not hear evidence in the traditional sense of hearing testimony under oath and receiving into evidence document filed by the parties in accordance with rules of evidence. The ESOs will have done their best to investigate a complaint by speaking with the complainant, perhaps with other employees and with the employer and anyone else who may have relevant information, and will also review the relevant records. If, based on his/her investigation, the ESO concludes there has been a violation, the employer is typically given an opportunity to pay the amount owing without an order being issued. If payment is not made, the necessary order issues. The fact that an enforceable order has been made (or not made) may give rise to an application for review by the party against whom the order has been made or by the person denied relief that he/she believes is warranted. At that review, either party may put evidence before the OLRB either by oral testimony or relevant documentary evidence.

The record currently before the OLRB consists of the ESO's order, the reasons for the order that may refer to relevant employer records.

Options:

1. Require ESOs to include all of the documents that they relied upon when reaching their decision (e.g., payroll records, disciplinary notices, medical certificates) when they issue the reasons for their decision. This will ensure that the OLRB has a record before it of the documents relied on by the ESO in making an order or in denying a complaint. Such a mandatory process should lead to a more consistent quality of decision-making by ESOs and would help explain the decision to the affected parties and to the OLRB as well as providing a more complete record to the OLRB sitting in review. For an employee who seeks a review of a decision, this procedure would also alleviate – at least to some extent – any obligation to produce some, or all, of the documentary evidence relevant to a review.

2. Amend the ESA to provide that on a review, the burden of proof is on the applicant party to prove on a balance of probabilities that the order made by the ESO is wrong and should be overturned, modified or amended.

3. Increase regional access to the review process. To facilitate this, the Ministry of Labour might appoint part-time vice chairs in various cities around the province (perhaps in the main urban centres in each of the 8 judicial districts in Ontario or in the 16 centres where the Office of the Worker Adviser (OWA) has offices) who would have training and expertise in the ESA only (not in labour relations) and who could conduct reviews on a local basis. This would make attending and participating in the review process more accessible and less expensive for both employees and employers.

   Special procedures, like pre-review meetings with the parties could be scheduled in advance to ensure narrowing of the issues, agreement on facts and perhaps settle cases, much like pre-trials in civil cases. The appointment of local ESA Vice-Chairs of the OLRB is similar to a proposal Professor Arthurs made to the federal government to deal with the special needs of distant communities (see: *Fairness at Work*, p. 207).

4. Request OLRB to create explanatory materials for unrepresented parties. There will always likely be a significant number of unrepresented parties at the OLRB. One straightforward way to assist is by ensuring that memoranda in plain language are prepared to assist self-represented

individuals, both employees and employers, with respect to both the procedure and the applicable principles of law, including the burden of proof and basic rules of evidence. These sorts of memoranda have proven to be of great assistance to self-represented individuals in other legal proceedings including in criminal prosecutions where an understanding of the burden of proof and the rights of the accused in a criminal prosecution are of fundamental importance to the accused.

5. Increase support for unrepresented complainants. The criticism of the settlement process at the OLRB set out above in section 5.5.5.2 would be addressed at least in part if currently unrepresented complainants were represented in the review process at the OLRB. We set out below two possibilities that have been raised with us.

Increase resources and expanded mandate for the Office of the Worker Adviser

The OWA is an independent agency of the Ministry of Labour. Its mandates are set out in the WSIA and the OHSA. Its costs are paid by the WSIB.

The OWA currently provides free and confidential services to non-unionized workers (advice, education, and representation) in workplace safety insurance matters (formerly called workers' compensation) and on occupational health and safety reprisal issues. The OWA delivers all of its services in English and French. In addition to representing workers at the WSIB, and the Workplace Safety and Insurance Appeals Tribunal (WSIAT), it also represents workers in proceedings before the OLRB in health and safety reprisal cases. It provides self-help information for workers to handle their own claims where appropriate. The OWA develops community partnerships with other groups that assist injured workers or who promote health and safety in the workplace. The OWA also provides educational services in local communities on topics related to its mandates. The OWA has offices in Toronto, Scarborough, Ottawa, Downsview, Hamilton, Mississauga, St. Catharines, London, Sarnia, Waterloo, Windsor, Sault Ste. Marie, Sudbury, Thunder Bay, Timmins and Elliot Lake.

The OWA could be given an enhanced jurisdiction and a new funding model developed to help employees with claims under the ESA and to represent such employees on reviews. An expanded mandate would be consistent with their current mandate to assist workers with workplace issues. If the mandate of the OWA were expanded, the result would be legal or paralegal support for employees and some employees would be

able to have representation at the review proceedings before the OLRB where self-represented individuals find themselves in unfamiliar territory.

Pro Bono Assistance

To supplement the Office of Worker Adviser, lists of lawyers willing to provide pro bono legal assistance on review cases could be established. There are many lawyers in Ontario who deal with, and many specialize in, employment matters, who may well be prepared to act in cases where the OWA cannot or should not. Many younger lawyers, and paralegals, especially in large firms, do not always get sufficient opportunities to advocate in legal proceedings and it may be that there are a significant numbers of professionals who would make themselves available for one or more days per year and who could take on the handling of several cases to be heard or dealt with on the same day.

5.5.7 Collections

Background

Over the past 6 fiscal years, the Ministry has assessed an annual average of $21.5 million of unpaid wages and other monies owing under the Act[288]. Through voluntary payment and collection activity, an annual average of $13.6 million was recovered, representing an average recovery rate of 63%.

On average, 300 to 400 unpaid Orders (worth about $1 million in total) are assigned by the Ministry of Labour to its designated collector, the MOF, which recovers about 10%.

Submissions

Employee advocates and unions observe that, without an effective collections system, employees who have gone through the entire Ministry process may end up with a hollow victory if the employer refuses to comply with the order to pay. They recommended faster and more effective collection.

Some possible suggested improvements are:

- the Ministry should be authorized to impose a wage lien on an employer's property when an employment standards claim is filed for unpaid wages;

288 Not including assessments where the employer is bankrupt, under receivership or subject to other formal insolvency proceedings.

- the Ministry should be authorized to request the posting of performance bonds in cases where there is a reasonable likelihood that wages will go unpaid in the future based on an employer's history of previous wage claim violations or for employers in sectors demonstrated to be at high risk of violation;
- the Ministry should re-establish a wage protection plan, funded by employers;
- claimants should be permitted to file and enforce orders as an order of the court;
- the Ministry should have the authority to revoke the operating licences, liquor licences, permits and driver's licences of those who do comply with orders to pay.

We have also been made aware of some hurdles that impair ability of the MOF to collect ESA debts. We received advice to consider making recommendations to mirror some collections-related provisions in the *Retail Sales Tax Act* such as:

- remove the requirement to file a certified copy of an order in court in order for creditors' remedies to be made available, and instead make an order valid and binding upon its issuance;
- allow for the issuance of a warrant;
- allow liens to be placed on real and personal property;
- allow the Ministry to consider someone who receives assets from a debtor to be held liable for the debtor's ESA debt. This provision would allow the recovery of assets that have been transferred to a family member/spouse in an attempt to avoid paying an order.

Options:

1. Maintain the status quo.
2. 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. This could include incorporating some of the collections-related provisions in the *Retail Sales Tax Act* – which is another statute under which the MOF collects debts – into the ESA, such as:
    a) removing the administrative requirement to file a copy of the Order in court in order for creditors' remedies to be made available;

b) creating authority for warrants to be issued and/or liens to be placed on real and personal property;

c) providing the authority to consider someone liable for a debtor's debt if he/she is the recipient of the debtor's assets, in order to prevent debtors from avoiding their ESA debt by transferring assets to a family member.

3. Amend the ESA to allow the Ministry to impose a wage lien on an employer's property upon the filing of an employment standards claim for unpaid wages.

4. Require employers who have a history of contraventions or operate in sectors with a high non-compliance rate to post bonds to cover future unpaid wages.

5. Establish a provincial wage protection plan.

6. Provide the Ministry with authority to revoke the operating licences, liquor licences, permits and driver's licences of those who do not comply with orders to pay.

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How You Can Provide Input on the Interim Report

If you are interested in responding to the Interim Report with your comments, ideas and suggestions, please contact the Ontario Ministry of Labour by:

E-mail: **CWR.SpecialAdvisors@ontario.ca**

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

Fax: **416-326-7650**

Comments are encouraged throughout the consultation period as posted on the Ontario Ministry of Labour website.

Thank you for taking the time to participate.

Notice to Consultation Participants

Submissions and comments provided are part of a public consultation process to solicit views on reforms to Ontario's employment and labour law regime that may be recommended to protect workers and support business in the context of changing workplaces. This process may involve the Ministry of Labour publishing or posting to the internet your submissions, comments, or summaries of them. In addition, the Ministry may also disclose your submissions, comments, or summaries of them, to other parties during and after the consultation period.

Therefore, you should not include the names of other parties (such as the names of employers or other employees) or any other information by which other parties could be identified in your submission.

Further, if you, as an individual, do not want your identity to be made public, you should not include your name or any other information by which you could be identified in the main body of the submission. If you do provide any information which could disclose your identity in the body of the submission this information may be released with published material or made available to the public. However, your name and contact information provided outside of the body of the submission, such as found in a cover letter, will not be disclosed by the Ministry unless required by law. An individual who provides a submission or comments and indicates a professional affiliation with an organization will be considered a representative of that organization and his or her identity in their professional capacity as the organization's representative may be disclosed.

Personal information collected during this consultation is under the authority of the *Employment Standards Act, 2000* and the *Labour Relations Act, 1995*, and is in compliance with subsection 38(2) of the *Freedom of Information and Protection of Privacy Act.*

If you have any questions regarding the collection of personal information as a result of this consultation you may contact the Ministry's Freedom of Information Office, 400 University Avenue, 10th Floor, Toronto, Ontario, M7A 1T7, or by calling 416-326-7786.

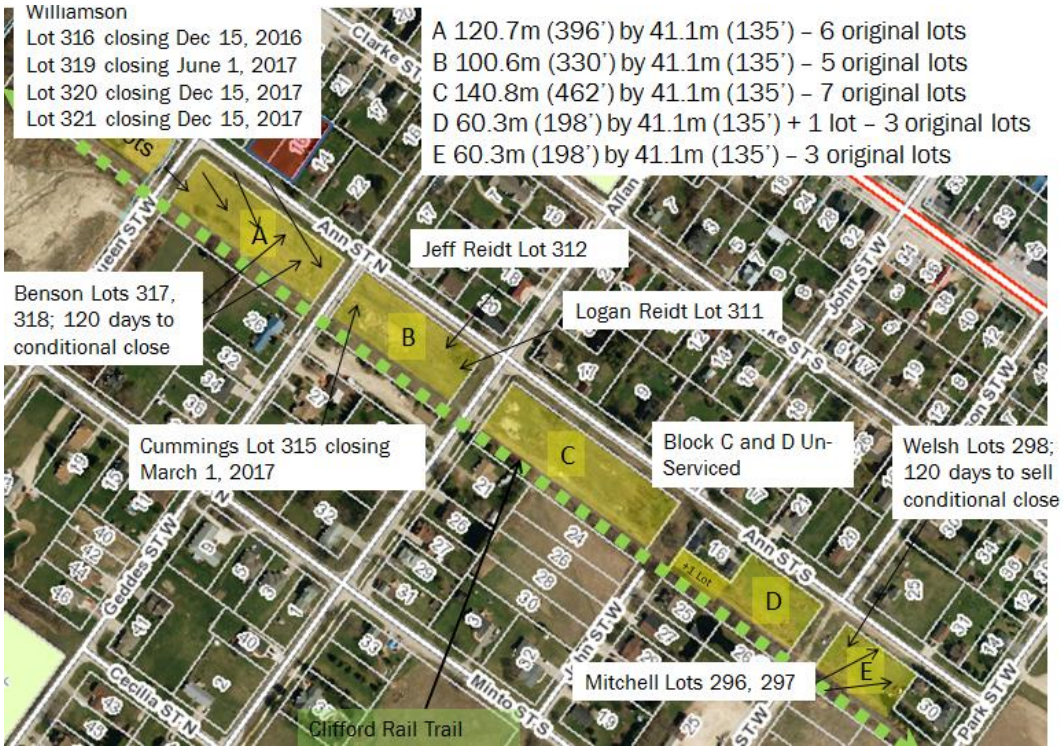
TOWN OF MINTO
DATE: September 29, 2016
REPORT TO: Mayor and Council
FROM: Bill White, C.A.O. Clerk
SUBJECT: Sale of Part Lot 313, Part Lot 314 Ann Street, Clifford

STRATEGIC PLAN:

Ensure growth and development in Clifford, Palmerston and Harriston makes cost effective and efficient use of municipal services, and development in rural and urban areas is well planned, reflects community interests, is attractive in design and layout, and is consistent with applicable County and Provincial Policies.

BACKGROUND

Since servicing 14 of 32 lots along Ann Street in Clifford this summer (Blocks A, B and E), staff has received multiple offers to purchase using the Town's standard agreement. At the June 7th meeting Council passed a resolution declaring Lots 294-315 to be surplus to the Town's needs, which are all lots in Blocks A through E shown below.



Notice of the pending sale of was given that Council would consider by-laws July 5 and on other dates from time to time to conclude transactions for lots in Blocks A, B and E. This notice is required by the Town's disposition of land by-law. Council has also passed a resolution not to sell un-serviced lots on Ann Street in Clifford.

The Mayor and C.A.O. Clerk are authorized in By-laws 2016-52 to 2016-58 to sign documents needed to close transactions for the original offers. To date the transactions with Benson for Part Lot 317, Jeff Reidt Part Lot 312, Logan Reidt Part Lot 311, and Christine Welsh for Part Lot 298 closed. House construction has started on some of these lots.
An offer was received September 29, 2016 at about noon from Benjamin J. Bray for Part Lot 13 which is one of two remaining lots in Block B. The $1,000 in certified cheque was

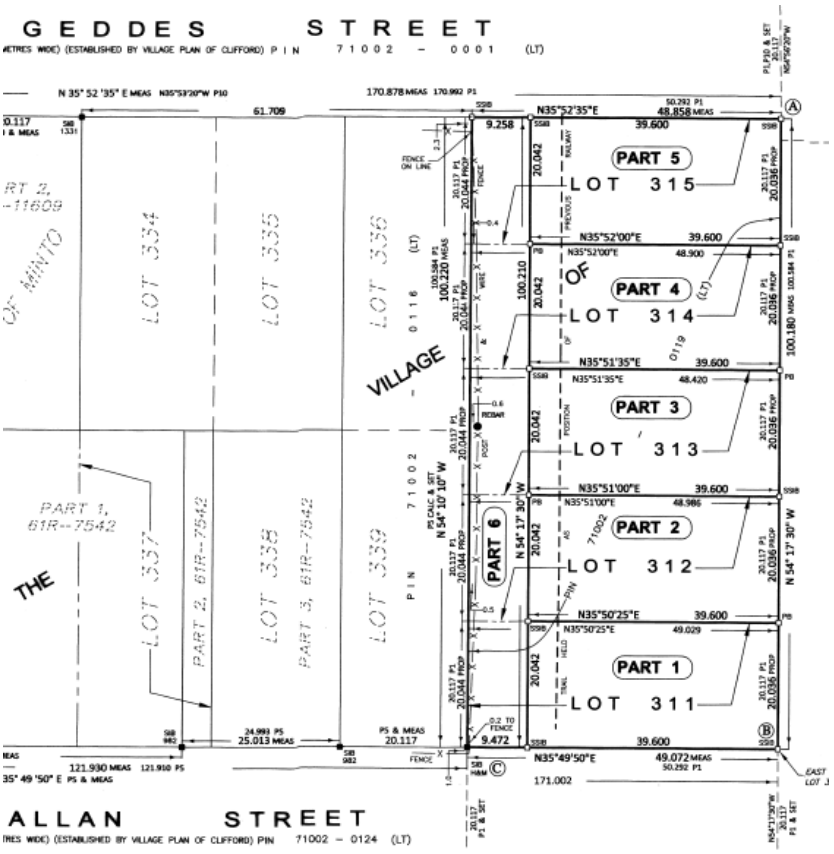
included and the offer otherwise meets all the Town's standard conditions. The Town has until Tuesday October 11 to respond.

Two more offers were faxed September 29 at about 5pm from Christine Welsh for both Part Lot 313 and Part Lot 314 including a deposit of $500 per lot. Overnight certified cheques for $1,000 per lot deposit were received along with a price increase for Lot 313 to $23,000. There are Purchaser conditions in both revised offers regarding 120 days for sale of an existing property, confirmation of building permits, and retention of topsoil on-site for future grading. The offers both meet all the Town's standard conditions, and the Town has until Tuesday October 11 to respond.

COMMENTS

All the offers contain Town standard conditions that prohibit resale of the lots until a home is constructed, require a building permit to be taken out for a home within six months of closing the transaction, and completion of a house within 18 months of closing. The Town retains a conditional "buy back" clause similar to industrial lots. The reference plan for these lots is complete and was provided to both purchasers.

The Town has to deal with the two offers for Part Lot 313. While the Welsh offer is for $500 more it was received second and contains conditions that are not part of the Bray offer, Council could sign back only on the offer for Part Lot 314 with Christine Welsh. The conditions requested in her offers are not a serious issue for the Town, but the terms of the Bray offer are firm.



Over the summer, the Public Works Department completed considerable site work to ensure the public trail remained on Town owned lands (Part 6 in this block). Now that the lots are surveyed, the Town could consider adjusting lot depth in un-serviced Blocks D and E to suit site conditions. A lot depth of 39.6 metres is probably achievable in Block C, but a lot depth of +-30 metres in Block D would avoid significant regrading to ensure trail access. Staff has been working with Triton Engineering to ensure site grading and drainage is consistent with Town development standards.

Council can determine at budget if additional lots should be serviced in 2017. Opening up Block C might be considered, but Block D and lands north of Queen Street would be projects for 2018 or beyond.

FINANCIAL CONSIDERATIONS:

All 14 serviced lots are now under conditional offers. Four of the 13 lots under offer are transferred. In all cases these purchases have been by individuals and small buildings constructing one home

RECOMMENDATION:

THAT Council receives the September 29, 2016 report from the C.A.O. Clerk regarding Sale of Part Lot 313, Part Lot 314 Ann Street, Clifford and that By-laws authorizing the Mayor and C.A.O. Clerk to execute all documents needed to close the transactions be considered as follows:

1. Benjamin J. Bray for Part Lot 313, Part 3 Plan 61R-20886
2. Christine Welsh for Part Lot 314 Part 4 Plan 61R-20886

And that Council not sign back on Christine Welsh's offer for Part Lot 313.

Bill White C.A.O. Clerk

TOWN OF MINTO
DATE: September 29, 2016
REPORT TO: Mayor and Council
FROM: Bill White, CAO/Clerk
SUBJECT: Clean Water and Wastewater Fund

STRATEGIC PLAN:

5.1 Actively seek out Federal and Provincial grants and revenue-sharing programs, and promote sustainable and equitable funding programs that require a minimal amount of reporting and promote local autonomy.

5.3 Ensure financial plans to include a blend of capital financing methods including long-term debt, user fees, grants, internal reserves and taxation, and maintain reserves to the point where Minto reduces reliance on borrowing or tax increases to finance major capital expenditures.

BACKGROUND

There are now four significant infrastructure programs being offered by the Province and Federal Government:

1. Ontario Community Infrastructure Fund (OCIF), including both merit based and formula-based funding for the first three years;
2. Small Communities Fund (SCF) for populations under 100,000.
3. Connecting Link Program
4. Clean Water and Wastewater Fund (CWWF)

Guidelines for the Clean Water and Wastewater Fund, were produced in September 14 with an October 31, 2016 deadline. The Federal government will provide $569.5 million to cost-share on rehabilitation and new construction projects, optimization initiatives, planning and design. The Province matches municipal contributions to a maximum of 25% of total eligible costs within the specified allocations. The Town has been advised the maximum federal allocation is $498,740 and maximum provincial allocation is $249,370. This means the Town must fund a minimum $1,000,000 project to qualify for these amounts.

Approved and pending projects subject to grant consideration are as follows:

Project	Estimated Grant	Total Project $
2015 OCIF Bride Road Culvert (complete)	$454,444	$652,000
2015 SCIF Harriston Elora Street (complete)	$1,000,000	$2,500,000
2015 Connecting Link Intake 1 Clifford Elora	$1,935,806	$2,800,000
2016 Connecting Link Intake 2 Clifford Elora north**	$ 830,000	$1,250,000
2016 OCIF Jane & Inkerman (underway)	$1,300,000	$2,090,000
Canada 150 (Harriston Pool) **	$ 83,333	$ 250,000
Ontario 150 (Harriston Arena Accessibility) **	$ 72,500	$ 145,000
2016 CWWF (TBA)	$748,110	$1,000,000 min
Total	**$6,424,193**	**$10,687,000**

** is not approved decision pending

Minto received $130,000 in formula based funding under OCIP as its Asset Management Plan is up to date and appropriate FIR reports are filed with no critical errors. This amount is now assured through to 2019 increasing as follows:

2016 $130,000
2017 $223,161
2018 $315,205
2019 $476,143

Council is asked to sign an agreement on the use and distribution of these funds through a report by Treasurer Duff.

Recently the Town heard that its SCF application for $1,68 million to complete a $2.525 million project on Brunswick and Nelson was not approved despite reaching the second round in that program. The following are projects the Town might consider under the Clean Water and Wastewater program:

1. Brunswick Street Palmerston Structure $2,525,000
2. George Street South Harriston water and sewer $1,225,000
3. Harriston Industrial Park sanitary sewer replacement and extension, watermain replacement and road reconstruction – John Street $700,000
4. Park Street Clifford $750,000
5. Palmerston Industrial Minto Road sewage pumping station, water/sewer $750,000
6. Repair/upgrade Palmerston Wastewater Treatment Plant as per County growth forecast

COMMENTS

Based on the criteria for the Clean Water and Wastewater programs, the Town should select projects that improve reliability of drinking water, wastewater and stormwater systems to meet federal or provincial regulations, standards or guidelines; rehabilitate and modernize aging infrastructure, and accelerate short-term community infrastructure investments. Capital works must be completed by March of 2018, although where need is demonstrated up to 25% of project costs may be extended with approval. In addition, projects involving design and planning for upgrades to wastewater treatment infrastructure are permitted.

1. Brunswick Street

At Nelson & Brunswick Street in Palmerston 19 homeowners need private pumps to lift their sewage to the sanitary main on Nelson. Preliminary drawings years ago showed potential for a small sewage pumping station on the southwest corner of Brunswick and Nelson on Town lands. The project will need a Schedule A Municipal Class Environmental Assessment which could make the March 2018 difficult. Water and sanitary sewer need improvement. Having a Town controlled pumping station is better from a public safety and environmental viewpoints.

2. George Street South Water and Sewer

The project involves reconstructing George Street with new water, sewer, storm sewer and upgrades to improve system function and address inflow and infiltration concerns. It coincides with reconstruction of George Street North in front of the Harriston Senior School. Total project cost is estimated at $1,225,000. As this is infrastructure replacement a Class EA is not required. Detailed design is in the process of being completed and it is anticipated a tender could be released by Spring 2017.

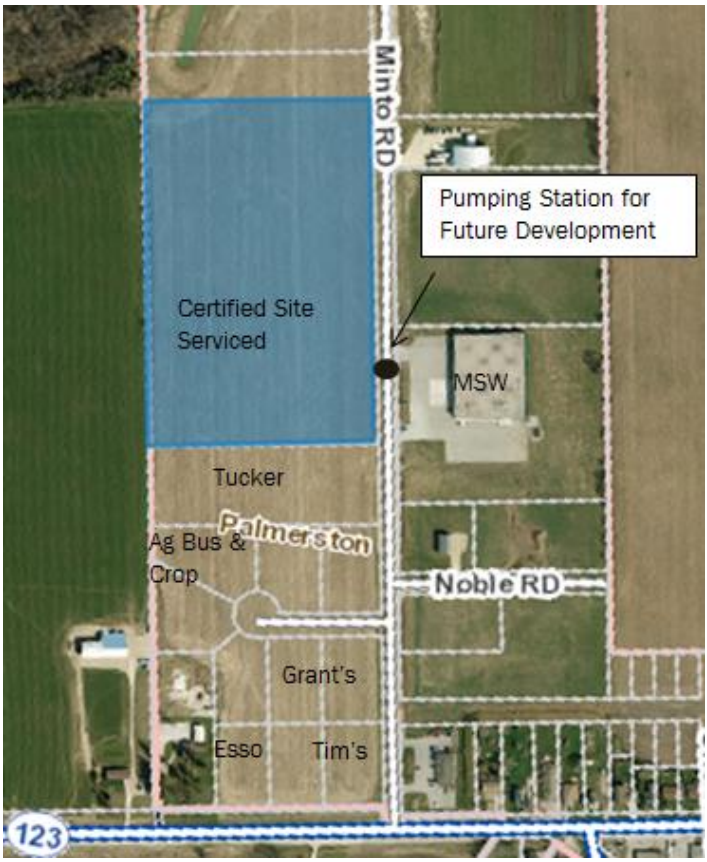
3. Harriston Industrial Park – John Street Nroth

In preparing the Class EA for Harriston Industrial Park it was determined an 8" waterline replacement and sewage work on John Street could increase fire flows to the area, and lower the sanitary sewer on John Street to accommodate gravity flow from industrial future development on Town owned lands to the west.

The overall benefit of the watermain will only be achieved when the watermain on John Street north is looped through from Adelaide and reconstructed down to the water tower. John Street was impacted by the summer detour due to heavy truck traffic which has led to further deterioration. Much of this design has not been completed so it would be difficult to design and construct the entire project before March of 2018.

4. Park Street Clifford
Park Street in Clifford requires reconstruction to upgrade water, sanitary sewer and roadway conditions. As it may function as a detour during 2018 and 2019 reconstruction of Elora Street Clifford this project reconstruction could be re-considered for 2019-20.

5. Palmerston Industrial Minto Road sewage pumping station, water/sewer
To service the north end of the Palmerston Industrial Park and potentially lands to the east or west, if added to the urban area, a sewage pumping station is required and water and sewer mains extended to service these lands. The Town's certified site is serviced by water and gravity flow sanitary sewer to the south along Minto Road. This infrastructure improvement would open up about 20 acres of additional lands for development.



There are four one acre lots remaining on Frank Lambier for future development and one commercial parcel fronting on CR 123. The three acre lot north of MSW may be partially serviced from the existing sewer on Minto Road depending on the location and design of the building proposed. Along with the certified site the Town still has options within Palmerston Industrial Park although if development continues in the coming years these options could soon be reduced. It does not appear critical that this project proceed in 2017 and could be delayed until 2020.

6. Palmerston Wastewater Treatment Plant
County growth forecast project 1300 new households in Minto over 25 years, representing 52 homes. This represents between 25 and 32 homes per year in Minto urban areas, including over 630 homes in Palmerston in 25 years. As stated to Council during review of the County forecasts, on-going improvement to inflow and infiltration at the waste water plant as well as upgrades to increase capacity will be needed to support this kind of growth.

As the CWWF allows for planning and design funding for plant upgrades staff has brought this project forward for Council's information. At the 2017 budget staff will be recommending Triton Engineering assess plant need and determine the most cost effective manner to upgrade and expand the plant. One concern is the age and condition of the existing clarifier which will require replacement, and potentially a second clarifier to increase redundancy and assist with future plant upgrades. The project would be considered a maintenance activity, and similar projects have been completed within a year or so at a cost of about $1 million. There are other areas to be investigated in the plant. Triton has been asked to bring back a work plan for this work for budget deliberations in December.

FINANCIAL CONSIDERATIONS:

The gross value of Town Tangible Capital Assets is $123 million and the depreciated or "book value" is $68 million depreciating at a rate of $2.8 million annually. The Town's Asset Management Plan suggests over $6 million is needed annually to maintain roads, bridges, water and sewer infrastructure. This means the Town should continue to spend about $4 million per year to properly maintain its assets.

Between 2011 and 2015 million, $19.7 million in capital work was completed. For 2016 $7.4 million is budgeted, and between 2017 and 2020 another $17.5 million of capital work is identified.

For roads and bridges the Town receives gas tax of $240,000 annually which when coupled with the formula based amount in OCIF will increase to $716,143 annually in sustained funding. In the coming years the Town will need to continue to set aside additional funds out of taxation to support its capital needs as well as some borrowing according to a solid financial plan. This financial plan will be provided at the 2017 budget.

RECOMMENDATION:

That Council of the Town of Minto receives the joint report from the Treasurer, Public Works Director and C.A.O. Clerk dated September 29, 2016 regarding Ontario Community Infrastructure Fund, Small Communities Fund, Permanent Infrastructure Funding and that Council of the Town of Minto approves submission of the George Street North project.

Gordon Duff, Treasurer Brian Hansen, Director Public Works Bill White, CAO/Clerk

TOWN OF MINTO
DATE: Sept 26, 2016
REPORT TO: Mayor and Council
FROM: Gordon Duff, Treasurer
SUBJECT: Approval of Accounts

STRATEGIC PLAN:

Fiscal Responsibility/Financial Strategies - strategies support the goal of being a fiscally responsible municipality.

BACKGROUND

The following is a summary of accounts by Department paid for September 15, 2016:

Administration	$	2,100,820.96
People & Property		587.53
Health & Safety		
Health Services		
Building		603.00
Economic Development		59,088.95
Incubator		1,107.27
Tourism		2,856.96
Fire		5,227.72
Drains		
Roads		310,200.95
Cemetery		
Streetlights		8,986.65
Waste Water		57,229.63
Water		12,639.18
Minto in Bloom		90.34
Recreation		1,487.06
Clifford		3,483.94
Harriston		4,698.52
Palmerston		68,621.25
Norgan		2,804.80
	$	2,640,534.71

COMMENTS:

The above information is provided to provide an update on monthly spending by Department as public information. Council also receives three budget update reports per year outlining the status of budget to actual for the capital plan and operating budgets.

Council receives by email a detailed summary of accounts including personal information about identifiable individuals that is protected under the Municipal Freedom of Information Act. The auditor supports Council approving the accounts in this fashion.

FINANCIAL CONSIDERATIONS:

Council's approval of the accounts increases transparency by disclosing monthly spending by Department.

RECOMMENDATION:

THAT Council of the Town of Minto receives the Treasurer's report dated September 26, 2016, regarding Approval of Accounts, and approves the Town of Minto accounts by Department for August and September 2016.

Gordon Duff, Treasurer

TOWN OF MINTO

DATE: September 27, 2016
REPORT TO: Mayor and Council
FROM: Gordon Duff, Treasurer
SUBJECT: Ontario Community Infrastructure Fund (OCIF) – Contribution Agreement

STRATEGIC PLAN:

5.1 Actively seek out Federal and Provincial grants and revenue-sharing programs, and promote sustainable and equitable funding programs that require a minimal amount of reporting and promote local autonomy.

5.3 Ensure financial plans to include a blend of capital financing methods including long term debt, user fees, grants, internal reserves and taxation, and maintain reserves to the point where Minto reduces reliance on borrowing or tax increases to finance major capital expenditures.

BACKGROUND:

The Ontario government announced a plan to spend $130 billion in infrastructure funding in late 2014. The original amount allocated to this program was $100 million per year is targeted to small, rural and northern municipalities. This amount is further split into a $50 million application-based funding envelope and another $50 million is formula-based funding. The Town of Minto received $130,960 annually in 2015 and 2016.

In July of 2016, the Province announced enhancements to the OCIF program. The total amount of money to be distributed to rural municipalities in 2017 was increased to $95 million. The funding allocation notices covered three years and the list of eligible expenditures was expanded to include water and wastewater optimization activities and loan payments on new core infrastructure projects started after January 1, 2017 which are included in the municipalities' Asset Management Plan. By 2019 the Town's formula based amount will have increased $345,000 from its current amount.

Capital projects must be consistent with the government's recently announced land-use planning framework. CAO/Clerk White recently presented a report to Council highlighting the features of this new plan. Essentially the Province will not fund project that anticipate growth if the area is not identified in the Provincial Growth Plan.

The amount of formula-based funding continues to be based upon several factors, primarily the amount of core infrastructure (roads, bridges, water and wastewater) owned by the municipality combined with the ability to replace and maintain these assets with reference to weighted property assessment and median household income. I have reviewed the inputs in the program guidelines and agree with these calculations.

The agreements are consistent across the Province.

COMMENTS:

The Town used the 2015 allocation to assist with funding of the James Street, Palmerston reconstruction and service upgrades. In 2016, $93,960 was used to assist with upgrades to the 6th Line, with the remaining $37,000 used to help pay for the enhancements to the Asset Management Plan required under the revised Federal Gas Tax Agreement. Council will decide upon the allocations of the 2017 – 2019 allocations as part of the budget process. The Allocation Notice states that Minto will receive the following amounts: 2017 - $223,161; 2018 - $315,205; 2019 - $476,143.

FINANCIAL CONSIDERATIONS:

The Town will include these funds in the capital or operating budgets as appropriate.

RECOMMENDATION:

THAT Council receives the report from the Treasurer dated September 26, 2016 regarding the Contribution Agreement for the Ontario Community Infrastructure Fund (OCIF) Formula-based Component and considers a by-law in open session authorizing the Mayor and Deputy Clerk to sign the agreement.

_____

Gordon Duff, CPA, CGA
Treasurer

TOWN OF MINTO
DATE: September 27, 2016
REPORT TO: Mayor Bridge and Members of Council
FROM: Todd Rogers
SUBJECT: MOECC Proposed Amendments

STRATEGIC PLAN:

11.2 Continue to operate water treatment and distribution with the highest standards of public safety in mind and according to Provincial requirements using highly trained Town staff, and maintain cross training and enhanced duties to assume responsibility for sewage collection and treatment facilities from Centre Wellington. Maintain both water and sewer facilities using qualified Town staff so long as it is cost effective and efficient to do so.

BACKGROUND:

The Ministry of the Environment and Climate Change is proposing amendments to:

- O. Reg. 169/03 Ontario's Drinking Water Quality Standards and the Technical Support Document for Ontario Drinking Water Standards, Objectives and Guidelines;
- O. Reg. 170/03 Drinking Water Systems;
- O. Reg. 243/07 Schools, Private Schools and Day Nurseries;
- O. Reg. 248/03 Drinking Water Testing Services; and
- O. Reg. 128/04 Certification of Drinking Water System Operators and Water Quality

The Minister's Advisory Council on Drinking Water Quality and Testing Standards (the Advisory Council) has provided advice to the ministry, recommending the following changes to Ontario Drinking Water Quality Standards, to take effect January 1, 2017:

1. Adopt three new standards based on new federal guidelines: Ontario Drinking Water Quality Standard of 0.06 mg/L for Toluene based on new federal guidelines; Ontario Drinking Water Quality Standard of 0.14 mg/L for Ethylbenzene; and Ontario Drinking Water Quality Standard of 0.09 mg/L for Total Xylenes.

2. Revise two existing standards: Revise Ontario Drinking Water Quality Standard of 0.01 mg/L to 0.05 mg/L for Selenium; and Revise Ontario Drinking Water Quality Standard of 0.03 mg/L to a more stringent value of 0.01 mg/L for Tetrachloroethylene.

3. Remove the current Ontario Drinking Water Quality Standard of 10 mg/L for Nitrate + Nitrite as this parameter is redundant since individual standards of 10 mg/L for nitrate and 1 mg/L for nitrite are maintained.

4. A new Aesthetic Objective of 0.015 mg/L is proposed for methyl t-butyl ether (MTBE); and Revise the Aesthetic Objectives for ethylbenzene and xylenes to 0.0016 mg/L, and 0.02 mg/L, respectively.

These changes to chemical testing are associated with increased lead testing requirements in schools and daycares, shorter time frames for water test results to be uploaded to the Ministry, and changes to rules for Operators in Training.

Operators in training are persons wishing to become certified to operate water systems in Ontario. The changes include getting rid of a Temporary OIT Certificate, extending valid OIT certificates from 16 to 36 months, and allow OIT's to operate limited systems under the care of an Operator in Charge or Overall Responsible Operator. These changes are consistent with other North American jurisdictions.

COMMENTS:

The tighter testing standard should not affect Minto as past sample result show our wells are below the proposed standards. The proposed new standards are parameters we have not tested in the past so until results are available the Town will not know the impact on its system if any.

Changes to the OIT Certificate can only help increase the number of people willing to move into this form of work. Changes ensure there is only on OIT certificate and extend the time during which an OIT can prepare for the complete the required course, gain the needed experience and complete the exam all within the 36 month period.

The proposed changes can be reviewed and commented on the Ontario Environmental Registry at https://www.ebr.gov.on.ca/ERS-WEB-External/displaynoticecontent.do?noticeId=MTI5MjUw&statusId=MTk1ODMy&language=en

FINANCIAL CONSIDERATIONS:

At this time there is no financial consideration. In the future there will likely be an increase in sampling fees from the laboratory for testing for the extra parameters but at this time the lab has not determined what if any costs.

RECOMMENDATION:

THAT the Council of the Town of Minto receives the Compliance Coordinators report regarding The Ministry of the Environment and Climate Change proposed amendments for information.

Todd Rogers
Compliance Coordinator

The Corporation of the Town of Minto
By-law No. 2016-71

To amend the estimates of all sums required during
2016 for purposes of the Municipality

WHEREAS Section 290 of the Municipal Act, S. O. 2001, c. 25, requires that the Council of a local municipality shall in each year prepare and adopt estimates of all sums required during the year for the purposes of the municipality;

AND WHEREAS the Council of the local municipality may require that the current year's estimates of every board, commission, or other body for which the Council is required to levy a tax rate or provide money, be submitted to the Council each year;

AND WHEREAS the Council of the Corporation of the Town of Minto has in accordance with the Municipal Act considered the estimates of all sums required during the year, including the estimates of all its boards, commissions, and other bodies;

AND WHEREAS the Council of the Corporation of the Town of Minto amend Schedule A of By-law 2016-19 as attached;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWN OF MINTO HEREBY ENACTS AS FOLLOWS:

1. **THAT** the estimates of the Corporation of the Town of Minto as set out in Schedule "A" attached hereto and forming part of this By-law to be adopted to replace Schedule A of By-law 2016-19;

2. **THAT** this By-law shall remain in force until repealed and any former By-laws relating to such shall be repealed.

Read a first, second, third time and finally passed in open Council this 4th day of October 2016.

_____
Mayor – George Bridge

_____
Deputy CAO-Clerk – Gordon Duff

Town of Minto
Capital Projects - 2016

By-Law 2016-71 Schedule "A"

Project	Unexpended Capital Financing/ (Unfinanced Capital Outlay) Dec 31/15	Expenditures	Transfers to Reserves	Transfers to Reserve Funds	Grants	Long-Term Debt Proceeds	Donations & interest	Proceeds from Land/Cap Assets Sales	Transfers from Reserves	Transfers from Reserve Funds	Transfers from Revenue	Unexpended Capital Financing/(Unfinanced Capital Outlay) Dec 31/16
Computer Hardware/Software	22,759.10	33,000.00								8,000.00	2,240.90	0.00
Office Equipment	0.00	10,000.00								0.00	10,000.00	0.00
Vehicle	0.00	30,000.00								10,000.00	20,000.00	0.00
Records Management	0.00	4,000.00								0.00	4,000.00	0.00
Office Renovations	85,436.57	50,000.00				0.00				0.00	-35,436.57	0.00
Fire Radio Replacements	0.00	65,000.00			0.00			0.00		0.00	65,000.00	0.00
Fire Equipment	0.00	20,000.00					0.00	0.00		0.00	20,000.00	0.00
Fire Rescue Equipment	4,155.82	0.00			0.00			0.00		0.00	0.00	4,155.82
Fire Personal Safety Equipment	0.00	20,000.00					0.00	0.00		0.00	20,000.00	0.00
Fire Vehicles	0.00	555,000.00				0.00	0.00	0.00		375,000.00	0.00	-180,000.00
Emergency Measures	32,470.37	60,000.00			0.00			0.00		0.00	27,529.63	0.00
Roads - vehicle	373,717.42	330,000.00				0.00		0.00	0.00	0.00	-20,000.00	23,717.42
Roads - engineering	0.00	10,000.00				0.00	0.00	0.00	0.00	0.00	10,000.00	0.00
Shops - Renovations & Equipment	0.00	34,500.00					0.00	0		0.00	34,500.00	0.00
Sidewalks-Cliff,Hstn,Palm	0.00	50,000.00							0.00	0.00	50,000.00	0.00
Catchbasins	0.00	50,000.00							0.00	0.00	50,000.00	0.00
Christmas Decorations	0.00	5,000.00							0.00	0.00	5,000.00	0.00
Tree Carvings & plantings	1,527.24	2,000.00					0.00		0.00	0.00	2,000.00	1,527.24
Harriston C/L paving	0.00	20,000.00			0.00		0.00	0.00		0.00	20,000.00	0.00
Harriston-Queen St S - 2065	10,000.00	35,000.00	0.00	0.00	0.00	0.00		0.00	0.00	0.00	25,000.00	0.00
Harriston-Stormwater - Elora St-N of lights	-114,114.72	372,600.00	0.00	0.00	241,800.00	0.00		0.00	0.00	180,000.00	64,914.72	0.00

Town of Minto
Capital Projects - 2016

By-Law 2016-71 Schedule "A"

Project	Unexpended Capital Financing/ (Unfinanced Capital Outlay) Dec 31/15	Expenditures	Transfers to Reserves	Transfers to Reserve Funds	Grants	Long-Term Debt Proceeds	Donations & interest	Proceeds from Land/Cap Assets Sales	Transfers from Reserves	Transfers from Reserve Funds	Transfers from Revenue	Unexpended Capital Financing/(Unfinanced Capital Outlay) Dec 31/16
6th Line Resurfacing	0.00	283,000.00	0.00	0.00	90,000.00	190,000.00			0.00	0.00	3,000.00	0.00
Structure E - Seip Lane Guiderails	0.00	60,000.00			0.00	60,000.00			0.00	0.00	0.00	0.00
Structure A-Minto Normanby Townline	9,942.97	0.00			0.00	0.00			0.00	0.00	-9,942.97	0.00
Bride Road Bridge	48,399.53	0.00			0.00	0.00			0.00	0.00	-48,399.53	0.00
Palm-Inkerman St	0.00	507,750.00			317,000.00	185,000.00			0.00	0.00	5,750.00	0.00
Palm-James St - Main-John	296,497.22	310,000.00			0.00	0.00			0.00	15,000.00	0.00	1,497.22
Palm-Lowe St - 3016	44,870.64	25,000.00			0.00	0.00			0.00	0.00	-19,870.64	0.00
Palm-Walker St - 3008	44,870.64	25,000.00			0.00	0.00			0.00	0.00	-8,491.82	11,378.82
Palm-Jane St	0.00	735,500.00			465,000.00	260,000.00			0.00	0.00	10,500.00	0.00
Clifford-Clarke St N - 1041	0.00	25,000.00				0.00			0.00	0.00	25,000.00	0.00
Clifford-James St W - 1040	0.00	25,000.00				0.00			0.00	0.00	25,000.00	0.00
Clifford-Queen St E - 1031	0.00	35,000.00			0.00	0.00			0.00	35,000.00	0.00	0.00
Clifford-Elora St-Dwntn Roads	0.00	400,000.00			360,000.00	0.00			0.00	0.00	40,000.00	0.00
Street Lighting - Clifford	3,606.95	2,000.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1,606.95
Street Lighting - Minto Pines	2,000.00	1,000.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1,000.00
Street Lighting - Minto Highlands	1,600.00	1,000.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	600.00
Street Lighting - Harriston	2,197.74	2,000.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	197.74
Street Lighting - Palmerston	37,334.30	4,000.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	33,334.30
Clifford-Trees	19,140.80	0.00					0.00				0.00	19,140.80
Cemetery - Monument Cleaning & Repairs	8,302.36	0.00					0.00		0.00		0.00	8,302.36
Cemetery - Harriston Cremation Garden	0.00	20,000.00					0.00		0.00	0.00	20,000.00	0.00
Cemetery - Collumbarium	3,463.46	35,000.00					0.00		0.00	0.00	31,536.54	0.00

Town of Minto
Capital Projects - 2016

By-Law 2016-71 Schedule "A"

Project	Unexpended Capital Financing/ (Unfinanced Capital Outlay) Dec 31/15	Expenditures	Transfers to Reserves	Transfers to Reserve Funds	Grants	Long-Term Debt Proceeds	Donations & interest	Proceeds from Land/Cap Assets Sales	Transfers from Reserves	Transfers from Reserve Funds	Transfers from Revenue	Unexpended Capital Financing/(Unfinanced Capital Outlay) Dec 31/16
Cemetery-Palm Chapel	6,080.01	0.00							0.00	0.00	0.00	6,080.01
Clifford-Cenotaph	138.35	0.00					0.00		0.00	0.00	0.00	138.35
Palm-Cenotaph	1,500.00	0.00							0.00	0.00	0.00	1,500.00
Sewers - Vehicles and other	186,389.36	45,000.00				0.00		0.00		0.00	-141,389.36	0.00
Sewers - Equipment	40,000.00	6,000.00				0.00		0.00		0.00	0.00	34,000.00
Sewers - Engineering	0.00	10,000.00				0.00				0.00	10,000.00	0.00
Harriston Sewers - I & I	1,592.12	150,000.00				0.00				120,000.00	28,407.88	0.00
Harriston Sewers - Elora St Downtown	30,950.63	201,000.00			0.00	0.00				0.00	170,049.37	0.00
Harriston Sewer - Lagoon Blower	0.00	16,000.00			0.00	0.00				0.00	16,000.00	0.00
Harriston Sewer - Lagoon Aeration Repairs	0.00	24,000.00			0.00	0.00				0.00	24,000.00	0.00
Harriston Sewers-BCF - Forcemain	-42,149.84	0.00			0.00	0.00				0.00	42,149.84	0.00
Clifford - Ann St-gravel section #1047-Park to Nelson	-7,116.53	75,000.00				75,000.00	0.00			0.00	7,116.53	0.00
Clifford - Ann St-#1050-Queen to Allan	-7,116.53	18,300.00				15,000.00	0.00			0.00	10,416.53	0.00
Clifford - Ann St-#1051-Queen to Allan	0.00	77,100.00				20,000.00	0.00			0.00	57,100.00	0.00
Clifford - Brown St Development-#1008	-3,149.22	0.00					15,000.00			0.00	-11,850.78	0.00
Clifford - Sewer Lining	0.00	100,000.00					0.00			100,000.00	0.00	0.00
Clifford - Sewer pipe replacements	0.00	25,000.00					0.00			0.00	25,000.00	0.00
Clifford - Service expansion	0.00	25,000.00					0.00			0.00	25,000.00	0.00
Clifford -Milltronics	0.00	5,000.00					0.00			0.00	5,000.00	0.00
Clifford - PLC	0.00	2,500.00					0.00			0.00	2,500.00	0.00
Palmerston Sewers- I & I Study	0.00	20,000.00							0.00	0.00	20,000.00	0.00

Town of Minto
Capital Projects - 2016

By-Law 2016-71 Schedule "A"

Project	Unexpended Capital Financing/ (Unfinanced Capital Outlay) Dec 31/15	Expenditures	Transfers to Reserves	Transfers to Reserve Funds	Grants	Long-Term Debt Proceeds	Donations & interest	Proceeds from Land/Cap Assets Sales	Transfers from Reserves	Transfers from Reserve Funds	Transfers from Revenue	Unexpended Capital Financing/(Unfinanced Capital Outlay) Dec 31/16
Palmerston - James St - Main to John	-35,484.15	90,000.00				120,000.00	0.00		0.00	0.00	5,484.15	0.00
Palmerston - Jane St - Inkerman to dead end	0.00	308,000.00			90,000.00	218,000.00	0.00		0.00	0.00	0.00	0.00
Palmerston - Inkerman St	0.00	165,000.00			140,000.00	25,000.00	0.00		0.00	0.00	0.00	0.00
Town of Minto-Water Meters	170,156.63	20,000.00		0.00	0.00	0.00			0.00	0.00	0.00	150,156.63
Town of Minto - SCADA & Equipment	46,179.81	100,000.00			0.00	0.00		0.00	0.00	0.00	53,820.19	0.00
Town of Minto - Water Vehicles	0.00	90,000.00			0.00	0.00		0.00	0.00	0.00	90,000.00	0.00
Water-Equipment	0.00	10,000.00			0.00	0.00		0.00	0.00	0.00	10,000.00	0.00
Clifford Water - Brown St Development	-15,000.00	0.00			0.00	0.00	15,000.00	0.00	0.00	0.00	0.00	0.00
Clifford - Ann St-gravel section #1047-Park to Nelson	24,087.13	89,000.00				55,000.00	0.00			0.00	9,912.87	0.00
Clifford - Ann St-#1050-Queen to Allan	24,087.13	92,000.00				90,000.00	0.00			0.00	-22,087.13	0.00
Clifford - Ann St-#1051-Queen to Allan	0.00	139,400.00				120,000.00	0.00			0.00	19,400.00	0.00
Clifford Watertower	0.00	10,000.00			0.00	0.00	0.00	0.00	0.00	0.00	10,000.00	0.00
Clifford Waterworks - Clarke St-Queen to James	30,759.12	0.00			0.00	0.00	0.00	0.00	0.00	0.00	-30,759.12	0.00
Harriston Well #2 Upgrades	49,653.13	115,000.00		0.00	0.00	0.00			0.00	0.00	65,346.87	0.00
Harriston Waterworks - George St-oversizing-William to Arthur	1,985.47	0.00		0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1,985.47
Harriston Waterworks - Other	0.00	25,000.00		0.00	0.00	0.00	0.00	0.00	0.00	0.00	25,000.00	0.00
Harriston Waterworks -Elora St-Downtown Watermains	165,700.50	218,300.00		0.00	0.00	0.00	0.00	0.00	0.00	0.00	52,599.50	0.00
Palmerston - James St-Main to John	-56,636.06	138,000.00			0.00	165,000.00			0.00	0.00	29,636.06	0.00
Palmerston - Jane St	0.00	302,000.00			191,000.00	111,000.00			0.00	0.00	0.00	0.00
Palmerston - Inkerman St	0.00	165,000.00			94,000.00	71,000.00			0.00	0.00	0.00	0.00

Town of Minto
Capital Projects - 2016

By-Law 2016-71 Schedule "A"

Project	Unexpended Capital Financing/ (Unfinanced Capital Outlay) Dec 31/15	Expenditures	Transfers to Reserves	Transfers to Reserve Funds	Grants	Long-Term Debt Proceeds	Donations & interest	Proceeds from Land/Cap Assets Sales	Transfers from Reserves	Transfers from Reserve Funds	Transfers from Revenue	Unexpended Capital Financing/(Unfinanced Capital Outlay) Dec 31/16
Palmerston - Valve replacements	0.00	5,000.00			0.00	0.00			0.00	0.00	5,000.00	0.00
Palmerston - Well #3 & #4-flow control valves	0.00	7,000.00			0.00	0.00			0.00	0.00	7,000.00	0.00
Water - engineering	0.00	10,000.00			0.00	0.00			0.00	0.00	10,000.00	0.00
Clifford Arena & Hall	-1,999.80	22,500.00	0.00		2,000.00	0.00	0.00	0.00	0.00	20,500.00	1,999.80	0.00
Clifford Ball/Rotary Park/Soccer Pitch	0.00	5,000.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	2,000.00	3,000.00	0.00
Trails & Parks	9,317.27	40,000.00	0.00	0.00	20,000.00	0.00	0.00	0.00	0.00	0.00	10,682.73	0.00
Harriston Arena	-1,600.00	45,000.00			0.00	0.00	0.00	0.00	0.00	45,000.00	0.00	-1,600.00
Harriston Ball Park	5,000.00	3,500.00					0.00		0.00	0.00	0.00	1,500.00
Harriston Pool	0.00	15,000.00					0.00		0.00	0.00	15,000.00	0.00
Harriston Train Station	0.00	5,000.00							0.00	0.00	5,000.00	0.00
Harriston Parks	0.00	10,000.00							0.00	4,000.00	6,000.00	0.00
Palmerston Arena	-2,900.00	154,000.00			12,900.00	0.00	20,000.00	0.00	0.00	124,000.00	0.00	0.00
Palmerston Rec-Norgan	-13,478.25	0.00					0.00	0.00	0.00	0.00	0.00	-13,478.25
Palmerston Rec-CN Station	0.00	3,000.00					0.00	0.00	0.00	0.00	3,000.00	0.00
Palmerston Rec-Pool	0.00	3,000.00	0.00				0.00	0.00	0.00	0.00	3,000.00	0.00
Palmerston Lions Park - other	3,362.24	25,000.00					0.00	0.00	0.00	25,000.00	0.00	3,362.24
Palmerston Fairgrounds/Ball	6,098.82	48,500.00					0.00	0.00	0.00	43,500.00	0.00	1,098.82
Playground Equipment	944.86	0.00					0.00	0.00	0.00	0.00	0.00	944.86
Other Recreation	10,000.00	0.00			0.00		0.00	0.00	0.00	0.00	0.00	10,000.00
Community Gardens	1,512.79	5,000.00		0.00	0.00		0.00		0.00	0.00	3,487.21	0.00
Building & Zoning	15,153.31	5,000.00					0.00	0.00	0.00	0.00	0.00	10,153.31

Town of Minto
Capital Projects - 2016

By-Law 2016-71 Schedule "A"

Project	Unexpended Capital Financing/ (Unfinanced Capital Outlay) Dec 31/15	Expenditures	Transfers to Reserves	Transfers to Reserve Funds	Grants	Long-Term Debt Proceeds	Donations & interest	Proceeds from Land/Cap Assets Sales	Transfers from Reserves	Transfers from Reserve Funds	Transfers from Revenue	Unexpended Capital Financing/(Unfinanced Capital Outlay) Dec 31/16
Economic Development	200,370.93	177,500.00	0.00	0.00	0.00	0.00	0.00	0.00		0.00	0.00	22,870.93
TOTALS	**1,782,567.64**	**7,717,950.00**	**0.00**	**0.00**	**2,023,700.00**	**1,780,000.00**	**50,000.00**	**0.00**	**0.00**	**1,107,000.00**	**1,129,853.40**	**155,171.04**
SUMMARY												
											.	
Water	440,972.86	1,535,700.00	0.00	0.00	285,000.00	612,000.00	15,000.00	0.00	0.00	0.00	334,869.24	152,142.10
Sewer	163,915.84	1,362,900.00	0.00	0.00	230,000.00	473,000.00	15,000.00	0.00	0.00	220,000.00	294,984.16	34,000.00
Other	1,177,678.94	4,819,350.00	0.00	0.00	1,508,700.00	695,000.00	20,000.00	0.00	0.00	887,000.00	500,000.00	-30,971.06
Totals	**1,782,567.64**	**7,717,950.00**	**0.00**	**0.00**	**2,023,700.00**	**1,780,000.00**	**50,000.00**	**0.00**	**0.00**	**1,107,000.00**	**1,129,853.40**	**155,171.04**

J & I 1,297,000.00

The Corporation of the Town of Minto

By-law No. 2016-72

By-law to authorize execution of an Agreement with Her Majesty the Queen in Right of Ontario as represented by The Minister of Agriculture, Food and Rural Affairs; Ontario Community Infrastructure Fund – Formula Based Component

WHEREAS Section 9 of the Municipal Act, S.O. 2001, as amended, provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act;

AND WHEREAS The Province created the Ontario Community Infrastructure Fund to: (1) provide stable funding to help small communities address critical core infrastructure needs in relation to roads, bridges, water and wastewater; (2) further strengthen municipal asset management practices within small communities; and (3) help small communities use a broad range of financial tools to address critical infrastructure challenges and provide long-term financial support for the rehabilitation and repair of core infrastructure for those in most need;

AND WHEREAS the Ontario Community Infrastructure Fund is composed of two (2) components: (1) the Application-Based Component; and (2) the Formula-Based Component;

AND WHEREAS the Town of Minto is eligible to receive funding under the Formula-Based Component of the Ontario Community Infrastructure Fund to undertake a Project;

NOW the Parties agree as follows:

1. That the Mayor and Deputy C.A.O. Clerk are hereby authorized to sign and execute the Ontario Community Infrastructure Fund – Application Based Component Contribution Agreement attached hereto as Schedule "A".

2. That this By-law shall come into force and take effect on the date of final passing thereof.

Read a first, second, third time and passed in open Council this 4th day of October 2016.

_____
Mayor George A. Bridge

_____
Deputy C.A.O. Clerk Gordon Duff

THE CORPORATION OF THE TOWN OF MINTO

By-law No. 2016-73

To amend the current zoning on Lot 21 George Street, Harriston from Residential (R1C) to Residential (R2).

WHEREAS Section 39 of The Planning Act, R.S.O. 1990, as amended, authorizes the council of a municipality to pass a zoning by-law for the temporary use of land; and

WHEREAS, the Council of the Corporation of the Town of Minto deems it necessary to amend By-law Number 01-86;

NOW THEREFORE the Council of the Corporation of the Town of Minto enacts as follows:

1. THAT Schedule "A" - Map No. 3 (Harriston) of the Town of Minto Zoning By-law 01-86 is amended by revising the regulations for Lot 21, George Street, Harriston, as shown on Schedule "A" attached to and forming part of this By-law from **Residential (R1C) to Residential (R2).**

2. THAT except as amended by this By-law, the land shall be subject to all applicable regulations of Zoning By-law 01-86, as amended.

3. THAT this By-law shall come into effect upon the final passing thereof pursuant to Section 34(21) and Section 34(22) of The Planning Act, R.S.O., 1990, as amended, or where applicable, pursuant to Sections 34 (30) and (31) of the Planning Act, R.S.O., 1990, as amended.

Read a first, second, third time and passed in open Council this 4th day of October, 2016.

_____
Mayor George A. Bridge

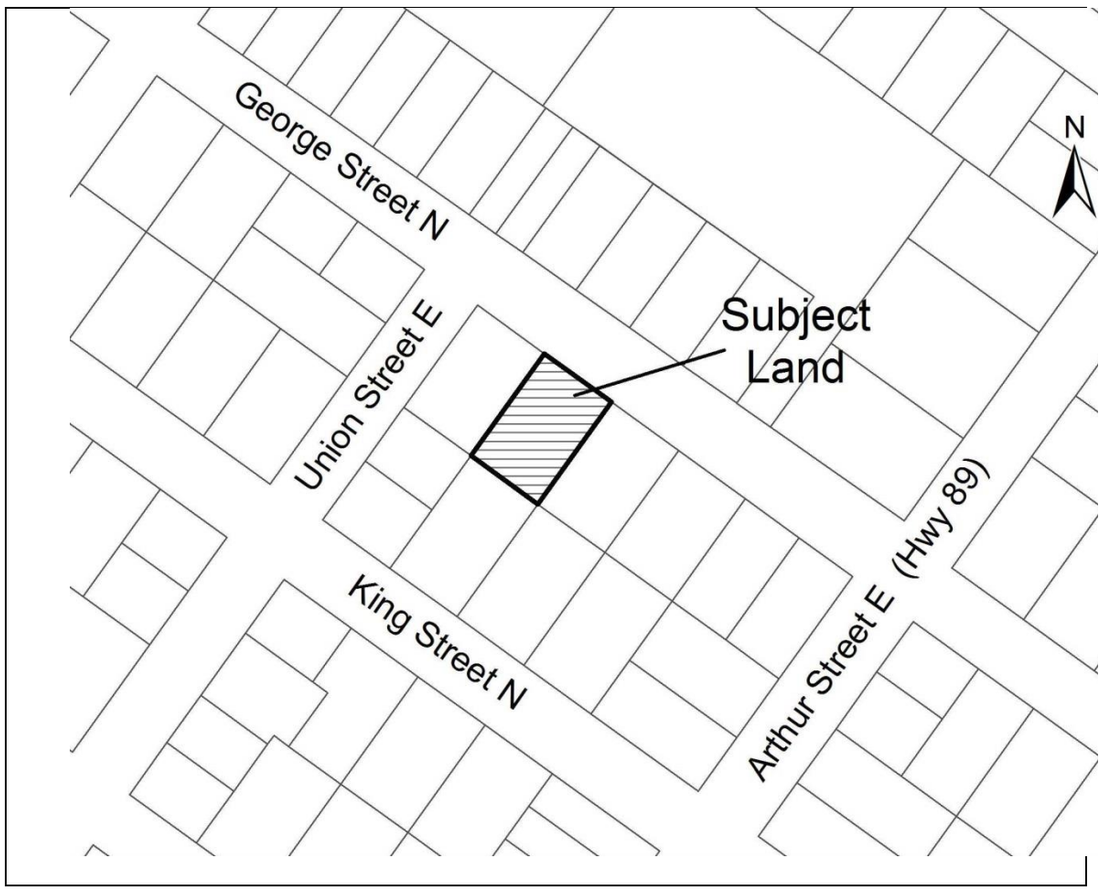
_____
Deputy C.A.O. Clerk Gordon Duff

THE TOWN OF MINTO

By-law No. 2016-73

.

Schedule "A"



Rezone from Residential (R1C) to Residential (R2).

This is Schedule "A" to By-law 2016-73

Passed this 7th day of June 2016

_____

Mayor George A. Bridge

_____

Deputy C.A.O. Clerk Gordon Duff

EXPLANATORY NOTE

BY-LAW NUMBER 2016-73

SUBJECT LAND

The property subject to the proposed amendment is located on Part Lot 21, George Street North, Harriston. The property is approximately 0.10 ha (0.24 acres) in size and is currently vacant.

PURPOSE

The proposed amendment will modify the current zoning from Residential (R1C) to Residential (R2). The proposed zone change would facilitate the construction of a semi-detached dwelling on the subject lands.

The Corporation of the Town of Minto
By-law No. 2016-74

to provide for drainage works in the Town of Minto known as Municipal Drain 116

WHEREAS the requisite numbers of owners have petitioned the Council of the Town of Minto in accordance with the provisions of the Drainage Act requesting that the following lands be drained by drainage works:

1) Part Lot 36 Concession 18, Town of Minto
2) Part Lot 6 Concession 4, Municipality of West Grey
3) Lot 7 Concession 4, Municipality of West Grey

WHEREAS the Council for the Town of Minto has procured a report made by Dietrich Engineering Ltd. of Waterloo Ontario dated July 25th, 2016.

WHEREAS the estimated total cost of constructing the drainage works is $56,900

WHEREAS $56,900 is being assessed to the lands and roads within the drainage area.

AND WHEREAS the Council is of the opinion that the drainage of the area is desirable:

NOW THEREFORE, the Council of the Town of Minto under the Drainage Act hereby enacts as follows:

1. The Engineer's Report Dietrich Engineering Ltd. of Waterloo Ontario dated July 25th, 2016 Reference No. 1557 is hereby provisionally adopted, and the drainage works as therein indicated and set forth are hereby authorized and shall be completed in accordance therewith.

2. The following attachment is extracted from the Engineer's report and is hereby adopted and forms part of this by-law as Schedule "A" - Assessment of Costs

3. A special annual rate sufficient to recover the costs of the drainage works and associated interest costs shall be levied upon the lands as set forth in the attached Schedule "A" to be collected in the same manner and at the same time as other taxes are collected in each year for (5) five years after the passing of this by-law.

4. The Town of Minto may borrow on the credit of the Corporation the amount of $56,900 being the amount necessary for construction of the drainage works. The Corporation may issue debentures for the amount borrowed less the total amount of:

a) grants received under Section 85 of the *Act;*
b) commuted payments made in respect of the lands and roads assessed within the Municipality;
c) monies paid under Subsection 61 (3) of the *Act*; and
d) monies assessed in and payable by another municipality, and such debentures shall be made payable within five years from the date of the debenture and shall bear interest at a rate not higher than the rate charged by the lender on the date of sale of such debentures.

5. A special equal annual rate sufficient to redeem the principal and interest on the debentures shall be levied upon the lands and roads as set forth in Schedule "A" attached to be collected in the same manner and at the same time as other taxes are collected in each year for five years after the passing of this By-law.

a) For paying the amount of $13,148 being the amount assessed upon the lands and roads belonging to or controlled by the Town of Minto,
b) For paying the amount of $13,148 being the amount assessed upon the lands and roads belonging to or controlled by the Municipality of West Perth.
c) For paying the amount of $30,604 being the amount assessed upon the landowners in accordance with the schedule of Assessment as provided in the report, a special rate sufficient to pay the amount assessed plus interest therein shall be

levied upon each of the assessed owners, to be collected in the same manner and at the same time as other taxes are collected.

6. All assessments over $1,000.00 will automatically be placed on the tax roll without further notification unless the Treasurer is contacted by the owner to have the amount debentured for five years at the going rate.

7. All assessments of $1,000.00 or less are payable in the first year in which the assessment is imposed or will automatically be placed on the tax roll without further notification.

8. The Treasurer and Collector of taxes are hereby authorized to accept part payment, from time to time, on account of any taxes due and to give a receipt for such payment provided that acceptance of any such payment shall not affect the collection of any percentage charge imposed and collectable under this Clause hereof in respect of nonpayment of any taxes or any class of taxes or of any installment thereof.

9. In respect to the payment of taxes by tenants of lands owned by the Crown or in which the Crown has an interest provision is hereby provided that where any such tenant has been employed either within or outside the municipality by the same employer for not less than thirty (30) days such employer shall pay over to the Treasurer or Collector on demand out of any wages, salary or other remuneration due to such employee the amount then payable for taxes under this By-law and any such payment shall relieve the employer from any liability to the employee for the amount so paid.

10. This by-law shall come into force and effect upon the third and final reading and may be cited as “Municipal Drain 116 By-law, 2016”

Read a first and second time and provisionally adopted in open Council this 4th day of October, 2016

_____

George A. Bridge, Mayor

_____

Gordon Duff, Deputy C.A.O. Clerk

Read a third time and passed in open Council this day of ,
2016

_____

George A. Bridge, Mayor

_____

Bill White, C.A.O. Clerk

Schedule "A" – Schedule of Net Assessment
Municipal Drain 116
Part Lot 36 Concession 18, Town of Minto
Part Lot 6 Concession 4, Municipality of West Grey
3) Lot 7 Concession 4, Municipality of West Grey
3) Lot 7 Concession 4, Municipality of West Grey

SCHEDULE OF ASSESSMENT FOR CONSTRUCTION
Municipal Drain No. 116 - 2016
Town of Minto

LOT OR PART	CON.	APPROX. HECTARES AFFECTED	OWNER	ROLL NO.	(SEC. 22) BENEFIT	(SEC. 23) OUTLET LIABILITY	(SEC. 26) SPECIAL ASSESSMENT	TOTAL ASSESSMENT	LESS 1/3 GOV'T GRANT	LESS ALLOWANCES	NET ASSESSMENT
Town of Minto											
Pt. 36	18	3.8	R. Dowling	2-109	$9,500	$1,740		$11,240	$3,747	$1,280	$6,213
* Pt. 36	18	1.9	J. Duguay & R. Turla	2-109-20	$8,000	$360		$8,360		$2,690	$5,670
Total Assessment on Lands					$17,500	$2,100		$19,600	$3,747	$3,970	$11,883
Minto-Normanby Townline		0.3	Town of Minto		$1,500	$1,248	$10,400	$13,148			$13,148
Total Assessment on Roads					$1,500	$1,248	$10,400	$13,148			$13,148
Total Assessment on Lands and Roads, Town of Minto					**$19,000**	**$3,348**	**$10,400**	**$32,748**	**$3,747**	**$3,970**	**$25,031**
Municipality of West Grey (Former Township of Normanby)											
Pt. 6	4	5.5	D. & J. Hershey	1-007	$2,500	$5,125		$7,625	$2,542	$200	$4,883
7	4	2.0	W. & C. Scott	1-008	$1,500	$1,879		$3,379	$1,126	$200	$2,053
Total Assessment on Lands					$4,000	$7,004		$11,004	$3,668	$400	$6,936
Minto-Normanby Townline		0.3	Municipality of West Grey		$1,500	$1,248	$10,400	$13,148			$13,148
Total Assessment on Roads					$1,500	$1,248	$10,400	$13,148			$13,148
Total Assessment on Lands and Roads, Municipality of West Grey (Former Township of Normanby)					**$5,500**	**$8,252**	**$10,400**	**$24,152**	**$3,668**	**$400**	**$20,084**
Total Assessment on Lands and Roads Municipal Drain No. 116 - 2016					**$24,500**	**$11,600**	**$20,800**	**$56,900**	**$7,415**	**$4,370**	**$45,115**

NOTES: 1. * Denotes lands not eligible for ADIP grants.
2. The NET ASSESSMENT is the total estimated assessment less a one-third (1/3) Provincial grant, and allowances, if applicable.
3. The NET ASSESSMENT is provided for information purposes only.

The Corporation of the Town of Minto
By-law Number 2016-75

Being a by-law to authorize the Mayor and Clerk to execute an Agreement between the Corporation of the Town of Minto and T & M BBQ Catering

WHEREAS Section 9 of the Municipal Act, S.O. 2001, as amended, provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act;

AND WHEREAS Section 5 (3) of the Municipal Act, S.O. 2001, as amended, provides that municipal power, including a municipality's capacity, rights, powers and privileges under section 9, shall be exercised by by-law unless the municipality is specifically authorized to do otherwise;

AND WHEREAS T & M BBQ Catering now rents the space in the former Palmerston P.U.C. garage at 215 William Street in the former Town of Palmerston from the Town of Minto, and wishes to continue renting this space from October 1st, 2016 until the 30th day of September, 2019;

NOW THEREFORE the Council of the Corporation of the Town of Minto enacts as follows:

1. That the Mayor and Deputy CAO/Clerk are hereby authorized and directed to execute an Agreement attached hereto as Schedule "A" and forming part of this By-law.

2. That the Deputy CAO/Clerk is hereby instructed to affix the Corporate Seal hereto.

Read a first, second, third time and passed in open Council this 6th day of September, 2016.

_____
Mayor George A. Bridge

_____
Deputy CAO/Clerk Gordon Duff

MEMORANDUM OF AGREEMENT made this 1st day of October 2016.

Between:

THE CORPORATION OF THE TOWN OF MINTO
(Hereinafter referred to as "The Corporation")

OF THE FIRST PART

And:

T&M BBQ CATERING
(Hereinafter referred to as "T& M")

OF THE SECOND PART

WHEREAS:
"The Corporation" is the owner of the former Palmerston P.U.C. garage at 215 William Street in the former Town of Palmerston;

AND WHEREAS:
"T & M" desires to rent the space in the former P.U.C. garage from "The Corporation" to carry on a catering business;

AND WHEREAS:
"The Corporation" has agreed to rent the former P.U.C. garage to "T & M" for a period of three (3) years; commencing the 1st day of October, 2016 until the 30th day of September, 2019;

NOW THEREFORE "The Corporation" agrees to:

1. Be responsible for fire insurance on the structure of the former P.U.C. garage at 215 William Street, in the former Town of Palmerston.

2. Be responsible for grass cutting and the removal of snow along the driveway at 215 William Street, in the former Town of Palmerston.

3. Advise "T & M" if they intend to sell the property. It must be noted that there is a Policy for selling municipally owned land that must be adhered to.

4. Maintain all major building systems and structure including but not limited to roof, walls, insulation, heating, ventilation and electrical.

5. To provide T&M a minimum nine months written notice of termination of this agreement for any reason except for default by T&M.

NOW THEREFORE "T & M" agrees to:

1. Pay rent to "The Corporation of the Town of Minto" $477.92 plus applicable HST for a total of 36 months commencing October 1, 2016.

2. Give "The Corporation" not less than two month's notice in writing of its intention to terminate this Agreement.

3. Remedy any default hereunder of which "The Corporation" has given written notice within thirty (30) days, failure to remedy any default then "The Corporation" may terminate this Agreement and obtain vacant possession of the premises upon the expiration of a further thirty (30) days written notice.

4. Be responsible for the utilities in the portion of the building that they are renting from “The Corporation” specifically, hydro, heat, water and sewer, internet, cable phone and similar.

5. Be responsible for fire and theft insurance upon your personal contents and shall maintain public liability insurance.

6. Be responsible for the maintenance of the premises in a clean, orderly condition and state of repair. Comply with garbage and recycling regulations imposed by the County of Wellington.

7. To renovate the premises at their own cost. Prior to commencing any renovations, “T & M” shall provide “The Corporation” with written plans and receive “The Corporation’s” written approval for such renovation work.

8. Not place a sign for advertising purposes unless approved by “The Corporation”.

9. Not carry on or permit to be carried on by any person a business or profession other than “T & M” without “The Corporation’s” written approval.

10. To indemnify “The Corporation” and save it harmless from any claims made against “The Corporation” of damages arising from personal injuries suffered by anyone at 215 William Street, in the former Town of Palmerston in defending any such claims. “T & M” further agrees to advise their insurance company of the existence of the indemnity agreement.

11. Not commit or permit to be committed, any act or thing which may void any insurance upon the building or any part thereof upon the property at 215 William Street, in the former Town of Palmerston, or which may cause any increased or additional premium to be payable for any such insurance.

12. In the event of fire, lightning or tempest, causing destruction of the property at 215 William Street, in the former Town of Palmerston, rent shall cease until the premises are rebuilt, if it is desirable by “The Corporation” to rebuild the premises.

13. Be responsible to leave the premises in good repair, reasonable wear and tear and damage by fire, lightning and tempest only excepted.

IN WITNESS WHEREOF the parties hereto have executed this Agreement on this the day of , 2016.

T & M BBQ CATERING

WITNESS TO THE SIGNATURES:

_____ _____
Alfred Joseph Roy

_____ _____
Debra Ann Roy

THE CORPORATION OF THE TOWN OF MINTO

_____
Mayor George Bridge

SEAL

_____
Deputy CAO Clerk Gordon Duff

The Corporation of the Town of Minto
By-law No. 2016-76

To confirm actions of the Council of the Corporation of the Town of Minto Respecting a meeting held October 4, 2016

WHEREAS the Council of the Town of Minto met on October 4, 2016 and such proceedings were conducted in accordance with the Town's approved Procedural By-law.

NOW THEREFORE the Council of the Corporation of the Town of Minto hereby enacts as follows:

1. That the actions of the Council at its Committee of the Whole/Council meeting held on October 4, 2016 in respect to each report, motion, resolution or other action passed and taken by the Council at its meeting, is hereby adopted, ratified and confirmed, as if each resolution or other action was adopted, ratified and confirmed by its separate By-law.

2. That the Mayor and the proper officers of the Corporation are hereby authorized and directed to do all things necessary to give effect to the said action, or obtain approvals, where required, and, except where otherwise provided, the Mayor and the Deputy C.A.O. Clerk are hereby directed to execute all documents necessary in that behalf and to affix the Corporate Seal of the Town to all such documents.

3. This By-law shall come into force and takes effect on the date of its final passing.

Read a first, second, third time and passed in open Council this 4th day of October, 2016.

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Mayor George A. Bridge

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Deputy C.A.O. Clerk Gordon Duff