



Ontario Federation of Agriculture

Ontario AgriCentre

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Ontario Ministry of Labour
Changing Workplaces Review, ELCPB
400 University Avenue, 12th Floor
Toronto, ON
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Dear Special Advisors,

The Ontario Federation of Agriculture (OFA) is pleased to provide comments to the Special Advisors and the Ministry of Labour regarding the Changing Workplaces Review Interim Report. The OFA is Canada's largest voluntary general farm organization, representing over 36,000 farm families across the province. These farm businesses form the backbone of a robust food system; helping to drive the Ontario economy forward.

Ontario's agriculture sector is a major economic engine, providing jobs in both rural and urban communities. Our farms offer stability to rural communities and represent an integral part of our social fabric by providing a healthy, safe food supply and contributing to environmental sustainability through the protection of soil, water and air resources.

In general, the OFA represents the interests of Ontario's farm owners and operators. In many cases they are also employers. In that role they take their obligations to farm workers seriously and believe that all farm workers, from both Canada and abroad, should be treated with dignity, and be provided with a safe, fair, and rewarding work environment.

The OFA works closely with Labour Issues Coordinating Committee (LICC). Together we represent the unified voice of farm employers from across the province; from over 200 different commodities; from big farms and from small; and from large employers to those that have only one employee. The OFA also supports the perspectives of the Ontario Chamber of Commerce (OCC) and the principles of their Keep Ontario Working campaign. The OCC has spent considerable time and effort consulting with Ontario's employer community and offers a thoughtful and measured response to the options presented in the Interim Report.

We would like to take the opportunity to reiterate that Ontario's farm workplaces are different. They are not comparable to the industrial processes found on the factory floor and deserve unique consideration. As we have stated in earlier submissions to the Ministry, the non-typical circumstances and vagaries of primary agricultural production drives the uniqueness of our

workplaces. Agricultural production is being increasingly characterized as an industrial operation. We believe that what remains of importance in agriculture is the activity – whether indoor or outside, the activity of growing is what is important when we consider labour needs and conditions of employment.

Agricultural production is a highly seasonal activity, and with over 200 different commodities grown in Ontario, there is a high variability around when crops are planted, and when they are ready for harvest. The vagaries of growing biological organisms subject to weather conditions creates high risk and vulnerability of employers, especially when the vast majority of our products are marketed in a domestic or international marketplace where competition is strong, margins are very tight, and the returns on investment are not dictated by the producer.

In addition to issues of seasonality and climate, the agriculture sector trades in a highly perishable product. Many of the good things grown in Ontario have a narrow window between emergence and harvest – the speed at which various commodities can begin to lose value before, during and after harvest creates a unique labour management situation.

There is good research that shows the public knowledge of agricultural production is severely limited, and what they think they know about production is either blatantly incorrect or is not consistent with the realities of agricultural production needed to feed Ontario and the world. However, it is the public that is driving changes to our sector regardless of currently established best practices and procedures. We believe that if the public had a better understanding agricultural production, of the incredible demands, pressures and risks that farmers work under, they would agree that a flexible, rationale, and practical approach to labour management is warranted.

Labour Relation Act

Our comments on the Interim Report will focus primarily on the Employment Standards Act. However, with regards to labour relations, we believe the Agricultural Employee Protection Act (AEPA) is an effective and applicable piece of legislation that provides a balanced, collaborative approach to solving workplace issues. The AEPA represents the collective interests of farm workers and duplicates the rights of association found in Section 2(d) of the Canadian Charter of Rights and Freedoms. The limitations contained in the AEPA (compared to the Labour Relations Act) bring an appropriate level of balance to an employment context where lives (plant and animal) and livelihoods may suffer at the hands of a work stoppage.

For obvious risks associated with agricultural production, the OFA supports a cooperative and non-confrontational approach to labour relations. We agree with the LICC that a *Workplace Consultative Committee* (WCC) as presented on page 129 of the Interim Report, that would serve to work cooperatively with employers and employees, holds some potential in the agricultural sector and is likely applicable to others.

The OFA recommends that the *status quo* option, maintaining the existing LRA exemption for agricultural and horticultural employees holds the most potential to balance the interests of

employers and employees. We welcome opportunities to discuss options for increasing the utility of the AEPA as well as exploring options for increasing education and understanding among employers and employees of this valuable tool.

Employment Standards Act

The OFA agrees with and supports the submission of the LICC. As such, we will take this opportunity to focus our comments on issues around exemptions and special rules, and the administration and enforcement of the Employment Standards Act (ESA).

Exemptions and Special Rules

It is well understood that the agricultural sector enjoys a range of exemptions and special rules under the ESA. It is worth noting that these have been in place since the ESA began, and are mirrored in most competing jurisdictions. Updating aging legislation is an extremely difficult balancing act; we believe to be effective it must also lessen the vulnerability of the employer and the precariousness of the economy. The Advisors recognize this challenge when they indicated that it is not in the public interest to recommend a wholesale elimination of all the exemptions.

We appreciate the recognition in the Interim report of our concerns that industries like agriculture experience uncertainties based on seasonal factors or unpredictable climate conditions and that often necessitates more flexibility in approaches to managing human resources.

We agree with the Interim Report that there are long standing exemptions for certain industries and job classifications that may be out of date and potentially unwarranted. When the conditions that existed to justify an exemption to the norm no longer exist, then that exemption should be evaluated and modified if necessary. We also agree with the recognition in the Report that exemptions and special rules offer a mechanism to appreciate the unique characteristics of some occupations that require a different, more flexible approach, to managing human resources. We remain convinced, however, that the current exemptions in the agricultural sector continue to be justified, and the rationale is as true today as it was when they were first allowed.

Exemption Review Process

The recommendation to adopt a process to review long standing exemptions in various industries is reasonable. Regardless of the process used to review exemptions, a sectoral process is most favoured to accommodate the unique situations and circumstances of agricultural production. While we are not committed to a particular design option for a new process to review existing or future exemptions and special rules at this time, it would appear that the principles in *Core Condition A* currently used by the Ministry of Labour to review any new requests for exemptions are the most amenable to the unique nature of production and the challenges faced by agricultural employers.

Some of the agriculture commodities have experienced an increasing degree of mechanization in the last decade. A rush of new technologies has allowed a farm owner/operator to significantly decrease or remove the demand for outside labour while maintaining production levels. While the trend towards mechanization of the agricultural sector will continue, the distinctive

characteristics of agricultural production have remained largely unchanged and there is still a need in many sectors for the gentle touch and discerning mind of a person. This is, and has always been, a fundamental condition of agricultural production. We do not believe that an overly bureaucratic or exhaustive process to review agricultural exemptions and special rules will change the outcome given the nature of the work has not changed.

The agricultural sector faces a chronic shortage of reliable farm workers. Our ability to attract and retain workers is made more challenging by the nature of the work and the fact that the majority of Ontario commodities compete in a global marketplace where producers have little influence over their potential returns. Given the extreme shortage of reliable farm workers and the importance of the sustainability of our food supply, any adjustments should be evidence-based and not broadly based on ideology or political whim. Drastic changes that are not evidence-based carry the potential for adverse unintended consequences.

Administration and Enforcement

Agriculture has a large number of small employers (less than five employees). Regulatory navigation is a constant challenge for small business. The OFA, as with other industry associations, spends considerable efforts to provide clarity and ease to our members in navigating an increasingly complex and time-consuming regulatory framework. At what point will the increase in complexity for new potential employers become a barrier they are simply unwilling to cross? How many jobs simply do not exist because the regulatory context is too burdensome for small and new employers to bear?

Issues around the ESA application on farms could be solved with a Ministry of Labour that is better engaged with the challenges of small business and chooses outreach and education over fines and more regulation. As an employer group we gravitate to a philosophy of inform, educate, and advise followed by progressively stronger actions to amend the behaviour of the small percentage of employers that are habitual/repeat offenders. We believe Ontario has the regulatory framework needed in the agriculture sector to protect the needs of workers. What is needed is better outreach and expanded options for enforcement to educate and inform employers around compliance.

We agree with other employer groups that the Ministry of Labour should create more opportunities to improve employer understanding of labour legislation and simplify compliance requirements. We recommend that government should also provide increased information and support to industry organizations that work closely with employers in order to ease compliance and understanding of the ESA and, in the case of agriculture, the AEPA. Providing support to industry organizations trusted by employers would serve to greatly increase the dissemination of information and compliance requirements. It would also serve to decrease the fear of punishment by those employers who believe they may be out of compliance, but are worried about asking for help. We know how important it is to have health and safety materials adapted to the cultural contexts of various sectors – using the language and terminology familiar to the end users. The same is certainly true for other Acts administered by the MOL.

The agricultural sector enjoys a very good working relationship with the Ministry of Labour on the Occupational Health and Safety Act (OSHA) Technical Advisory Committee. This Committee was created to ease the transition of the agricultural sector coming under the OHSA. What was meant to be a short-term committee has continued for the last ten years and offers an important opportunity for representatives from employer, workers, and government to share and discuss ideas and issues around farm health and safety. It is an excellent model that shows industries and government can come together to find mutually agreeable solutions to new and persistent problems and we recommend that it should be replicated across the Acts administered by the Ministry of Labour.

OFA appreciates the opportunity to comment on the Interim Report of the Changing Workplaces Review. We know that advocating for the status quo in this review may not be seen as progressive. However, we believe that the conditions that initially led to our current status under the Employment Standards Act continue to exist and that the rationale for our exclusion from the Labour Relations Act remains valid. We look forward to working with the Ministry of Labour during this review and its outcomes to build a greater understanding of the unique conditions that the agricultural sector faces in producing food for Ontario and the world.

Sincerely,



Don McCabe
President

cc: Hon. Kevin Flynn, Minister of Labour