

Changing workplaces and Ontario regulations: What's next?

Jenn Miller, Atkinson Foundation
Melissa Faber, Ontario Ministry of Labour



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The Changing Workplaces Review

Presentation for Ontario Nonprofit Network

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Presentation Outline

- To provide details on the Changing Workplaces Review including:
 - Background information on the Review;
 - Results and themes from public consultations;
 - Overview of what's included in the Special Advisors' Interim Report; and
 - Update on the current status of the Review.

Introduction to Review

- The **Changing Workplaces Review** is Ontario's broadest independent review of the *Labour Relations Act, 1995* (LRA) and the *Employment Standards Act, 2000* (ESA) and considers how both Acts could be amended to better protect workers while supporting business in today's economy.
- The Review does not consider:
 - Construction industry provisions of the LRA;
 - Minimum wage;
 - Reducing the gender wage gap (part of the Gender Wage Gap Review);
 - Issues specific to migrant workers; and
 - Compulsory interest arbitration (e.g., for police, firefighters and hospital workers).
- The Ontario Government appointed two independent and neutral Special Advisors to lead the Review.
 - They were tasked with examining academic and inter-jurisdictional research and soliciting feedback from stakeholders and the public, including by conducting public consultations.
 - The Special Advisors are expected to provide the Government with their Final Report with recommendations early next year.

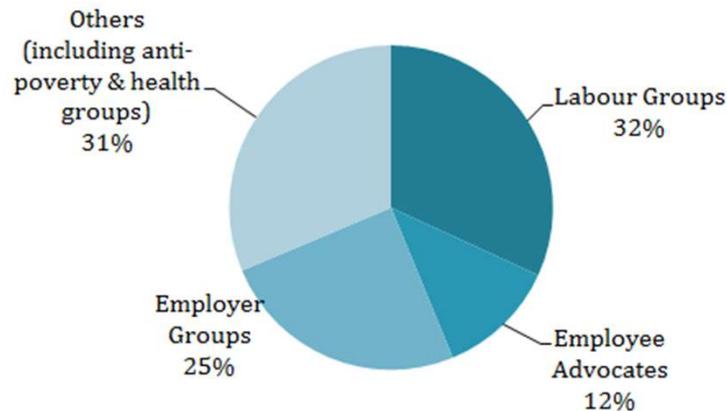
Key Timelines

- **Feb. 2015:** Two Special Advisors were appointed by the Ontario Government to lead and co-ordinate public consultations for the Review.
- **June – Sept. 2015:** The Advisors held 12 public consultation meetings across Ontario, heard 200+ public presentations and received 300+ written submissions.
- **July 27, 2016:** The Advisors' Interim Report was released. It outlines potential areas for change to the LRA and ESA based on what was heard during consultations in 2015. The Advisors have provided another opportunity for interested parties to make written submissions on the Report.
- **Oct. 14, 2016:** Deadline for written submissions on the Interim Report.
- **Early 2017:** Special Advisors deliver Final Report with recommendations to the Government.
- **Spring 2017 (TBD):** Release of Special Advisors' Final Report.

Results from 2015 Consultations

- **Employer groups** called for efficiency and flexibility to be at the centre of the Review, arguing that any recommendation must not impede their ability to compete in global markets.
- **Labour groups** called for voice to be a priority, warning of the increasing imbalance of power in the workplace.
- **Employee advocates** and **community-based groups** emphasized equity, calling for expanded coverage and stronger protections under employment and labour legislation, coupled with more reliable enforcement.

Who Did We Hear From?



CONSULTATION RESULTS

12 Public Consultation Meetings

200+ Presentations

300+ Written Submissions

1000+ Recommendations

Key Themes from 2015 Consultations

- The LRA and ESA continue to be seen as key pieces of legislation for protecting employees, and stakeholders have suggested that both Acts may need to play an expanded role given the changing nature of work.

LRA Issues

- Coverage of the Act and exclusions
- Card-based certification and other issues concerning certification
- Just cause and interim reinstatement during certification campaigns
- Successor rights for contract services (e.g., building, security, cleaning, etc.)
- Use of replacement workers
- Reinstatement after a strike / lock-out
- Sectoral bargaining / broader-based bargaining

ESA Issues

- Misclassification / definition of employee
- Exemptions and coverage
- Personal emergency leave
- Temporary help agencies
- Equal pay for temporary and part-time workers
- Access to benefits
- Paid sick days
- Scheduling of work
- Information about rights and obligations
- Enforcement and administration

Interim Report Chapters

**Chapter 1:
Introduction**

**Chapter 2:
Guiding Principles, Values and Objectives**

**Chapter 3:
Changing Pressures and Trends**

**Chapter 4:
Labour Relations**

**Chapter 5:
Employment Standards**

Chapter 1: Introduction

Purpose of the Interim Report:

- Issued to advise Ontarians of the range of issues that have been identified and the options for change being considered based on 2015 consultations.
- The Interim Report identifies approximately 50 issues and over 225 options.
- The deadline for written submissions was October 14.
- A “Guide to the Interim Report” was also issued to outline the issues and options that have not been the subject of significant debate or which may have some new elements for interested parties to consider.
- Feedback received on the Interim Report will be considered by the Special Advisors when they finalize their Final Report with recommendations to the Government early next year.

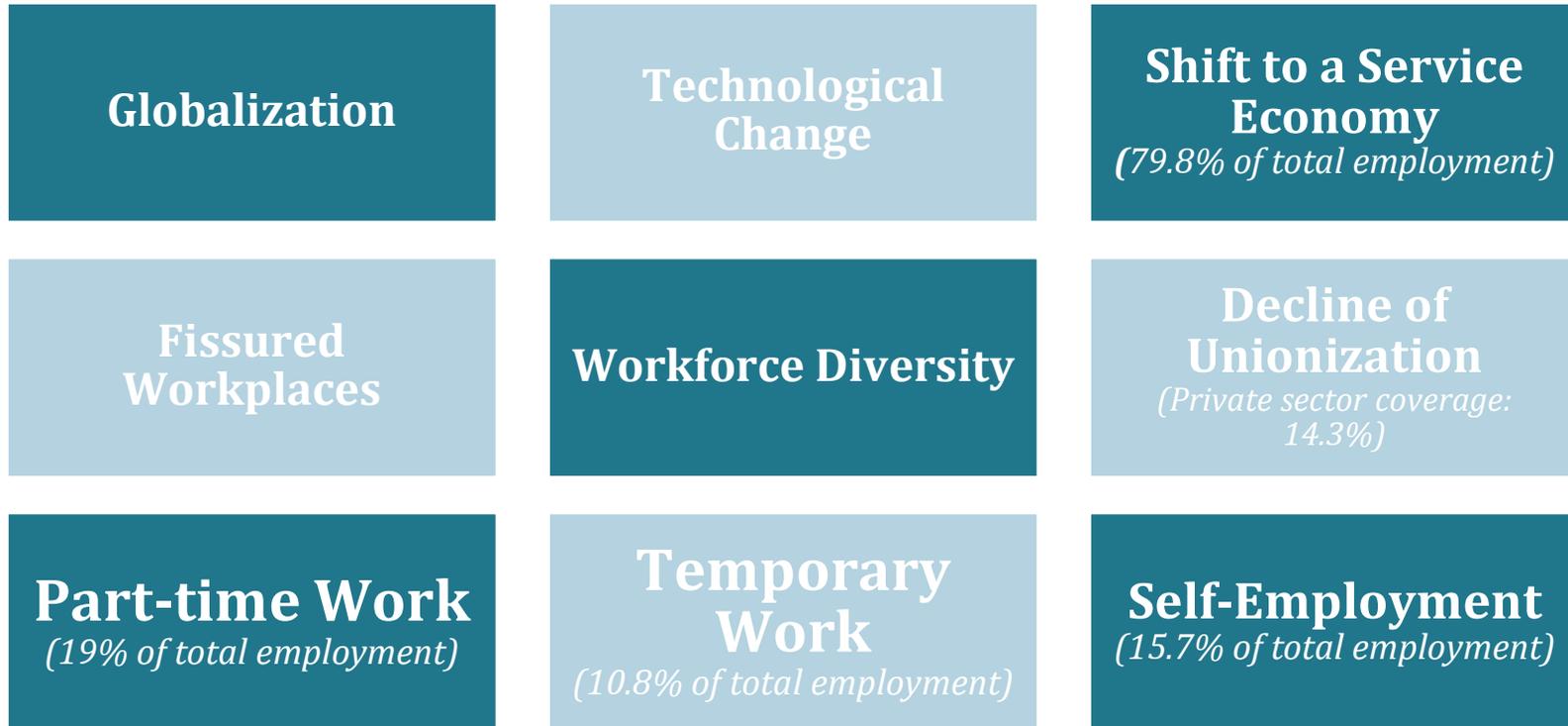
Perspectives of the Parties:

- Highlights two perspectives that were generally heard during consultations:
 - **Employer groups** have to compete and adjust to a highly-competitive, dynamic and changing economy.
 - **Labour groups, worker advocates and other groups** see the current situation for vulnerable and precarious workers as an urgent and serious threat to the well-being of a growing number of workers, their families and to Ontario society.

Chapter 2: Guiding Principles, Values and Objectives



Chapter 3: Changing Pressures and Trends



Details in Chapters 4 & 5

- **Chapter 4: Labour Relations** and **Chapter 5: Employment Standards** of the Interim Report provides an overview of some of the issues and potential options for change that the Special Advisors heard during public consultations in 2015.
- Potential options in Chapters 4 and 5 include:
 - Making no changes (status quo);
 - Recommendations made by stakeholders during consultations;
 - Approaches taken in other jurisdictions; and
 - Unique and new approaches for the Ontario context.

Chapter 4: Labour Relations

Section	Description	Examples of Options Raised
4.1 – Legislative History of the LRA	<ul style="list-style-type: none"> Legislative history of the LRA including details of amendments in 1993, 1995 and 2005. 	---
4.2 – Scope and Coverage of the LRA	<ul style="list-style-type: none"> Outlines coverage and exclusions under the LRA and focuses on the exclusion of agricultural (covered by the <i>Agricultural Employees Protection Act, 2002</i>) and horticultural employees. It also focuses on the issue of related and joint employers in situations where a business is not operated by one employer. 	<ul style="list-style-type: none"> Eliminate some exclusions Enact new legislation to provide coverage to certain groups of workers Amend or expand related employer provisions; and enact specific joint employer provisions
4.3 – Access to Collective Bargaining and Maintenance of Collective Bargaining	<ul style="list-style-type: none"> Describes the certification process and outlines issues such as: <ul style="list-style-type: none"> Card-based certification Electronic membership evidence Access to employee lists Off-site, telephone and internet voting Remedial certification First contract arbitration Successor rights Consolidation of bargaining units 	<ul style="list-style-type: none"> Remove perceived barriers to access certification (e.g., reintroduce card-based certification, provide alternative voting procedures) and obtain first agreements (e.g., remove requirements to access remedial certification and first contract arbitration) Expand successor rights to apply to contract tendering.

Chapter 4: Labour Relations *(Cont'd)*

Section	Description	Examples of Options Raised
4.4 – The Bargaining Process	<ul style="list-style-type: none"> • Describes the issues of: <ul style="list-style-type: none"> • Replacement workers • Right of striking employees to return to work • Renewal agreement arbitration. 	<ul style="list-style-type: none"> • Ban or create rules for using replacement workers • Create or remove rules for the issue of employees returning to work after a strike • Remove perceived barriers to access renewal agreement arbitration
4.5 – Remedial Powers of the Ontario Labour Relations Board (OLRB)	<ul style="list-style-type: none"> • Deals with remedial powers of the OLRB including: <ul style="list-style-type: none"> • Interim orders and expedited hearings • Just cause protection • Prosecutions and penalties. 	<ul style="list-style-type: none"> • Expand powers of the OLRB to make interim orders and expedite hearings • Provide just cause protection for employees after certification but before a first agreement is effective • Increase penalties under the LRA or eliminate current requirements dealing with LRA enforcement

Chapter 4: Labour Relations *(Cont'd)*

Section	Description	Examples of Options Raised
4.6 – Other Models	<ul style="list-style-type: none">• Describes other potential models to consider (besides the LRA “Wagner Act” model) including broader-based bargaining and employee voice.	<ul style="list-style-type: none">• Introduce new bargaining models that can be applied to sectors, industries, geographical areas, franchise operations• Enact models of “employee voice” so employees can participate in and have influence in their working environment
4.7 – Additional LRA Issues	<ul style="list-style-type: none">• Outlines other LRA issues such as: the ability of arbitrators to extend time limits and the issue of conciliation boards.	<ul style="list-style-type: none">• No options listed - the Special Advisors invite interested parties to comment on these issues

Chapter 5: Employment Standards

Section	Description	Examples of Options Raised
5.1 – Legislative History of the ESA	<ul style="list-style-type: none"> Legislative history of the ESA including details of amendments between the 1970s-1990s, 2000s, 2014-15. 	---
5.2 – Scope and Coverage of the ESA	<ul style="list-style-type: none"> Outlines several issues including: <ul style="list-style-type: none"> Definition of employee Who is the employer and scope of liability Exemptions and special rules (including for managers, IT professionals, pharmacists, building superintendents, and special minimum wages for students and liquor servers) Exclusions of interns/trainees and crown employees. 	<ul style="list-style-type: none"> Increase education and enforcement for defining “employee” Where there are multiple employers/work is contracted out, make all parties share in the responsibility to comply with employment standards Remove or review exemptions for certain groups of workers Create a process to review exemptions Amend or remove exclusions related to interns/trainees and crown employees

Chapter 5: Employment Standards (Cont'd)

Section	Description	Examples of Options Raised
5.3 – Standards	<ul style="list-style-type: none"> • Deals with ESA standards including: <ul style="list-style-type: none"> • Hours of work and overtime pay • Scheduling • Public holidays and paid vacation • Personal emergency leave • Paid sick days • Other leaves of absence • Wages and benefits for part-time and temporary work • Termination, severance and just cause • Temporary help agencies. 	<ul style="list-style-type: none"> • Increase standards/entitlements; remove requirements for standards • Introduce new standards (e.g., paid sick leave, domestic or sexual violence leave) • Require employers to provide advance notice of work schedules • Require wages and benefits for part time and temporary workers to be the same as full-time workers • New rules and responsibilities for temporary help agencies
5.4 – Other Standards and Requirements	<ul style="list-style-type: none"> • Includes other standards and requirements under the ESA such as: <ul style="list-style-type: none"> • Greater right or benefit • Written agreements • Pay periods. 	<ul style="list-style-type: none"> • Allowing parties to contract out of the ESA based on whether the employer provides greater standards • Remove requirements or create flexible rules for written agreements • Require employers to harmonize pay periods with their work weeks

Chapter 5: Employment Standards (Cont'd)

Section	Description	Examples of Options Raised
5.5 – Enforcement and Administration	<ul style="list-style-type: none"> • Provides an overview of the current enforcement program and includes details on: <ul style="list-style-type: none"> • Education and awareness programs • Creating a culture of compliance • Reducing barriers to making claims (e.g., initiating claims and reprisals) • Strategic enforcement (e.g., inspections, resources, use of settlements and remedies and penalties) • Applications for review; and collections. 	<ul style="list-style-type: none"> • Require ESA Committees (as an expansion of Joint Health and Safety Committees) • Create a Director of Enforcement • Allow anonymous claims or reduce requirements for the claims process • Increase and target inspections in the workplace • Increase fines for penalties • Increase enforcement resources • Streamline the collections process

Next Steps

- **Oct. 14, 2016:** Deadline for written submissions on the Interim Report.
- **Oct. 14, 2016 – mid November:** Special Advisors review written submissions and complete any remaining consultation meetings.
- **Mid November to Early 2017:** Special Advisors finalize Final Report with recommendations.
- **Early 2017:** Special Advisors deliver Final Report with recommendations to the Government.
- **Spring 2017 (TBD):** Release of Special Advisors' Final Report.