

## Legal update

### Ontario's Changing Workplaces Review: ESA exemptions

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#### September 2016 Employment and labour

Last year the Ontario government initiated a review of the *Labour Relations Act, 1995* (the LRA) and the *Employment Standards Act, 2000* (the ESA) to ensure the province's labour relations and employment standards legislation continue to reflect the realities of the modern workforce, workplace and economy.

The Changing Workplaces Review, which has included extensive public consultations, is being conducted by two special advisors: C. Michael Mitchell, formerly union-side labour lawyer, and the Honourable John C. Murray, a former Ontario Superior Court judge and management-side labour lawyer. The review's overarching objective is to improve security and opportunity for those made vulnerable by the structural economic pressures and changes being experienced by Ontarians.

The special advisor's Interim Report, which was released in July, identifies approximately 50 issues affecting Ontario's workplaces and over 225 options of varying size and scope for addressing these issues in the LRA and ESA. Although maintaining the status quo is listed as an option for almost every issue, some of the other options, if enacted, would usher in significant change. This includes, for example, some of the options identified for addressing the extensive number of exemptions and special rules under the ESA.

#### Three exemption categories

The Interim Report acknowledges that there has been sustained criticism from many sources about this issue, suggesting that the exemptions are out-dated, inconsistent, complex and often lacking in rationale. The special advisors also note that the current exemptions operate to deny a significant number of employees the protection of important provisions of the ESA – most typically limitations on hours of work and overtime. They outline an approach to the current ESA exemptions by creating three categories:

Category 1 lists seven exemptions the special advisors may recommend varying or eliminating altogether without further review beyond the process currently underway. 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

- student exemptions from the “three-hour rule.”

The special advisors have asked for further submissions on reasons to maintain, modify or eliminate these seven exemptions. They also have invited stakeholders to make submissions regarding whether and why these exemptions should be referred to a subsequent review process and not dealt with as part of the current review.

Category 2 concerns special industry rules that the Ministry of Labour has approved since 2005 related to public transit, mining and mineral exploration, live performances, the film and television industry, and ambulance services. The special advisors express the preliminary view that these special rules should continue without modification because they were created pursuant to a policy framework after a thorough consultative process involving stakeholder representation. They invite further submissions from stakeholders on whether there are reasons to review these special rules at this time.

Category 3 contains the remaining 70-plus complex exemptions currently in the ESA. The special advisors think these should be reviewed using a transparent and consistent review process to determine whether they are justifiable. They seek submissions on the proper process to be implemented to review and assess these exemptions, and set out some options for such a review process.

Given the breadth of the review and the number and variety of submissions during the initial consultation process, the Ontario government has launched a second phase of public consultations seeking feedback on all issues addressed in the Interim Report, including the current ESA exemptions. To submit your comments, ideas and suggestions about the current ESA exemptions and other issues addressed in the Interim Report, contact the Ministry of Labour by October 14, 2016 at:

E-mail: [CWR.SpecialAdvisors@ontario.ca](mailto:CWR.SpecialAdvisors@ontario.ca)

Mail: Changing Workplaces Review, ELCPB  
400 University Ave, 12<sup>th</sup> Floor  
Toronto, Ontario M7A 1T7

Fax: 416-326-7650

After this phase of consultations concludes, the special advisors will provide the Ministry of Labour with a final report and recommendations to help inform changes to modernize Ontario's labour and employment laws.

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