SUBMISSION

BY THE

ONTARIO FEDERATION OF LABOUR

ON THE

CONSULTATION PAPER

TIME FOR CHANGE: ONTARIO'S EMPLOYMENT STANDARDS LEGISLATION

AUGUST 23, 2000

INTRODUCTION

The Ontario Federation of Labour welcomes the opportunity to make this presentation to the Minister of Labour on the consultation paper *Time For Change: Ontario's Employment Standards Legislation*. At the same time, as an organization representing hundreds of thousands of working people across the province, we are compelled to oppose many of the proposals and directions outlined in the Consultation Paper as, in our opinion, if implemented they will make life worse for the average person trying to earn a living in Ontario.

The Ontario Federation of Labour has already made its views known on the key issues raised in this Consultation Paper in response to the Ministry's earlier discussion paper on *The Future of Work in Ontario*. Our submission, dated March 1999 and appendaged to this submission, takes up in considerable detail the kinds of amendments we believe to be appropriate and why. To date, our views have not had any positive resonance on the Minister of Labour or the Government of Ontario. Indeed, the current Consultation Paper proceeds on most issues in exactly the opposite direction. While the elected representatives of unionized workers are not listened to, others are. The labour law changes proposed in the so-called *Enhancing Worker Democracy* paper by Frank Sheehan and others on the Red Tape Elimination Committee, for example, calls for "getting rid of the overtime permit system and encouraging more flexible working arrangements".

Nonetheless, in the hopes of improving the lives of working people, mainly those without the benefit of a union, we briefly answer key points of the Consultation Paper in this submission which we have drafted in consultation with the Employment Standards Work Group (ESWG).

What the Tory Government Says it is Doing to the *Employment Standards Act*

The government's main theme in a *Time for Change* is the need to update the *Employment Standards Act* to meet the challenges of the 21st Century. It says that the *Employment Standards Act* should be flexible, modern, simpler and more efficient, and fair. Who could argue with this?

Flexibility, simplicity and fairness are good things. The problem lies in what is meant by these broad and general terms. The government's use and meaning has a particular slant or bias. An examination of its specific proposals reveals the government's slant – it is turning back the clock to give employers more control over workers' time and it is refusing to introduce provisions to enable working people to meet the challenges of the 21st Century.

The consultation paper, *Time for Change*, does two major things. First, it provides some details for its election promises regarding flexible work arrangements and family crisis leave. Second, it suggests general directions for modernizing the *Employment Standards Act*. By looking at the government's specific proposals, it is easy to compare what the Tories say they are doing with their actual proposals. We also want to contrast the government's proposed changes with what truly modern and forward-looking work arrangements and family leave provisions would look like.

Flexible Work Arrangements: Making People Work Longer Hours

The government says that it is important to ensure flexible work arrangements that respond to production and delivery systems while balancing work and family responsibility. It proposes a series of major changes to the provisions regulating work time (overtime, maximum hours of work, rest periods, public holidays and vacations) while, at the same time, proposing family leave. These proposals reflect the government's ideas about "modernizing" employment standards and making them more "flexible". Who would these changes benefit?

a) Hours of Work and Overtime

- Maximum work week of **up to 60 hours (from current 48 hour maximum)**. The government is increasing the maximum hours of work that an employer can ask an employee to work by 12 hours a week. Not only is this a huge move backwards, it is in the opposite direction from where European countries are moving.

- Work up to **180 hours over 3 weeks** (averaging maximum hours). For example, an employee could be asked to work 30 hours one week, 65 hours the next and 75 hours in the third week.

- Overtime pay (which is now time and a half regular pay afer 44 hours in a week) would only be required if the employee has worked over **132 hours in 3 weeks** (overtime will be averaged over 3 weeks). This means that an employee could work 30 hours one week, 32 hours the next and 70 hours in the third week and not be entitled to overtime in the third week for the hours worked above 44 in that week.

- The weekly rest provision would be 24 hours of rest in every 7 days or 48 consecutive hours in every 14 days.

The government emphasizes that its proposed changes allows employers and employees to cooperatively design work arrangements such as flextime or compressed work weeks. But who is kidding who? While the government says that employees would have the legal right to refuse to work more than 48 hours a week, **how many employees can freely choose not to do what their employers want and still maintain a good working relationship?** The reason the maximum hours of work provision was set at 48 hours was because everyone recognized that, in the employment relationship, the inequality of power between employers and employees meant that it was necessary to be suspicious of how voluntary an employee's choice to work extra time really was.

What these changes do is allow employers to pressure workers to work longer hours. Moreover, averaging gives employers a huge amount of control over scheduling with harsh consequences for employees, especially those who have family responsibilities. Workers' schedules could swing wildly between "too little" and "too much". Many employers would love the "flexibility" to do just in time scheduling to match their peak production or service times. Studies show the biggest work time problem for workers is erratic, unpredictable schedules. How could anyone ever arrange child care with such erratic schedules? The proposals would also allows employers to reduce their overtime bill by allowing them to average overtime over three weeks and offer the employee time off at straight time instead of time and a half overtime pay.

These proposals are a major step in the wrong direction! They go backward rather than forward. They are a throw back to the 19th and early 20th Century; between 1884 and 1944, the legal limit for women and children was 60 hours of work in a week.

Employees will be forced to work longer hours, sacrificing their health and making it even more difficult for them to balance domestic responsibilities. The government is moving backwards and, in so doing, is giving Ontario employers a big gift.

What Working People Need!

Instead of moving backwards and increasing the amount of time people must spend at work, we need to **reduce** the maximum hours of work. Not only is this important for ensuring people's health, it is important for enabling people to balance their family responsibilities and be active and involved citizens. The *Employment Standards Act* should be changed to provide an 8 hour day and 40 hour work week, with **overtime after 40 hours** and the right to refuse overtime. Overtime should continue to be compensated by overtime pay since employers should pay a premium for having employees work long and disruptive hours. Not only will this be good for people who have jobs, it has the long term effect of increasing job creation, particularly when it is combined with other measures that encourages new hiring.

b) Vacation with Pay

People need paid time off work. They need time to relax and get away from the stresses of work, they need time for life and family and time to participate in community life. Currently, the *Employment Standards Act* establishes a minimum standard of 2 weeks of vacation a year, which must be scheduled in one or two week blocks, with 4% vacation pay after 12 months of work with the same employer. Moreover, the vacation must be scheduled no later than 10 months after the same year it was earned.

The government does not propose either to increase the length of vacations to which employees are entitled or the amount of vacation pay they will receive. All it proposes to do is, at the written request of the employee, allow the employer to agree to schedule vacation in daily increments. This is supposed to benefit employees because they could then take paid vacation time to deal with personal matters. It is also supposed to benefit employers because it means that they would not have to hire replacements for employees. This proposal creates an incentive for workers to cut back on rest and time away from work.

Once again, the problem with the proposal is that it presumes that an employee has a choice in the matter. Because Ontario does not have legislative sick and family leaves, many employees have no other option but to use vacation days for personal matters. But this means they are sacrificing their vacations. True flexibility would give employees not only sick and family leave, which would be paid, but also longer vacations which already exist in many other jurisdictions.

What Working People Need!

Working people need paid time off from work in order to relax and deal with the stress that work often causes. We need more paid vacation time, similar to what most European workers have, rather than proposals which allow paid vacations to be turned into stop gap measures to deal with personal matters. The current law has been stuck at 2 weeks vacation for decades. At a minimum, workers should be entitled to 3 weeks paid vacation after 5 years. At least 2 weeks of vacation should continue to be scheduled in blocks of, at least, one week's duration. Personal leave should be treated separately, and differently, from paid vacations.

c) Public Holidays

Currently, the *Employment Standards Act* provides for 8 public holidays a year which entitles employees to a day off with pay. If employees agree to work on the public holiday, they are paid at their regular rate and the employer must also provide a substitute day off with pay. Special rules apply to employees who work in hospitals, restaurants, motels, taverns, tourist resorts or continuous operations. They may be required to work the holiday, in which case the employer must either schedule a substitute day off with pay or pay time and a half for hours worked plus a regular day's wages. Currently, in order for an employee to be eligible for a paid public holiday, the employee must meet five qualifying conditions.

The government proposes to change the *Employment Standards Act* to allow employees the choice of agreeing to work on a public holiday without imposing an obligation on the employer to give a substitute day off. Employees would have the choice of agreeing either to time and a half for the hours worked on the holiday plus a regular day's pay or to regular pay for the day and a substitute day off with pay. It would also eliminate most of the qualifying conditions, except the requirement that an

employee report for and perform work on the holiday if previously agreed. The entitlement to a regular day's pay for the holiday would be prorated. No increase in the number of public holidays are proposed. However, the government would abolish almost all of the qualifying conditions. The employee could agree to time off in lieu of overtime but the time off is at straight time whereas overtime is at time and a half.

The removal of qualifying conditions for paid public holidays is a good thing. However, the question of the voluntary nature of the employee's choice of working the holiday and receiving pay or time off in lieu arises again. Moreover, it appears that the government is committed to a vision in which continuous work is the norm and public holidays which the majority of people in Ontario participate in and enjoy is an exception.

What Working People Need!

We need more public holidays and we need to be able to take that time off. Most collective agreements of unionized employees contain additional paid days for public holidays and should be examined for purposes of statutory amendment enabling more public holidays.

SUMMARY

Essentially, the government's flexible work arrangements package allows employers to ask employees to work longer hours and gives employers much more control over how to schedule work without paying workers a premium. It amounts to a deterioration in workers' standards and the quality of life of working people across Ontario.

The Sugar-Coating – Family Leave

The work time arrangements that the government proposes to implement clearly give employers more flexibility to force workers to work longer hours with less predictable schedules. It is a gift to employers. The government needs to sugar-coat the bad medicine for employees. Such blatant biases in the proposed legislation undermine any conception of fairness.

This helps to explain the government's proposals regarding family leave. This is the only aspect of *Time for Change* which offers anything of benefit to employees. The increase in the number of women working outside of the home, especially those with young children, the increased demands for care of the elderly or disabled, and the changes in the way that health care are delivered, place enormous demands on working people to balance the demands of their work and family responsibilities. The government proposes to respond to these demands by introducing a family leave.

The government proposes to give all employees employed in **workplaces of 50 employees or more 10 days of unpaid, job-protected leave a year to deal with family crisis, personal or family crisis and bereavement situation**.

This proposal is the only one which is designed to be of benefit to employees. Job protection for people who suffer illness or experience family crises is absolutely essential. The problem is that what the government proposes is too little for too few.

For an employee to be entitled to the leave the government proposes, she or he must be employed in a workplace with at least 50 employees. This means if there are only 30 employees, someone who gets sick or who has a child who gets sick and misses work is not entitled to return to her job once the illness has passed. This is hardly modern! Moreover, lots of, and increasingly more, employees are employed in workplaces with under 50. Since the late 1970s, small businesses have been the key contributors to net job growth in Canada. The share of employment provided is shifting from large to small businesses. The workplace of the 21st Century is more likely to be small rather than large. So why is the government limiting such an important form of job protection only to employees in large workplaces? Why should employees be forced to subsidize small employers? This is not only unfair, it is bad public policy.

The leave provision only allows people, who must take up to 10 days off because of their own illness or a family crisis, their job back once their illness is over or the crisis is resolved. It does not provide them with paid time off. Many people, especially those who earn low wages, simply cannot sacrifice pay. This means that people will continue to work while ill in order to make ends meet. Moreover, by providing one leave entitlement that covers personal illness and family crises, it means that working women employed outside of the home will likely have to sacrifice their entitlement to sick leave as they have the primary responsibility to care for children, who frequently get sick. It also means that

women, and men, who take care of sick relatives have to sacrifice their wages. This is hardly fair!

The leave provision is simply a form of window-dressing if we look at the other proposals the government has made with respect to work time arrangements. At the same time that the government is selling the family leave as flexibility for workers, it is giving employers' greater power to force workers into long work weeks and erratic schedules.

As important as what the government has proposed regarding leaves is what it has omitted. The Ontario government has made no commitment to extend job protections to women and men who want to access the new Employment Insurance parental benefits that begin December 31, 2000. The changes to the *Employment Insurance Act* would enable employees to access up to one year of benefits to care for infants. The federal government has already amended the *Canada Labour Code* so that federal workers (people employed by banks, airlines, etc.) can take time off to access the benefits and have the right to return to their job. Other provinces are amending their employment standards legislation to provide for this. Ontario is not. This is clearly retrograde.

What Working People Need!

Working parents need a job-protected leave which would allow them to enjoy the year long parental benefits provided in the *Employment Insurance Act* come December 31, 2000. Ten days of unpaid family leave is no substitute. In fact, it is an insult. Working people also need a flexible form of leave that recognizes that people get sick, that members of families get sick and experience crises, and that people lose people who they love and care for. There should be specific entitlements for the adversities of life so that people do not lose their jobs or their pay. Moreover, thresholds for leaves that depend upon the size of the workplace, not only hurt the most vulnerable workers since they tend to be disproportionately employed in small workplaces, they also hurt the lowest paid workers (since small workplaces tend to pay less than larger ones).

Modernizing and Clarifying the *Act*: More of the Same?

In the second half of *Time for Change*, the government proposes to overhaul the *Employment Standards Act* to better address the needs of the growing numbers of contingent – part-time, temporary and "self-employed" workers – and to simplify it,

encourage compliance and improve enforcement. However, the government does not propose to improve a single standard or benefit for workers. In fact, it says that it is not proposing to change any of the employment standards (other than those relating to work arrangements and family leave). The most obvious omission concerns the minimum wage which has been frozen at $6.85 per hour. A substantial increase in this provision alone would assist thousands of Ontarians to rise above the poverty level. The government says that the review is only concerned with who gets employment standards and how the standards are enforced.

But this is not the real story. Among other things, the government is proposing to dump the *Industrial Standards Act*, which provides garment workers with better hours of work than they are entitled to under the *Employment Standards Act*. These vulnerable workers, many of whom are women, youth, immigrants and members of visible minorities, would see their working standards fall. Moreover, the last time the government proposed to "improve" the administration of the *Employment Standards Act*, Bill 49 in 1996, it forced unionized employees to file costly grievances in order to enforce the legislation and it forced employees, who were owed more than $10,000 by an employer who violated the legislation, to undertake a costly and time-consuming court action.

The government's mantra for changing the *Employment Standards Act* has been modern, flexible, simple and fair. But the specific changes it proposes are backward and biassed. Workers will be compelled to work longer hours with fewer protections. The government's idea of modern times is like the Charlie Chaplan movie in which workers are simply cogs in the machine of continuous production.

It is time to go forward, not back. Workers need easy to enforce standards that address the wide range of contingent jobs and provide them with a living wage and decent working conditions with time off. It is not time to turn the clock back.

Respectfully submitted,

ONTARIO FEDERATION OF LABOUR

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APPENDIX

THE FUTURE OF WORK IN ONTARIO: DISCUSSION PAPER

SUBMISSION BY THE

ONTARIO FEDERATION OF LABOUR

March 1999

CONTENTS

Responses to the Issues and Questions in *The Future of Work in Ontario: A Discussion Paper* by the Ontario Ministry of Labour

Introduction

The Ontario Federation of Labour (OFL) is the central labour organization in the province of Ontario. It has an affiliated union membership of over 600,000 members from all regions of the province. With most unions in Ontario affiliated, membership includes nearly every job category and occupation.

As a province-wide central labour body the OFL works to develop and coordinate policy as passed at our conventions and by our executive bodies. Over many years and a series of conventions the OFL has passed resolutions and policy papers on basic issues and rights of employment, such as minimum wage, hours of work and overtime legislation. The issues raised in this submission speak to those issues approved and voted on by democratically elected delegates and executive officers, plus new issues and concerns raised in the workplace as Ontario prepares to enter the twenty-first century.

The Ontario Federation of Labour has consulted with a number of provincial governments about reforms to employment legislation. Our goal has always been to increase the protection of the province's most vulnerable workers and that of our membership. Most often this goal takes us beyond the ranks of the labour movement. Non-union workers lack the protection of a collective agreement, they lack the ability to file a grievance or engage in collective bargaining. They lack even a voice on the key employment issues that impact on their daily working lives. For this very reason the OFL has tried to provide a voice where ever possible, to take up the issues that, from our long experience are the most pressing for unorganized workers, in the hopes that the government of the day will listen and ameliorate them.

We welcome the chance to submit to you our suggestions for updating the *Employment Standards Act.*

1 What do you see as the most important changes affecting your workplace?

The Ministry of Labour's discussion paper begins by making the obvious, but important point – the world of work is undergoing tremendous change. Employers are restructuring and downsizing. The sectors of the economy in which most people work are undergoing constant change such that while more manufacturing products are being produced for example, they are being produced with an ever shrinking percentage of the work force. At the same time a growth in employment can be found in the service sector. How work is organized and with what new technologies – the labour process – is also undergoing a continuous revolution. The pressure of the need to be profitable, to increase productivity in a market economy and face international competition are key factors confronting the world of work and compelling such change.

A number of these workplace changes are noted in the Ministry of Labour's discussion paper, though the paper is sadly lacking in terms of direction. It lacks both specific options for future legislative initiatives and proposed recommendations for policy changes that would enable the reader to support or suggests alternatives to the government's current thinking on the matters raised.

The basic changes noted as currently occurring in the workplace include:

- Demographic changes such as: a smaller youth share of the labour market; increases in immigration are highlighted as is the increased participation in the workforce of women.

- Changes in the occupations and sectors in which people work are noted, such as the growth of employment in the service sector. Over the last several decades this has primarily been the public and broader public sector as Ontario built a universal health care system, a public education sector and quality public services. As these areas have been down-sized by governments with other fiscal priority outlooks, the private service sector has become the center of employment growth in this sector. New services and new ways of identifying services now show managerial and professional service occupations at 34% of the work force. In significant part this figure involves the reclassification of certain service sector occupations. It is this latter service sector that shows the most growth, rather than what has traditionally been known as managerial.

- Changes in employee/employer relationships are also noted in the discussion paper. These are important as the growth of part time, contract, temporary and self-employed work become ever more prominent. The percentage of workers in full time (35 to 40 hours) employment has declined to 58% in 1997 from 67% in 1976. While shorter hours (and pay) is prominent for many, there is also a trend towards longer hours and more overtime for others.

There exists substantive literature and considerable debate on all of the identified developments. Perhaps the most heated debate at the time of writing is on the particular nature of the section of the discussion paper entitled “the Competitive Global Economy.” New trade agreements for investors such as the North American Free Trade Agreement (NAFTA) have not only facilitated more exports, often at the expense of the domestic economy, but have left us witness to other changes such as deregulation, cuts to valued social services, a significant withdrawal of government from intervention in the economy and rising inequality and unemployment.

Unemployment[1]

Missing from the discussion paper are not only examples and options about how the government could assist people with the tumultuous changes in the nature of work and employment (legislative initiatives, new regulations, re-regulation and basic enforcement), but also any options, suggestions or indeed recognition of the impact of unemployment on the labour market. The following paragraphs therefore discuss the significance of this phenomena.

Unemployment in Ontario has averaged above 9 percent for 6 consecutive years (1991 - 1996). This is the longest period of sustained unemployment since the 1930s. In contrast, the recession of the early 1980s saw unemployment fall to 5 percent after 5 years. Five years after the bottom of the 1991-1992 recession unemployment still exceeded 9%. Only in 1997 did unemployment significantly fall, although it still exceeds 7 percent.(See Figure 1)

Figure 1

As bad as the official unemployment figures are, they only partially tell us the true extent of the jobs crisis in Ontario. The official figures only tally those who meet the definition of

"actively looking for work," and thereby exclude those Ontarians who would like to work but are so discouraged by the depressed conditions that they have given up looking. Nonetheless, these people represent a pool of unutilized people who are out of work and need to be considered in a more all inclusive definition of unemployed.

Figure 2

As illustrated above in Figure 2, labour force participation in Ontario has dropped dramatically since the recession of the early 1980s. In 1989 the participation rate was 70 percent. By 1995 it had fallen to 66 percent. There has been no recovery in labour force participation since then, even though there has been some modest growth in employment.

If the labour force participation rate had remained at its pre-recession 1989 level, over 400,000 more people in Ontario would be active in the labour market (i.e. either working or actively looking for work) (see Figure 3). This decline in labour force participation represents not only a huge step backwards for Ontario's economy, not only untold hardship for hundreds of thousands of citizens, but also a massive downward drag on those employed. Hours of work, compensation levels, benefits and job security are all impacted negatively. Employment standards and the enforcement of employment standards therefore become more important than ever.

This is particularly true of the two thirds of the workforce that lacks the protection of a collective agreement. But even unionized workers feel the downward pressure noted above when they negotiate a new collective agreement or try to maintain employment levels in the workplace.

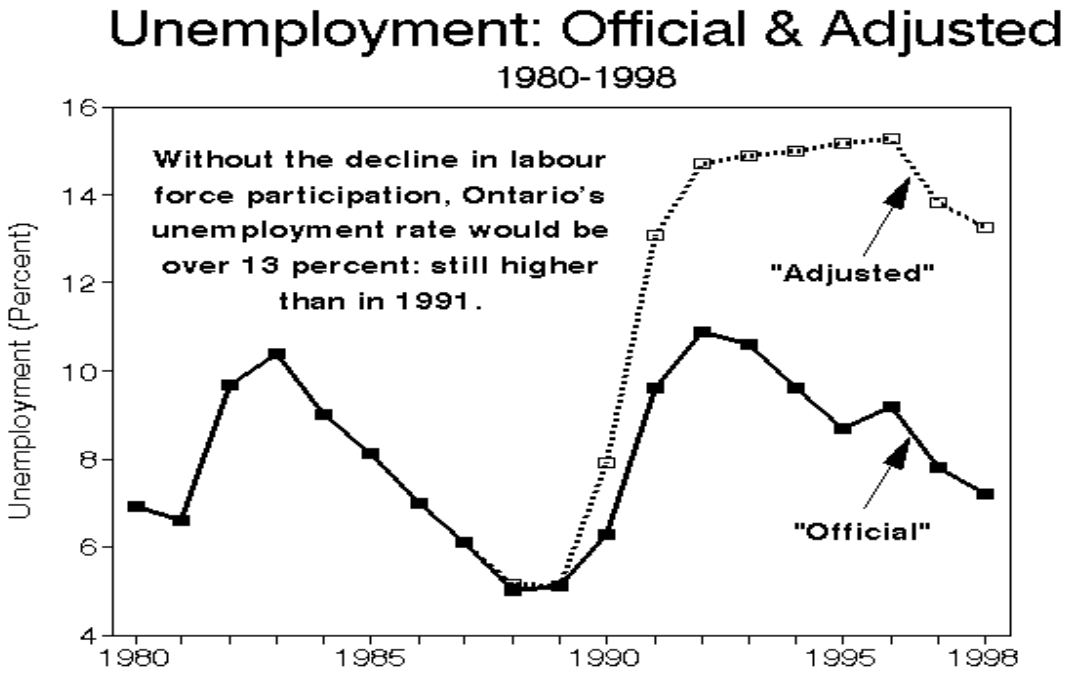

Figure 3

Youth

The official unemployment rate for youth (15-24 years) as of January 1999, fell for the first time since September 1990 to 13.6%. This is still twice the rate for the population as a whole which is 6.8%. The problems of discouraged workers and hidden unemployment is even more ruinous and tragic for young people than for the population as a whole. From a labour force participation rate of 74 percent in the pre-recession period the current situation reveals a dramatic decline to a rate of 65%. The rate is now only 62% (see Figure 4). In short, youth in the 1990s are living in the 1930s labour market.

Figure 4

Non-standard Work

The job numbers only tell part of the story. What the nature of those jobs are and what the level of compensation for them is, tell another big part. Non-standard work of various kinds has grown dramatically over the last decade. Part-time work, seasonal, contractual employment all fit into this category as do home workers. Over half of the new jobs since mid-1995 are classified as self-employed. While job growth in the self employed category is centered in the relatively expensive urban areas such as Toronto and Ottawa, the average wage level is surprisingly low. Currently, the majority of job growth in Ontario is part-time in the service sector.

Most of these jobs lack any job security, pensions, benefits or even unemployment insurance coverage. The importance of higher standards and stronger enforcement are essential to Ontarians who lack the more traditional long-time relationship of full-time employees and the protection of a collective agreement.

As the *Growing Gap* report notes, working time in Canada only looks stable, “Canadians still work, on average, a 37-hour week” like they did a generation ago. But today this average masks an increasingly polarized reality. Whereas in 1976 almost two-thirds of Canadians (65%) worked between 35 and 40 per week, in 1997 only a little more than half did (54%).[2]

Today, part-time jobs make up almost one in five jobs, whereas in the mid-1970s they consisted of one in ten. Nearly a third of part-time employees (31.5%) would prefer full-time work. This is three times the number who wanted full-time work in the mid-1970s. About 50% of those part-timers are young people. Nearly 25% of all the paid employment of women is part-time.

While more and more people then are working part-time and a growing percentage are doing so involuntarily, others are finding themselves working regular "voluntary" overtime. As the *Growing Gap* report notes: "A remarkable symmetry is emerging. One in five jobs are now part time. Similarly, almost one in five employees worked overtime in any given week in 1997."[3] Over half of overtime today is unpaid. On average the overtime worked is equivalent to an extra day per week – an additional 9 hours. While such unpaid overtime is common amongst non-unionized employees it is also found amongst **salaried** unionized employees in the broader public sector and in the private service sector, in contrast to the paid overtime in the **waged** industrial and resource sectors. In short, legislated improvements to employment standards are needed to ensure payment for overtime on the one hand and on the other to curb overtime as one essential component in a more equitable distribution of work.

In concluding this section it is evident that despite relatively strong job creation in Ontario between 1997 and at least early 1998, the nature of the labour market remains one in which unemployment and non-standard work is dominant for many workers. This has dragged down the real compensation levels of the vast majority. Those employed have been unable to negotiate wage increases that keep up with rising productivity and profits. The total value of wages, salaries and benefits paid out in the province grew by 6.9 % between 1995 and 1997. This can be compared to an 11.1% increase in corporate profits during the same period and a 16.7% growth in small business profits. In a context where the share of the economic pie continues to shrink for workers, even though the total pie is growing for the provincial economy as a whole, employment standards can play a vital role in helping those on the bottom by raising standards and ensuring that they are implemented.

Raise the Minimum Wage

A primary mechanism by which the downward drag on income levels can be ameliorated is to raise the minimum wage. The Ontario Federation of labour has long held that the minimum wage should be indexed to 70% of the average industrial wage.[4] The general minimum wage has been frozen by the current government at $6.85 since January 1995. Overwhelmingly, such work is part-time or contract. But even if the impossible happened and someone was able to work 40 hours per week all year at minimum wage, s/he would only earn **$14, 248.^{oo}.** This is their gross income! **This is $3,000.^{oo} less than the poverty line for a single person in an Ontario city!**

According to Statistics Canada (1996 averages):

- earnings among people who are not full-year, full-time earners averages $7,700.^{oo};
- fully ¾ of these people (not full-year, full-time earners) earned less than $15,000.^{oo} which is below the poverty line for single persons in most Ontario cities;
- even among full-time, full-year earners, large numbers are low earners. Almost ¼ of women full-time, full-year earners earn less than $20,000.^{oo} a year which is below the poverty line for a two person household.

Ontario government statistics on earnings and employment among people leaving welfare show that:

- among sole-support parents who have left welfare, the big majority (75% to 90%) are in temporary or casual jobs where average hourly wages are less than $10 an hour and gross weekly earnings are between $320 and $360.

Many Ontarians work for minimum wages – typically retail sales clerks, resort and hotel workers, farm workers, couriers, fast food workers and restaurant workers. In fact, one out of ten workers in Ontario.

It is time for the lowest paid people to benefit from the growing economy. The minimum wage sets a “floor” for everyone. Increasing the minimum wage would benefit us all. It is time the minimum wage be increased above the poverty line and indexed so as not to be eroded in future years.

2 How can workplace standards better reflect changes in the nature of relationships between employees and employers?

As pointed out in the Ministry's discussion paper and in answer to Question 1 above, the primary changes in the working relationship are toward increasing insecurity of employment for employees. We have several recommendations that will offer increased protection to employees in various non-standard and contingent employment relationships:

, ***No exemptions from minimum standards***

The *Employment Standards Act* has long, long lists of people who are not covered by some or all sections of the *Act* – from baby-sitters, to cab drivers, to farm workers, to hotel workers, to camp counselors, to many professionals, to group home workers, and so on. The ESA should be simplified – by ensuring that one law applies to everyone.

The ESA should also cover anyone required to "volunteer" or participate in a work placement as part of an employment or pre-employment program, including Ontario Works participants.

While the ESA already covers employees during any required "training" period, there are many employers in Toronto who need to be reminded that employees in training do not work for free or for less than minimum wage.

, ***Equal pay, benefits and rights for part-time workers***

More and more jobs are part-time. Employers are replacing full-time jobs with part-time ones and creating new part-time jobs, then treating part-time workers as second class workers – lower pay, no benefits, erratic scheduling. In Quebec, part-time workers must be paid the same wage as full-timers until their wages are twice as much as the minimum wage. In Saskatchewan there is a requirement for prorated benefits for part-timers (those who work more than 15 hours per week) and for posting schedules in advance. If part-time work is the way of the future, then the ESA of the future has to offer full recognition and protection to part-time workers.

, ***Full protection for home-workers and tele-workers***

A critical issue for the ESA in the 21st century will be to ensure that people who work from home are recognized as employees and fully protected by the ESA and other employment legislation, such as the *Occupational Health and Safety Act,* whether they work on a computer, on the telephone, stuff envelopes, assemble jewelry, make auto parts, or sew garments.

, ***Clear distinction between employees and independent contractors***

The employment trend of the 90s is calling people self-employed when they are not. Cleaners come in to work one night and are told “Sign here. You’re no longer working for me, you’re in business for yourself.” The work hasn’t changed at all, but the cleaner is no longer protected by the ESA, or health and safety or workers’ compensation laws. The same thing is happening to all kinds of sales people, personal service providers, hotel workers, garment home-workers, house painters and even workers in factories! The *Employment Standards Act* should spell out the legal “tests” that make the distinction between an employee and a truly independent contractor, as the *Ontario Labour Relations Act* does. It should be clear that as long as employees are dependent on an employer, they are employees for the purposes of all legislation and thereby have the full legal protections of such.

, ***Recognition and accumulation of service with different employers***

More and more people are working more than one part-time job, or several contracts in a year in order to survive. They may work full-time, but not for one employer, or all year but for more than one employer in a sector – retail sales, restaurant work, tele-marketing, etc. The ESA should be changed so that they can accumulate their service in a sector in order to qualify for pregnancy and parental leave, public holidays and termination and severance. One way in which this could be accomplished is through a central registry. (This idea has been proposed earlier in submissions by UNITE (ILGWU) and the OFL.)[5]

Whatever the mechanism, if work and work relationships are to change so dramatically as we head into the twenty-first century then legislation should, in our view, reflect these changes.

, ***Joint responsibility between employers***

Contracting out – it's the employers' strategy of the 1990s. Large corporations contract out production to smaller ones in order to avoid having employees and the costs and the responsibilities that go with it. Although the contractors end up with legal responsibility for employment conditions, the large corporation still has overall control in that they constitute the market, dictate the price they will pay for the goods or service and thereby indirectly dictate compensation levels and working conditions. We would therefore propose that both companies should be held jointly responsible for meeting the rules and regulations set out in the ESA.

One particular example of companies that need to be held jointly responsible are both parties to franchise arrangements. For instance, in a coffee shop chain in Toronto, the franchise owner controls every minor detail of the operation – and then claims not to be responsible for the fact that franchisee after franchisee violates minimum employment standards. Legislation needs to be drafted to correct such problems.

Similarly, employment and placement agencies should also be held responsible for ensuring that workers placed through them receive the minimum entitlements under the ESA.

, ***Restore the Employee Wage Protection Program***

The Employee Wage Protection Program should be restored and funded directly by employers. Too many workers are being left high and dry by employers through no fault of their own. The travel industry has created a fund to ensure that stranded travelers can be recompensed; it is only fair that employers take responsibility for meeting their obligations to their employees.

, ***Strengthen the anti-reprisal measures in the ESA***

Both the *Occupational Health and Safety Act* and the *Ontario Labour Relations Act* have stronger clauses to protect employees from reprisals when exercising their rights under those Acts. We recommend that the ESA have an equally strong clause that allows Employment Standards Officer to attend a workplace immediately on being informed of a reprisal and to write an order that would protect the employees job for a substantial period of time.

, ***Prohibit unjust dismissal***

Without strong anti-reprisal measures and a prohibition on unjust dismissal, employees without the protection of collective agreements will never be able to genuinely exercise the rights granted to them in the *Employment Standards Act* or other employment legislation. We have pointed out over and over again that more than 90% of employees who make claims under the ESA are no longer employed by the employer alleged to have violated their rights. This is not because they file ESA claims as revenge for having lost their employment. It is because they know that they will lose their jobs, and therefore their livelihood, if they make a claim against their employer. Generally, when employees have to choose between a continued violation of their minimum standards, or unemployment, they choose the former. In periods of high unemployment and increasing instability of employment such as we have experienced this decade, that choice is even more likely.

Recent amendments to the ESA require unorganized employees to choose between the Employment Standards Branch and the courts for redress when they have been terminated without just cause. The courts have recognized rights related to termination that are greater than those granted in the ESA. But litigation through the courts is generally too costly and lengthy for most employees to access. The ESA should therefore be amended to include a prohibition against unjust dismissal.

We address the question related to the accommodation of employees with family responsibilities below in our section on hours of work.

3 What do you think is the purpose of workplace standards?

The International Labour Organization has stated that minimum employment standards promote "social cohesion, higher productivity and efficiency". We concur with this view.

Workplace standards are also needed in order to protect employees from their employers. There is a power imbalance in the labour market. Vulnerability is not a personal trait of some or all workers. It is an objective situation in the labour market, wherein the employer has the power to unilaterally deprive an employee of her/his livelihood. The employee on the other hand has little countervailing power. Minimum labour or employment standards put a small hurdle in the way of the employer's unilateral exercise of this power where it harms employees. When there is high unemployment, as there is now and has been for all of this decade, employer's power is magnified as the employee's power to stay with or leave an employer is often only the power to choose between unjust employment or unemployment and poverty.

Workplace standards are a barrier to unscrupulous employers from exploiting vulnerable workers in the labour market and prevent them from gaining an unfair market advantage against competitors. They set out some socially-defined minimum standards of fairness and compensation in the employee-employer relationship. Ideally, minimum standards would ensure that those who had regular employment earned a living wage and would not need to rely on the social safety net to supplement their income. That is not the case now as we noted in section 1. The minimum wage has fallen too far below increases in the cost of living, and too few people are able to even find full time employment at minimum wage.

In recent years, the Ministry of Labour has referred more and more often to a concept of "*self-reliance*" in the workplace, implying that it is the responsibility of employers and employees to *jointly* ensure compliance with employment legislation. This further implies that it is the government's responsibility only to make the laws and not to enforce them. It is our view that the Ministry of Labour should be responsible for the enforcement and collection of its orders. The labour movement opposes the privatization of these functions. Organized workers should not be denied access to publically funded complaint procedures under the *Act*. Furthermore, in a non-unionized workplace the employer has all of the power and the employees have none because the employer has the authority to terminate anyone's employment arbitrarily at a very low cost. If the Ministry of Labour does not enforce its own laws, employers will simply be in the position to flaunt them without fear of reprisal. Laws are not enacted to govern the behavior of parties who would behave in a manner beyond reproach in all situations. Minimum standards need to be in place and enforced precisely to regulate the behavior of unscrupulous employers.

So, referring back to the question of the purpose of minimum employment standards, we want to be very clear – **they serve no purpose if they are not enforced.**

It isn't only those who work for minimum wages and other standards who benefit and rely on them. Employment standards set the floor for everyone else working in Ontario. Take away the basic floor of standards , and everybody falls through, not just those at the bottom, not just the 7% who earn minimum wage.[6]

What benefit are minimum employment standards to employers? The social benefits accrue to all members of society. Minimum standards provide a level playing field for labour costs and benefits. If they are high enough, they contribute to a healthy economy which enables almost everyone to support themselves and their families without additional social assistance.

4 What can the government do to ensure the employees and their employers work together to promote compliance with workplace standards? How can we better communicate what the law is about?

As we said above, the Ministry needs to actively and vigorously enforce the *Act* to ensure compliance with it. In order to effectively enforce the *Act*, it needs to be amended to include a prohibition on unjust dismissal and strong, immediate measures to deal with reprisals.

The Ontario Federation of Labour supports the Employment Standards Work Group (ESWG) recommendations concerning ways in which the Ministry can better communicate the law:

- Make it mandatory for employers to post a brief, plain-language summary of the *Act* in the workplace, as with the *Ontario Health and Safety Act*. Such a summary should also be available in languages other than English and posted in the major languages of the workforce in any workplace.

- Require employers to distribute plain language summaries of the ESA to each new employee, as they are required to have each new employee complete a TD1 for Revenue Canada.

- Require employers to post Ministry Orders in the workplace, informing employees other than those who filed claims that the employer may be violating their rights in certain ways.

- Vigorously prosecute repeat violators of the ESA and publicize such prosecutions as a deterrent.

- Carry out public education campaigns advertising and promoting the *Act* and the Branch in all large circulation newspapers (in many languages) in the province, in a similar way to that being done by the equivalent Ministry in Quebec.

- If the government continues to have the resources for periodic mass mailings to every resident in the province, we suggest that one of them each year advise people of their rights in employment.

- Ensure that plain-English summaries of the ESA be available in all government offices.

- Have the Ministry of Corporate and Consumer Affairs distribute the *Employer's Guide to the Employment Standards Act* to all new corporations as they register and impress on them that understanding employment law is as important as understanding tax law.

- Translate the *Employers' Guide* and make it available in languages other than English and French.

- Don't rely on Internet access to information. Less than one third of the population of Ontario has a computer at home, even fewer have Internet access, and we know that a huge proportion of the most vulnerable groups in the labour force do not know how to use computers.

The OFL also supports the Employment Standards Work Group's past recommendations to the Ministry of Labour concerning ways in which enforcement of the *Act* can be enhanced. These include:

- conducting "spot" inspections and audits, particularly in industries which have low wages and high staff turnover; and

- accept 3rd party complaints made to protect the anonymity of employed workers in workplaces in which there is evidence of widespread violations of the *Act.*

5 How should issues regarding hours of work be addressed? Can hours of work flexibility help to address needs of working parents?

The Ministry of Labour's *Future of Work* paper recognizes that some people are working much longer hours while other workers don't have enough hours. This trend underlies, in part, the increasing inequality of earnings in Canada. Statistics Canada analyzed data from 1969 to 1991 and found that the increase in inequality is mainly driven by changes in the distribution of annual hours worked. As the percentage of people working 35 to 40 hours per week in their main job fell, the proportion of people working 50 hours or more rose.

Ontario's employment law governing hours of work has failed to keep pace with changes in the labour market. The standard work week under the legislation – the hours worked per week before overtime must be paid – has stayed at 44 hours for the past 50 years.

We believe that the amendments to the ESA proposed in this section are the best ways in which reform of the *Act* can contribute to family life and assist parents in combining their work and family responsibilities.

, *The 8 hour day, 40 hour week*

A modern *Employment Standards Act* would provide for more paid leave time and a substantial reduction in the work week itself. Despite employers' insistence that they require even greater flexibility in establishing hours of work and overtime, the 37.5 or 40 hour work week is common in almost 80% of collective agreements in Ontario. Within Canada, the federal government has legislation enshrining a 40 hour-week standard as does British Columbia, Saskatchewan, and Manitoba. Now Quebec has moved to lower its work week. The *Fair Labor Standards Act* in the U.S. has maintained a 40 hour week for the past 60 years. Increasingly European countries are looking at reducing the standard work week to encourage employment growth. France recently adopted a 35-hour week and Italy declared a 35-hour week by 2001.

, *Overtime pay after 40 hours*

The overtime premium is now levied after 44 hours. Instead, overtime should be standardized under the law to apply time and a half payments after 40 hours per week and/or 8 hours per day.

All overtime hours after 40 hours in a week and 8 hours in a day should be voluntary.

, *Limit Weekly Overtime*

The maximum work week in Ontario is currently 48 hours. But a largely unenforced permit system allows employers to easily obtain annual and special permits to supplement the 48-hour weekly maximum. With no enforcement many employers do not bother getting the permits. Employers say that they find the process of obtaining permits confusing, cumbersome and time-consuming. The recent Red Tape Review Commission argues that employers need flexibility to adjust work schedules based on market fluctuations. It therefore recommended increasing the maximum work week from 48 to 50 hours per week or averaging work time to a maximum of 200 hours over four weeks.

It is the position of the OFL that such a recommendation takes us in totally the wrong direction. Increasing the allowable overtime to 50 hours per week would only exacerbate the existing labour market problems of poorly distributed working time and income inequality. Put simply, opening the door to even more employer discretion in setting hours and overtime means increasing the precariousness of many workers' lives.

Any consideration of averaging overtime hours beyond 8 hours a day or 40 hours a week would have extremely negative affects on workers, their families and the labour market. For non-unionized workers who have little bargaining power with employers, workers could face unsocial hours, increased stress trying to negotiate childcare and other family demands, and health and safety risks associated with extensive or periodic overtime.

Instead legislative mechanisms should be explored with the goal of more equally distributing work. Legislative provisions in the *Employment Standards Act* and beyond should be initiated to facilitate the hiring of additional employees rather than working current employees overtime.

Finally, where workers agree, the use of "flextime", which varies arrival and departure times, can offer employers flexibility around peak or core times during the work day. A variety of alternative policies can be negotiated with workers that improve employees' family life and well-being, while ensuring productivity and employment opportunities. In a time of persistent high unemployment, we need a strategy of limiting overtime to encourage job creation.

, *Scheduling of Hours*

Employment Standards should also be improved to ensure that work schedules are made available to workers well in advance. This is necessary for part-time workers or workers with irregular shifts. Similarly, many workers are forced to hold two or three part-time jobs to get by and advance scheduling is critical. We have seen recently that tens of thousands of parents try to work opposite shifts to enable them

to provide all-day at-home care for their children. Advanced and consistent scheduling is necessary if shift work is to assist families.

, ***Minimum Shifts***

Similarly, the ESA compels employers to pay workers that are called in to work a minimum of three hours whether they work the whole time or not. The *Act* should be amended to specify a minimum of three hours for shifts, scheduled or on call-in. With increasing inequities of earnings being rooted in fewer hours of paid work, the ESA can set limitations on shifting the burden of flexibility onto workers. Workers bear additional commuting and other fixed costs when working scheduled shifts of one or two hours.

, ***15 Minute Breaks***

Most employers and employees have two rest breaks a day. Many think that this is provided for in the *Employment Standards Act*. But the *Act* is silent on the question of these breaks. Yet such breaks, initiated by the unionized workers, are today the norm in factories, offices, retail stores and most other workplaces. The ESA should be updated to reflect this reality and specify the longstanding practice of two 15-minute paid breaks during each 7 or 8 hour day, in addition to a lunch period.

, ***Three Weeks Vacation after 5 years***

The ESA provides exceptionally low standards for vacation entitlements. Currently, workers are allowed only two weeks vacation after completing one year of service. As it stands, a worker can, and many do, receive only two weeks of vacation each year until retirement. Vacations are not perks or benefits. Vacations historically recognize that people need a break for social, community, health and family reasons.

It is our view that we should join many other jurisdictions in Europe and increase basic entitlements in the *Act.* At the very least, the *Act* should be amended to not only allow 2 weeks paid vacation after one year, but should allow 3 weeks vacation with pay after 5 years employment. The *Task Force on Hours of Work and Overtime* recommended this change and argued that Statistics Canada figures show that 3 week vacations had become the norm with most companies with more than 20 workers.

, ***Sick Leave, Family Leave and Bereavement Leave***

The *Future of Work* document poses the question of how changes in hours of work flexibility can help working parents. Surely a critical issue for people and working parents is paid sick leave. The *Act* is silent on the issue. To bring the ESA into the 21st century, we must ensure that employees have full job protection and entitlements to paid sick leave. The standard should be set at one day per month accumulated sick leave.

Paid Family Leave is critical for working parents. Workers, particularly women, are vulnerable to job loss when family emergencies arise. Just as maternity and parental leave protections recognize the social need for such leaves, so to must society ensure workers are protected from job loss through temporary ill health of family members. At a time when working people must care for sick children or elders, workers should not be penalized through job loss. Full job protection and entitlement to paid family leave must be established as a basic standard under the ESA to a minimum of five days per year.

The *Employment Standards Act* is also silent on bereavement leave. While most work places with collective agreements have enshrined the rights of workers to take leave when a loved one and family member die, it is precarious workers who are vulnerable to job loss and wage loss when a family member dies. Again, basic bereavement leave must be enumerated in the ESA for all workers.

6 Do workplace standards need to be changed to reflect new forms of work? How?

In the sections above, we have enumerated how workplace standards need to be changed to protect workers in new forms of work.

7 How can workplace law be made more accessible to the people of Ontario?

We have outlined several important recommendations for making workplace law more accessible to the people of Ontario in our answer to Question 4 concerning communications. In addition to those we would add:

- ***Office Hours***

  The lack of real protection for workers without a union means that nine out of ten of them must wait until they have left a job before filing a claim for unpaid wages, overtime, vacation pay and other violations of basic employment standards. Many of these workers have already moved on to new jobs. With the Ministry of Labour's office hours being restricted from 9:00 a.m. to 4:30 or 5:00 p.m., it is difficult for workers to get access to information and filing of claims. People must take time off from work to file claims and attend fact finding meetings. At best it means a loss of a day's wage which is a real hardship for low-wage workers. But for many workers there is a fear of being fired for requesting time off. This very real fear, in our view, acts as an additional pressure on workers to abandon their claims. The limited hours of operation and locations of operation of the Employment Standards Branch present insurmountable barriers which prevent workers from exercising their rights under the *Employment Standards Act*.

- ***Staffing***

  The provincial government has reduced employment standards officers staff positions by 25%. The negative impacts of these cuts are only now being felt. For workers attempting to access a fair and equitable process to recover lost wages or other earnings, the delay is unjust. The average length of time it took Employment Standards Officers to process workers' claims in 1996-97 was almost 5 months. For many workers, the wait was much longer. Adequate staffing is essential to ensure access to the *Employment Standards Act* and the remedies it provides.

Conclusion

Throughout this submission we have spoken to the main changes we see as necessary. Our thinking on these issues arises from our experience in the workplace and the specific problems that we have encountered. Our concerns also arise from the broader context of the ever changing world of work. The workplace is undergoing dramatic changes as we head into the 21st century. Re-structuring, downsizing, new technologies, the demand for new and different skills, the continued decline in employment in sectors such as resource extraction and manufacturing, the fiscal and ideological limits on public sector growth and the substantial rise in employment levels of the private service sector. Co-incident with this growth is that of the small workplace and non-standard work.

The extent and rapidity of such changes, together with the pressure of international competition, means that Ontario's working population could face continued pressure to compete on the basis of the lowest common denominator i.e., lower wages and lower standards. It is the view of the Ontario Federation of Labour that this is not the best path for working people or government in Ontario. Laws need to be adopted in the changing world of work with a vision of an Ontario that is a better – more just, more equal, more prosperous – place to work. This means higher standards and improved enforcement.

To provide you with a concrete example of how we think the *Employment Standards Act* should be modernized, the appendix provides a one page list of needed reforms to the *Act*.

Respectfully submitted.

ONTARIO FEDERATION OF LABOUR

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APPENDIX

ONTARIO'S EMPLOYMENT STANDARDS:
WHAT *REAL* MODERNIZATION WOULD LOOK LIKE

Ì TOUGH, PRO-ACTIVE POLICING OF EMPLOYMENT STANDARDS:

- Inspection and “spot checks” of corporate pay roll records
- Real protections from employer reprisals

Í NEW IMPROVED WORKING STANDARDS

In the modern work world, we need stronger laws, not weaker ones.

! **NO EXEMPTIONS FROM EMPLOYMENT STANDARDS**
Regardless of age or where we work, the same employment rights must apply.

! **RAISE AND INDEX THE MINIMUM WAGE**
The minimum wage should be raised to 70% of the average industrial wage and indexed so that as inflation rises the minimum wage rises with it.

! **OVERTIME PAY AFTER AN 8 HOUR DAY, 40 HOUR WEEK**
The current law only provides overtime pay after 44 hours.

! **3 WEEKS VACATION AFTER 5 YEAR'S SERVICE**
Other provinces have this law. All we have is 2 weeks after 1 year’s service.

! **MORE PAID HOLIDAYS**
In addition to the 9 under current Ontario law, we need more paid holidays (during the December 24-31 period, for example).

! **EQUAL PAY FOR PART-TIMERS**
“Part-timers” should get the same hourly rate as “full-timers” doing the same job.

! **PAID BREAKS**
We need a guarantee of a rest break in each half shift. Now there's only an unpaid 30 minute lunch break after 5 hours.

! **RIGHTS TO SICK LEAVE AND PERSONAL LEAVE**
Ontario offers no job protection if we’re sick or caring for a sick family member.

! **PROTECTIONS FOR TELEWORKERS AND OTHER HOMEWORKERS**
No employer should be able to force us to turn our home into a workplace.

! **JUST CAUSE LEGISLATION**
Employers should have to justify the dismissal of employees. Currently we only have anti-discrimination laws under the Ontario Human Rights Code.

! **PROTECTION FOR “DEPENDENT" CONTRACTORS**
Some firms evade the law by declaring a worker an " independent" contractor.

ENDNOTES

1. Sources for section 1: Labour market data is from Statistics Canada, *The Labour Force Information, and Employment, Hours and Earnings* as cited in Jim Stanford, CAW, *The Harris Governments and Jobs in Ontario: Another Look.* Figures 1-4 taken from this September 1998 study.

2. Yalnizian, Armine. *The Growing Gap: A Report on Growing Inequality Between the Rich and Poor in Canada*. Centre for Social Justice, 1998.

3. Ibid. p. 27.

4. Ontario Federation of Labour, Proposed Changes to the *Employment Standards Act*, June 27, 1990.

5. Submission by the Ontario Federation of Labour to the Ministry of Labour's Consultation Paper *The Employment Standards Act* and The Protection of Homeworkers, August 8, 1993.

6. The Ontario Federation of Labour has written on the role of employment standards and their policy importance in earlier briefs to the government, see *Submission by the OFL to the Standing Committee on Resources Development: Bill 49 Employment Standards Improvement Act, 1996*, August 19, 1996.