



On behalf of our members, the Ontario Road Builders' Association (ORBA) is pleased to provide a written submission on the "Proposed Amendments to the Employment Standards Act, 2000 to Prohibit Employers from Entering Non-Compete Agreements with Employees" under Bill 27: *Working for Workers Act, 2021*.

Formed in 1927, the Ontario Road Builders' Association is proud to represent the road building sector in Ontario. Our members build the majority of provincial and municipal roads, bridges and transportation infrastructure across the province. The road building sector directly and indirectly employs approximately 56,000 workers at peak season and impacts all Ontarians.

### **Proposed Measures Prohibiting Employers from Entering into Non-Compete Agreements with Employees**

Our Association has serious concerns regarding the proposed measures prohibiting employers from entering into non-compete agreements with employees. It is often the case that high-level executive severance packages include a non-compete agreement in addition to compensation. This has become standard practice in many large

industries and corporations. These employees are well compensated in part because of the non-compete agreement. In return, employers are protected against company knowledge moving to their competitors. Our members operate in a low-bid environment, which means that the difference between bids is sometimes small. Any added advantage a contractor has over the other could make a difference in being awarded a large, multi-year project.

ORBA members recognize that employers will still be able to use contractual terms such as a non-solicitation, confidentiality, or non-disclosure agreements. These terms offer a different kind of protection and do not protect the employer from industry experience such as general knowledge, connections and relationships being poached by a competitor.

Due to severe labour shortages, the hiring pool in the road building industry is quite limited, meaning employers are often competing for talent, particularly in positions such as graduated apprentices, mechanics and heavy equipment operators. A non-compete agreement is useful in this instance to ensure that when hired, an employee is retained. Employers invest money and years of training for specialized employees to be able to work effectively on a jobsite. Losing an employee to a competitor after such an

investment limits the economic and intellectual growth of a company. “Brain drain” is a common problem in the construction sector.

It is also extremely important that there is the added exception made for employers to enter into non-compete agreements as part of the sale of a business. When a contractor takes ownership of a business in whole or in part, it is common for a non-compete agreement to be used to protect the buyer from having to compete with the seller. If the seller were to become an employee of the buyer as part of the package, a non-compete agreement could be useful to prevent the seller from leaving and taking industry knowledge and previously sold information with them.

We would like to thank you for the opportunity to comment. Please do not hesitate to contact Brianna Puigmarti, Policy Advisor, Policy and Stakeholder Relations Division at 905-507-1107 ext. 230 if you have any questions or concerns.