



Submission to the Standing Committee on Social Policy

# Bill 27: Working for Workers Act

November 18, 2021

Ontario Road Builders' Association



On behalf of our members, the Ontario Road Builders' Association (ORBA) is pleased to provide a written submission to the Standing Committee on Social Policy on 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.

Comments in this letter have been prepared with consultation from all levels of our membership. Our members have expressed a number of concerns regarding two clauses under Schedule 2 of Bill 27: the requirement for a disconnect from work policy, and measures prohibiting non-compete agreements in employment contracts.

### **Proposed Requirement for Policies on Disconnecting from Work**

Our Association supports providing employers with the flexibility to develop employee policies that are appropriate to the work environment and operational requirements specific to the road building industry. As mandated by law, our members follow all requirements related to work hours as outlined in the *Employment Standards Act*.

The Ontario road building industry delivers projects based on a "just-in-time" delivery model, necessitated by production limitations on materials. When a problem does occur, either with the materials, equipment or at the jobsite, management and employees need to be able to respond efficiently to handle the problem before major cost implications incur. For example, a broken-down or unmanned paver at a jobsite could cost a contractor several thousand dollars when inactive. Roadside construction work environments are often large, complex operations, with relatively tight profit margins and project timelines, and very little room for error.

Our industry is also dependent on the weather, with the average seasonal window for construction lasting approximately 6 to 8 months. Management and employees understand that because of these unique conditions, problems need to be mitigated quickly, regardless of work hours.



It might be the case that a project manager has both a day crew and a night crew, for which they would be expected to be available for a quick phone call or email, in the event of a problem. Similarly, many road building companies operate across different time zones and higher management need the flexibility to respond to issues regardless of time. A “disconnect from work” policy could cause further workplace restrictions that are extremely problematic for our industry.

Another large part of the road building industry is road maintenance, which includes salting, snow removal and bridge maintenance. Ontario’s weather can be unpredictable, particularly in the north, and quick seasonal changes lead to road maintenance workers sometimes jumping into action at the drop of a hat. Across the broader construction sector, there is a shortage of labour; 100,000 workers are expected to retire from the industry by the end of the decade. With potential crew shortages on both the construction and maintenance side of road building, any shift that isn’t covered could lead to problematic conditions, and in the case of snow removal, unsafe roads.

Flexibility has been key to many industries operating through the recent pandemic. The road building industry was deemed essential and remained operational throughout the last 19 months. In the event of another pandemic, the road building industry needs the same flexibility it had with respect to employee work hours in order to help keep the roads safe and the economy moving.

Our Association recognizes the need for workplace requirements that contribute to the overall safety and positive work-life balance of our members’ employees, however the proposed requirement ensuring employers have a written policy to address “disconnecting from work” could lead to more problematic work hour controls in the future. Our industry is also concerned about how to incorporate a “disconnect for work” policy when much of the work in this industry operates outside of what is considered conventional work hours.

### **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.