

## Ontario leaves live-in superintendents exposed

Review of exemptions to the Employment Standards Act promised for fall

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By Barbara Carss

Live-in superintendents in multifamily buildings continue to have little protection in Ontario law. Earlier hints that the provincial government might move quickly to guarantee entitlement to the minimum wage, overtime pay, set working hours with food breaks and public holidays proved unfounded when proposed amendments to the Employment Standards Act (ESA) were introduced, in [Bill 148](#), in June. Instead, a review of the Act's many exemptions and industry-specific rules has been promised for the fall of 2017.

For now, market demand and the goodwill of employers are still the prime determinants of superintendents' working conditions. Industry insiders affirm that they have to offer compensation in line with other positions in the labour force even if there are few formal requirements to do so enshrined in law.

“Especially in light of fierce competition for site staff from the condo industry, we typically remunerate them above what is currently required according to the Employment Standards Act,” says Randy Daiter, vice president, residential properties, with M&R Holdings. “Superintendents have hours in the 40-per-week range. However, given the nature of the role, they also fulfill the very important requirement to be available for urgent situations outside regular business hours. They do receive holidays and days off when they are not expected to be at the building.”

Employees in dozens of sectors are named in [Ontario Regulation 285/01](#), which sets out allowed exemptions to the Employment Standards Act, but live-in superintendents are the only non-student category excluded from entitlement to the minimum wage with no stipulated alternative minimum threshold. Nor is there guidance for calculating the value or wage equivalence of living accommodations — something the regulation does spell out for live-in workers, like nannies, in private households.

Findings from the [Changing Workplaces Review](#) — conducted by the Ontario government's specially appointed advisors, who were mandated to consult widely and deliver the recommendations that now underpin much of Bill 148's core content — reiterate that superintendents enjoy greater regulatory safeguards elsewhere in Canada.

“British Columbia and Nova Scotia are the only other provinces that have exemptions for superintendents. However, their exemptions are narrower than those in Ontario,” states the special advisors' [interim report](#), released in the summer of 2016. “In British Columbia, superintendents are exempt from eating periods and overtime pay. They are also subject to a

special minimum wage rule under which they are entitled to a monthly base wage and a certain amount per unit supervised. In Nova Scotia, they are only exempt from overtime pay.”

## Differing Workplace Circumstances

The interim report suggested the advisors would recommend a straightforward reinstatement of superintendents’ entitlements unless they heard convincing arguments for the exemptions. However, their final report, released in late May, pulls back from that position. The recommendations outline a potential new process for ongoing review of the ESA’s sector-specific rules and exemptions to ensure they continue to be relevant and defensible.

The special advisors acknowledge that a multi-sectoral and steadily evolving economy needs flexibility to address differing workplace circumstances and varying challenges that might arise. Notably, landlords carry obligations as both employers and highly regulated housing providers.

“There would be backlash if superintendents are not able to respond to tenant service requests in a timely manner. We view the current exemptions under the employment legislation as recognition by the government of the distinct elements of the superintendent role,” Daiter observes. “Like any job, there are pluses — i.e. the housing benefits — and minuses, but, overall, I’d say the scale balances for a mutually beneficial employment arrangement.”

In another industry-related example, the construction sector is also exempt from the ESA’s requirements relating to hours in the workday and prescribed periods for eating, but it has not been an issue in a largely [unionized workforce](#). “A collective agreement, as long as it doesn’t promise less than the ESA, supersedes. It’s always the dominant document,” explains Andrew Pariser, vice president with the Residential Construction Council of Ontario (RESCON).

The Changing Workplace Review’s special advisors caution against occasional adjustments to the Act becoming inadvertently entrenched. Those pertaining to live-in superintendents are pegged to the less-than-precise date of “at least since 1969” and are among some of the 85 current exemptions under the ESA that are deemed due for critical scrutiny.

“We received no submissions (following the interim report) from residential property employers with respect to residential building superintendents, janitors and caretakers,” the final report notes. “Rather than eliminate the exemption on the basis that no submissions were received from the employers, we recommend an early review of the regulation applying to this group of employees because of its breadth and the resulting anomalous treatment compared to others similarly situated in the rest of the country.”