



**Ontario College  
of Pharmacists**  
Putting patients first since 1871

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## **Ontario College of Pharmacists Submission to the Ministry of Labour:**

### **Consultation on *Employment Standards Act* Exemptions for Pharmacists**

**February 2018**

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## I. Executive Summary

The Government of Ontario has been consulting with key stakeholders and seeking public input on current exemptions, special rules or exclusions under the *Employment Standards Act, 2000* (ESA). As part of its review, and mindful of the Ontario College of Pharmacists' ("the College's") mandate to serve and protect the public, the Ministry of Labour asked the College to provide a submission on whether the current pharmacist exemptions under the ESA should be maintained.

The College undertook consultation activities with both pharmacists and members of the public with a focus on the impact of removing or maintaining the exemptions on the safety and quality of patient care and access to pharmacy services.

In analyzing and summarizing the responses, the College found the following:

- The majority of respondents, both members of the public and pharmacists, support removing or modifying the ESA exemptions. Many pharmacists believe that doing so would have positive impacts on patient care. There was no strong consensus from the public as to whether removing the exemptions would have an overall positive or negative effect on the safety and quality of patient care.
- Comments were provided by both the public and pharmacists which suggested concern that long working hours of pharmacists could increase the risk of error and therefore be detrimental to patient safety.
- Pharmacists were primarily concerned with the exemption related to eating periods and hours of work as it was reported to have the most impact on how they provide patient care.
- While some respondents felt that removing these exemptions could result in a pharmacy needing to close to accommodate a pharmacist's break and as a result affect access to pharmacy care, many others felt that patients have adequate choice of pharmacies if their own was closed for a short period.

In light of the feedback received by the College and in line with the College's role as the regulator of pharmacy dedicated to serving in the public interest, the College recommends that the Ministry consider the following in their review:

- The degree to which the impact of removing exemptions (or a sub-set of them) may result in greater patient safety through a potential reduction in the risk of errors.
- The extent of the impact of removing exemptions on timely access to pharmacy services, especially in rural communities.

Ultimately, when considering any changes to legislation or expectations of pharmacies and pharmacy professionals, it is the College's position that **patient safety must be the foremost priority**. Furthermore, any changes made under the ESA must not act as a barrier to pharmacists providing patient care in accordance with legislation, standards of practice, the Code of Ethics and College policies and guidelines.

## **II. Introduction**

The Ministry of Labour is conducting a review of the special rules and exemptions under the ESA. The ESA sets out the rights and responsibilities of employees and employers in most Ontario workplaces and provides the minimum standards for most employees working in Ontario.

Pharmacists are currently exempt from certain areas of the ESA, including hours of work and eating periods, overtime pay, minimum wage, public holidays, vacation with pay and personal emergency leave. The College, in its capacity as the regulator of pharmacy in the province, was asked to provide the Ministry of Labour with a written submission on whether the profession's exemptions from the ESA should be maintained as they relate to pharmacists.

Three consultation activities informed this submission:

- An online consultation portal on the College website between November 20 and December 15, 2017 to get input from the public and pharmacists.
- Discussion with four focus groups comprised of individuals – general public – from across Ontario and moderated by an external research and polling group.
- Questions included within a weekly omnibus survey directed to approximately 1,000 Ontarians, done by the same external firm.

Taking an approach that aligns with the role of the College to regulate the practice of pharmacy in Ontario along with its mandate to serve and protect the public interest, the scope of the consultations conducted by the College were specific with respect to patient and public safety. In all cases, respondents were asked to consider the impact of removing or maintaining the exemptions for pharmacists in the context of access to pharmacy services and the quality and safety of pharmacy care.

While the Ministry requested information and feedback related to pharmacists who are employees, rather than independent contractors or employers, it was not possible for the College to separate responses from pharmacists into the different categories. Thus, all responses that were received through the online consultation are reflected in the findings below.

The College also reviewed the input related to pharmacists submitted by professional associations to Ontario's Regulatory Registry from October 18, 2017 to January 1, 2018. Their feedback is addressed separately in the report.

## **III. Background**

### **A. Ontario College of Pharmacists**

The Ontario College of Pharmacists regulates pharmacies, pharmacists and pharmacy technicians in the province of Ontario. The College's mandate is to serve and protect the public and hold Ontario's pharmacists and pharmacy technicians accountable to the established legislation, standards of practice, Code of Ethics and policies and guidelines relevant to pharmacy practice. The College also ensures that pharmacies within the province meet certain standards for operation and are accredited by the College.

## **B. Pharmacist Practice in Ontario**

There are over 15,000 pharmacists registered to practice in Ontario. Most pharmacists work in community or hospital pharmacy providing direct patient care. Pharmacists in the community are often the most accessible and convenient healthcare professional for patients.

The practice of pharmacy is the promotion of health, prevention and treatment of diseases, dysfunction, and disorders through medication and non-medication therapy; the monitoring and management of medication therapy; the custody, compounding, and dispensing of drugs; and the provision of healthcare aids and devices and information related to their use. Pharmacists have a unique body of knowledge respecting drugs and drug actions, interactions, and effects, based on their extensive education and training in such areas as medicinal, physical, biological, and pharmaceutical chemistry, anatomy, physiology, biopharmaceutics and pharmacokinetics, therapeutics, pharmacology, and pathology.

In recent years, the pharmacist's role in the health care system has expanded to include services beyond dispensing medication and counseling patients on their drug therapy. Since October 2012, expanded scope has allowed pharmacists to provide services that include prescribing certain drugs and administering certain vaccines. Pharmacists also initiate therapy for smoking cessation to promote healthy lifestyles, and administer flu shots through the province's Universal Influenza Immunization Program. There is also an increasing role for pharmacists to play in confronting and reducing the harms of ongoing healthcare issues such as the opioid crisis.

Pharmacists are expected to practice in accordance with the Code of Ethics, relevant legislation and policies and the standards of the profession. They must also abide by the Model Standards of Practice for Canadian Pharmacists (MSOPP) and the Supplemental Standards of Practice for Schedule II and III Drugs. These standards outline the responsibilities of a pharmacist, including pharmacists managing a pharmacy.

The Standards of Accreditation under the *Drug and Pharmacies Regulation Act, 1990* outline the responsibilities of the designated manager, owner and directors when operating a pharmacy. The standards, taken together, create an overarching obligation on designated managers, directors and corporations to support the provision of quality services.

## **IV. Methodology and Limitations**

### **A. Online Consultation**

A total of 384 responses through the College's online consultation portal were evaluated. Two responses were identified as duplicate and were removed. Five responses did not meet the objective of the consultation and were also removed, leaving 377 responses for analysis.

A detailed analysis of the responses was structured based on various criteria, including type of respondent, whether they expressed support for maintaining or removing the ESA exemptions, and whether the respondent comments about the exemptions have an impact on the quality of pharmacy services delivered to the patient or patient safety.

In addition, some of the responses were grouped into themes to provide a more in-depth and contextualized insight into the workplace for pharmacists who currently have exemptions under the ESA.

The majority of responses (94%) in the online consultation came from pharmacists. Less than four percent of the online consultation responses identified as members of the public, which is consistent with public consultations that the College has done in the past. The remaining two percent were comprised of individuals working in the pharmacy who were not pharmacists as well as those respondents who chose not to identify themselves.

#### *Limitations*

While the College makes the consultation portal available to pharmacy professionals, stakeholders and the public, pharmacists generally make up the majority of responses to consultations conducted by the College. This consultation was promoted through the College's social media channels, website and email newsletter, in addition to some paid social media advertising targeting the public.

The responses from pharmacists, the public and other respondents should not be considered a representative sample, as respondents self-selected to participate. In addition, while the College set out specific questions that respondents were asked to answer, respondents were able to comment freely – ultimately, many provided anecdotes rather than clear statements of support or disagreement for removing the exemptions. As well, it was not possible for the College to separate responses from employee pharmacists from those of employers or owners.

### **B. Focus Groups**

Four focus groups were hosted by Leger, a well-known research firm. There were a total of 28 participants of varying ages and income levels, with two groups conducted in person in Toronto and two conducted online with participants from across the province. All participants had used a pharmacist a minimum of two times in the last six months. Respondents were provided the same information regarding the ESA that was shown in the omnibus survey (see Appendix 2).

#### *Limitations*

The responses provided through the focus group should not be considered a representative sample. However, their comments were very helpful in illustrating public concerns around ESA exemptions for pharmacists.

The four focus groups were originally established to consult on other aspects of the College's activities and therefore, discussions were not solely focused on the ESA exemptions.

### **C. Omnibus Survey**

A survey of 1,010 Ontarians was completed online between December 11 and 14, 2017 using Leger's online panel, LegerWeb. The College was able to include three questions specifically regarding the exemption of pharmacists from the ESA (see Appendix 2 for the report from Leger). Leger notes that a probability sample of the same size would yield a margin of error of +/-3.0%, 19 times out of 20.

### *Limitations*

Respondents to the survey had limited and high-level information provided to them regarding the exemptions with no opportunity to seek clarity on any questions they might have. Additionally, there was no measure as to whether any of the respondents have regularly sought the services of a pharmacy.

## **V. Summary of Results from the Consultations Conducted by the College**

The feedback obtained through the online consultation, the focus groups and the survey was analyzed and is summarized below.

### **A. Findings from the Online Consultation**

**The majority of respondents support removing or modifying the ESA exemptions for pharmacists.**

Fifty-seven percent of respondents supported removing the exemptions or suggested modifications to the exemptions. Respondents expressed varying degrees of support: some respondents believed all of the exemptions should be removed, while others believed that the only ESA exemptions that needed to be removed or modified were eating periods and hours of work.

Approximately six percent of respondents supported maintaining the exemptions.

Over one-third (37%) of respondents did not clearly comment on whether they support maintaining or removing the exemptions. Instead, they generally shared anecdotes or issues they have experienced in their practice that they felt were related to potential changes under the ESA.

**The majority of respondents were concerned with hours of work and eating periods.**

Overwhelmingly, there was an expression of concern regarding the impact the current exemptions have on the ability of pharmacists to take breaks and to limit their working hours. Many pharmacists shared stories of when not being able to eat or rest had negative effects on their own health and the care they provided to patients.

#### **Public perspective:**

*"I do not want someone responsible for my medication to be suffering low blood sugar, dehydration, fatigue."*

There were a few respondents who felt that, as professionals, pharmacists should make their own decisions about when to take breaks, and that the ESA is not an appropriate enforcement mechanism for this group of professionals.

However, many pharmacists believed that unless mandated through law, employers will not feel they need to provide coverage for breaks and eating periods. Respondents signaled that this leaves them in a difficult position since a pharmacist must be available if the pharmacy remains open to the public.

Other issues related to the exemptions, such as vacation pay and public holiday pay, were not discussed as frequently. Many pharmacists indicated that they already received these benefits from their employers.

**The majority of respondents believe there would be a positive impact on the quality of pharmacy services and safety of patients if the exemptions were removed, while recognizing there may also be some unintended consequences.**

Seventy-seven comments were specific to the safety and quality of patient care and accessibility of pharmacy services if the exemptions were removed. The majority of respondents believe that this impact would be positive, as access to breaks and other workplace entitlements would improve working conditions, which many say would result in better patient care. Many respondents asserted that under the current exemptions there is a risk to patient safety, meaning a lower standard of patient care and increased medication errors, because they do not receive adequate breaks and are scheduled for long or consecutive shifts.

At the same time, respondents flagged the following potential unintended consequences:

- If there were no corresponding changes to the expectations of the employer in regards to output and activities, the benefits of a break would be negated by feeling more rushed and pressured to fit the same amount of work into less time, paradoxically affecting patient safety.
- The availability of timely service might decrease, particularly in rural areas and small pharmacies where only one pharmacist is employed and the pharmacy needs to close when that pharmacist is not present. However, there was not consensus on this point as some respondents stated that most patients have many pharmacies within a short distance of each other, and many pharmacies are staffed by multiple pharmacists.

**Public perspective:**  
*“Patients don’t have the luxury of time when commuting long distances.”*

**Many respondents commented that the role of the pharmacist in the health care system has changed since the ESA exemptions were first put in place.**

Many pharmacists commented that today they have a greater role in providing a range of pharmacy services. They noted that pharmacy hours of operation are longer and they feel expected to do more without the necessary staff to support them.

## B. Results of the Omnibus Survey and Focus Groups

*The survey and focus groups were directed exclusively to the public.*

**The majority of public respondents believe that pharmacists should not be exempt from the standards in the ESA.**

The consensus from the focus groups along with 59% of Ontarians polled in the survey, is that pharmacists should not be exempt from the standards in the ESA. Only one-quarter of respondents to the survey believe pharmacists should continue to be exempt.

### **Public perspective:**

*“These employees should be eating, taking their breaks, taking vacation.”*

**Public respondents expressed concern for people living in smaller communities who may not be able to access a pharmacy when in need.**

Similar to the online consultation, public respondents signaled the risk of unintended consequences associated with removing the exemptions. Despite believing that pharmacists should not be exempt, there was some concern expressed for whether patients living in smaller communities would be able to access a pharmacy when in need. Based on results from the survey, roughly four-in-ten Ontarians agree that removing the exemptions would have a negative impact on access to timely pharmacy care. However, members of the focus group weren’t as worried as they felt people could find alternative ways to access pharmacy care in these situations, such as by planning ahead or accessing an open pharmacy nearby.

### **Public perspective:**

*“If you live in a small town and you go to your doctor late in the day, you should still be able to get your prescription.”*

### **Public perspective:**

*“If you are tired, you can make a mistake. They should have a certain number of hours.”*

Ontarians who responded to the survey were unclear overall on the impact to the safety and quality of patient care of either maintaining or removing the exemptions, with about 40% saying that it would have a negative impact and about 40% saying that it would have a positive impact.

The impact of maintaining the exemptions was more clearly expressed in the focus groups. Participants expressed concern about the safety and quality of patient care they would receive when pharmacists were working too many hours.

## C. Key Findings

The following highlights key findings from all three consultation activities.

- There is strong support, from both the profession and the public, for the removal or modification of the exemptions for pharmacists under the ESA.
- The majority of pharmacist respondents believe that there would be a positive impact on the quality and safety of patient care if the exemptions were removed.

- The public who participated in the focus groups were concerned about risks to their health and safety due to pharmacist fatigue. However, in the survey there was no consensus on whether the removal of the exemptions would have a positive or negative impact on the quality and safety of patient care.
- The major exemptions in the ESA that concerned pharmacists were related to hours of work and eating periods.
- There were some concerns around accessibility of pharmacy services if pharmacists were granted eating periods and limits on hours of work that resulted in changes to pharmacy hours of operation, especially in rural communities.
- Pharmacists are concerned that without accompanying structural or staffing changes, removing the exemptions could result in new patient safety and workload management issues.

## **VI. Review of Ontario Regulatory Register Responses**

There were 22 responses submitted through the Ontario Regulatory Register; four responses were from professional associations (representing business, retailers, pharmacies and pharmacists), one was a duplicate, and the remaining responses were from pharmacists.

The responses from the professional associations were reviewed but are not reflected in the findings above as the College was specifically requested to focus its consultation and analysis on employee pharmacists and the public. However, the College did observe that the comments from professional associations expressed concern over operational challenges and the economic impact on businesses if the exemptions are removed. In general, the professional associations support allowing rest and eating periods for pharmacists as long as there is flexibility built into the standards for meal breaks. They are concerned that there is a potential negative impact to patients if pharmacy operations are interrupted, suggesting that it is not practical to have a second pharmacist available for coverage in a small pharmacy. Larger pharmacies use a team of pharmacists who work extended hours but do not necessarily overlap shifts to allow for coverage in the pharmacy.

## **VII. Recommendations and Considerations**

The College's mandate is to serve and protect the public interest. As such, the College's consultations on whether to remove exemptions for pharmacists under the ESA were focused on potential impacts on safety, quality, and access to pharmacy care. Regardless of any changes made to the ESA, the obligations of pharmacists to the Code of Ethics, the standards of practice and applicable legislation and policy will be upheld. It is the College's expectation that, no matter the practice setting or business demands, pharmacists must provide care that puts the patient first.

Any changes to the ESA regarding pharmacist exemptions may also have unintended consequences on patient care, pharmacy operations and the pharmacy's work environment. In drafting the recommendations below, the College has described some of the potential impacts, based on the feedback received.

***Therefore, the College recommends that the Ministry consider the following in its review:***

- **The impact of removing exemptions on public safety and the quality of pharmacy services.** Many pharmacists raised concerns that current conditions are contributing to risks for patients, for example by having pharmacists providing patient care when they have not had sufficient breaks for rest and eating. There were a number of respondents who felt that removing the exemptions would lead to a decrease in the incidence or risk of medication errors, thus improving patient care. From the public perspective, many members of the focus groups were concerned about the risk of pharmacist error due to fatigue and long hours.
- **The impact of removing exemptions on timely access to pharmacy services.** Respondents were divided on whether removing the exemptions would affect patient access to care. Under the *Drugs and Pharmacies Regulation Act*, a pharmacy cannot operate without a pharmacist physically present (unless the pharmacy has the ability to restrict the public from access to any drugs referred to as Schedule I, II or III). In urban areas, there are generally many pharmacies and multiple pharmacists on staff and access may not be an issue. However, the Ministry may wish to consider the impact that requiring breaks or restricting hours of work could have on rural communities that only have one pharmacy. There may be potential compromises to certain requirements; for example, a pharmacist could be required to take a break, but has to remain physically present in the pharmacy.
- **The recognition by many pharmacists that they consider themselves primarily employees.** Many pharmacists felt that while they were considered healthcare professionals, they were not independently able to make decisions about breaks, limits on hours of work and other benefits, which sometimes compromised their well-being. The Ministry may wish to consider whether a changing work environment means that pharmacists are more often being treated as employees by their employers and not independent professionals.
- **The business models currently present in pharmacy.** Unlike many other regulated healthcare professionals, pharmacists cannot manage patient volume through an appointment system. Many pharmacies function with only one pharmacist on duty at any given time, supported by pharmacy technicians and/or pharmacy assistants. Should pharmacists be required to take breaks, it may not always be feasible to provide pharmacist coverage for that short period. This may mean that the pharmacy needs to close for that period, which could restrict access to products beyond medications (e.g. food, wellness, personal care). Alternatively, the pharmacy may need to break up full-time shifts into multiple swing or part-time ones. Either of these may result in negative impacts on patient access or continuity of care. The Ministry may wish to consider how removing the exemptions could be done in a way that takes into account the various business models that exist in pharmacy.

## VIII. Conclusion

This submission was informed by hearing from the public and pharmacists. While the College, as the regulator of pharmacy in the public interest, does not hold a position on whether specific exemptions under the ESA should be removed, this report summarizes many of the issues identified with doing so and outlines potential impacts on patients, pharmacists and pharmacies.

Ultimately, when considering any changes to legislation or expectations of pharmacies and pharmacy professionals, it is the College's position that **patient safety must be the foremost priority**.

The College would be pleased to continue to work with the Ministry of Labour and other key stakeholders regarding the profession's exemptions from the ESA to ensure that the safety and quality of and access to pharmacy care for patients is maintained or improved.

## IX. Appendices

### Appendix 1: Responses Received Through the Online Consultation

*A copy of the responses received through the College's online consultation is available on the College's website: [Consultation on Exemptions and Exclusions Under the Employment Standards Act](#).*

### Appendix 2: OCP Ontario Omni Report December 18, 2017

*See next page for the report provided by Leger.*



**OCP  
Ontario Omni Report  
December 18, 2017**

**Leger**

# METHODOLOGY

## QUANTITATIVE RESEARCH

### INSTRUMENT

A survey of 1010 Ontarians was completed online between December 11-14, 2017 using Leger's online panel, *LegerWeb*.

A probability sample of the same size would yield a margin of error of +/-3.0%, 19 times out of 20.

### ABOUT LEGER'S ONLINE PANEL

Leger's online panel has approximately 475,000 members nationally – with between 10,000 and 20,000 new members added each month, and has a retention rate of 90%.

## QUALITY CONTROL

Stringent quality assurance measures allow Leger to achieve the high-quality standards set by the company. As a result, its methods of data collection and storage outperform the norms set by WAPOR (The World Association for Public Opinion Research). These measures are applied at every stage of the project: from data collection to processing, through to analysis. We aim to answer our clients' needs with honesty, total confidentiality, and integrity.

# INTRODUCTION

## ***Respondents were given the introduction:***

The Ontario government is seeking input to help make workplaces fairer for workers in industries that currently have exemptions, special rules or exclusions. The Ontario College of Pharmacists has been asked to provide the Ministry of Labour with a submission on whether the profession's exemptions from the *Employment Standards Act, 2000*(ESA) should be maintained as they relate to pharmacists.

The exemptions in the ESA that currently apply to pharmacists are:

- Hours of work and eating periods;
- Overtime pay;
- Minimum wage;
- Public Holidays;
- Vacation with Pay; and
- Personal Emergency Leave (in cases where personal emergency leave taking the leave would constitute an act of professional misconduct or a dereliction of professional duty).

This means that employers are not ***required*** to offer or provide these workplace benefits/entitlements to pharmacists.

## ***Respondents were asked:***

Having read this information, to what extent do you agree or disagree with each of the following statements:

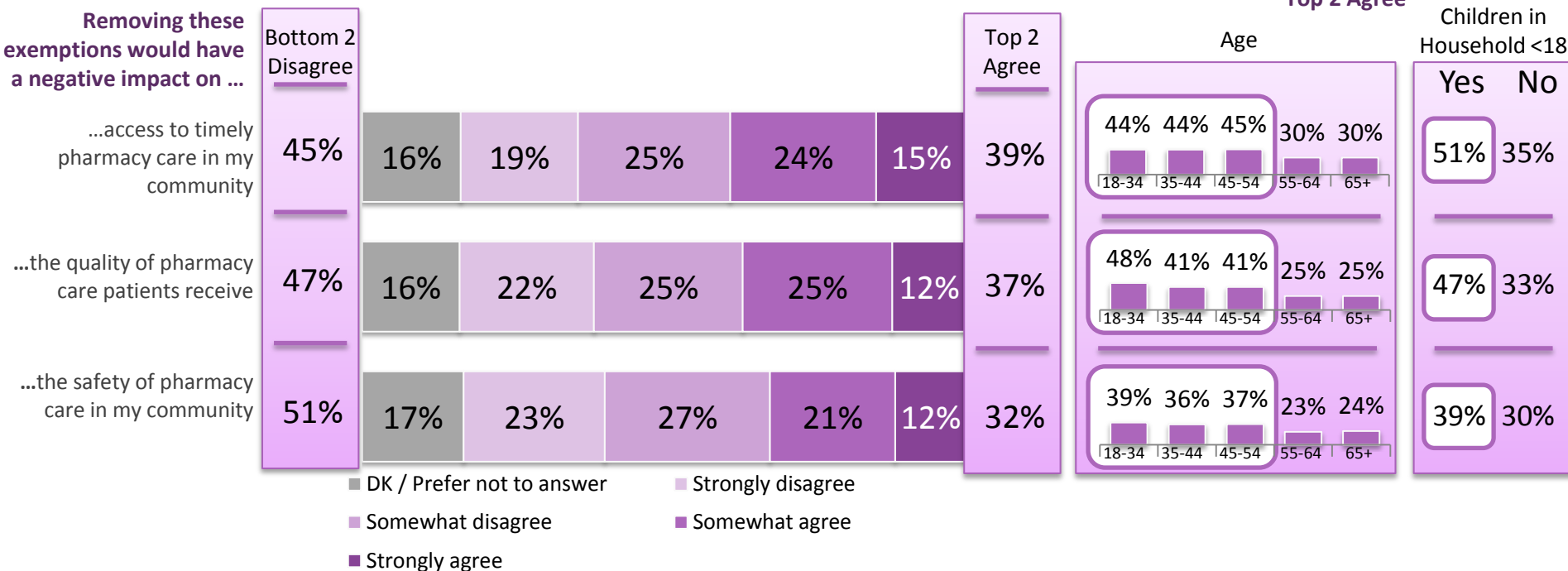
# SUMMARY

While Ontarians were unclear on the impact of either maintaining or removing the ESA exemptions on access to timely care, quality of care and safety, it is clear that a majority believe that pharmacists should not be exempt from the standards in the Employment Standards Act.

# IMPACT OF REMOVING EXEMPTIONS

After reading about the exemptions currently in place for pharmacists, roughly four-in-ten Ontarians agree that removing the exemptions would have a negative impact on 'access to timely pharmacy care' (39%), and 'the quality of pharmacy care patients receive' (37%), while slightly fewer (32%) agree that removing the exemptions would have a negative impact on 'the safety of pharmacy care in their community'. Younger Canadians (age 18-54), and households with children <18 are significantly more likely to agree with each statement.

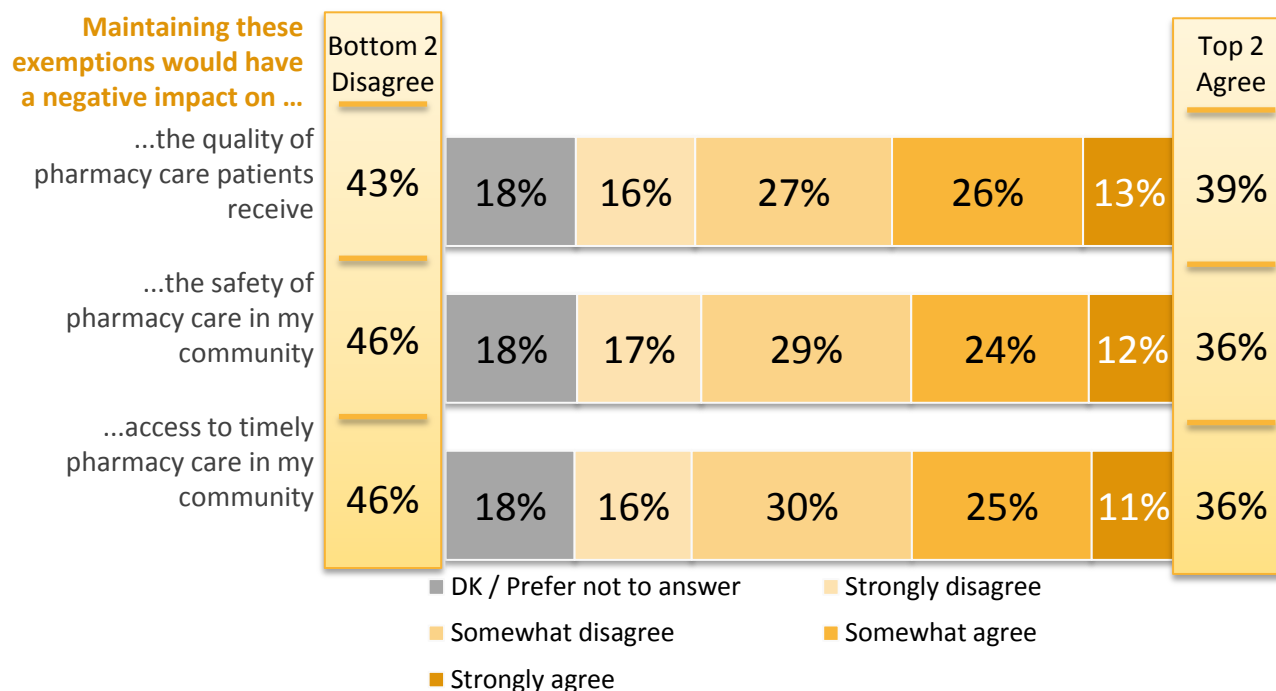
Having read this information, to what extent do you agree or disagree with each of the following statements:



# IMPACT OF REMOVING EXEMPTIONS

After reading about the exemptions currently in place for pharmacists, more than one-third of Ontarians agree that maintaining the exemptions would have a negative impact on 'the quality of pharmacy care patients' (39%), 'the safety of pharmacy care in their community' (36%), as well as 'the access to timely pharmacy care in their community' (36%).

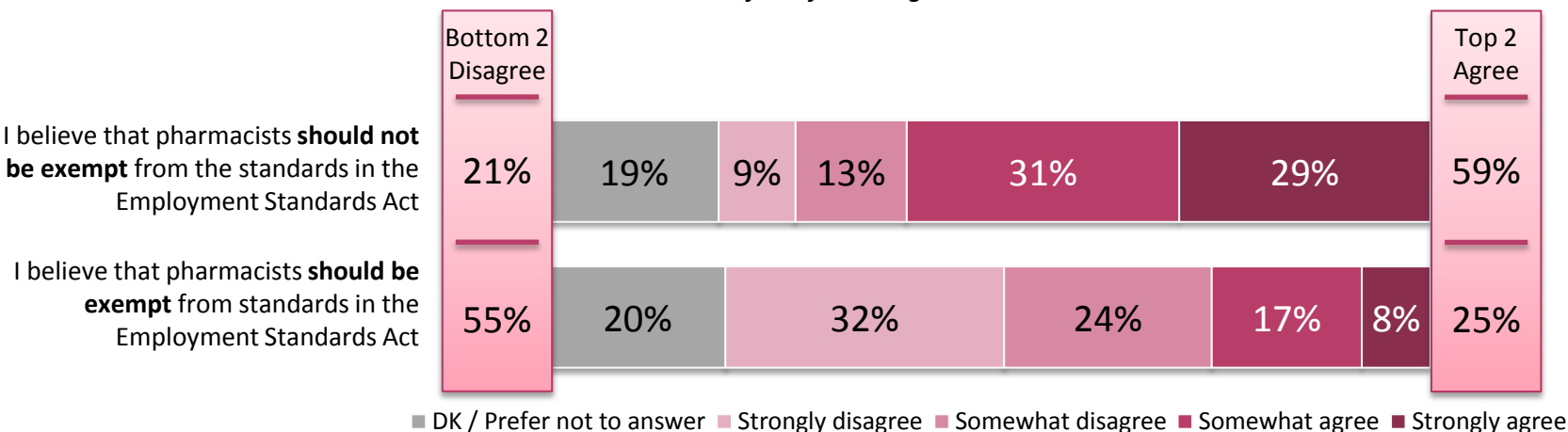
*Having read this information, to what extent do you agree or disagree with each of the following statements:*



# PHARMACIST EXEMPTION FROM THE STANDARDS

After reading about the current exemptions currently in place for pharmacists, six-in-ten (59%) Ontarians believe that pharmacists **should not be exempt** from the standards in the Employment Standards Act, on the other hand, one-quarter (25%) believe pharmacist should not be exempt.

*Having read this information, to what extent do you agree or disagree with each of the following statements:*



# QUALITATIVE FINDINGS FROM THE FOCUS GROUPS

Despite some debate, the consensus from the groups is that pharmacists should not be exempt from the Employment Standards Act. The discussion surrounded three main points as follows:

## Safety & Quality of Care

The respondents expressed concerns about the safety of patients under a scenario wherein pharmacists are working too many hours:

*"If you are tired, you can make a mistake. They should have a certain number of hours."*

*"If the pharmacist is overworked, they may give you the wrong dose."*

*"They are part of the chain responsible for our health."*

*"I don't want my pharmacist filling my prescription when they are working overtime."*

## General fairness

Generally, respondents felt that excluding pharmacists from the Employment Standards Act was unfair, some even saying it was "awful".

*"These employees should be eating, taking their breaks, taking vacation."*

*"They should have the same rights as anyone who is working. How did this happen?"*

*"I don't see the justification."*

*"I also think there should be a standard of pay for the profession. They go to school for a long time."*

## Timeliness

Despite believing that pharmacists should not be exempt from the ESA, there was some concern for those living in smaller communities not being able to access a pharmacy when in need:

*"If you live in a small town and you go to your doctor late in the day, you should still be able to get your prescription."*

Others weren't as worried about it and felt that people should either plan ahead or access an open hospital pharmacy or neighbouring town pharmacy if necessary.

## Exceptions

Having said this, there were a few exceptions to the overwhelming opinion that pharmacists should not be exempt from the Employment Standards Act:

*"We could keep the exemptions in place for small towns where there is only one pharmacist."*

*"Thinking about a small town, they could be closed for two days. They would have to call and remind people that they aren't working so they should refill their prescriptions sooner."*

Note: Focus groups were conducted for the OCP on December 7<sup>th</sup> and December 11<sup>th</sup>, 2017. While not the main focus of the groups, respondents were read the same information regarding the Employment Standards Act that was shown in the online survey and asked to comment.

[www.leger360.com](http://www.leger360.com)

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THE RESEARCH INTELLIGENCE GROUP



**Ontario College  
of Pharmacists**

Putting patients first since 1871

