Ontario Nurses' Association

Response to Ontario Changing Workplaces Review Interim Report

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Coverage and Exclusions (s. 4.2.1)	ONA supports Option 2 as outlined in the interim report, namely: *"2. Eliminate some or most of the current exclusions in order to provide the broadest possible spectrum of employees' access to collective bargaining by, for example:* *a. permitting access to collective bargaining by employees who are members of the architectural, dental, land surveying, legal or medical profession entitled to practise in Ontario and employed in a professional capacity; and* *b. permitting access to collective bargaining by domestic workers employed in a private home."* ONA supports the submissions of the Workers' Action Centre on this issue.
Card-based Certification (s. 4.3.1.1)	ONA supports Option 3 as outlined in the interim report, namely: *"3. Return to the Bill 40 and current construction industry model."* Alternatively, ONA would support Option 2 as outlined in the interim report: *"2. Return to the card-based system in place from 1950 to 1993, possibly adjusting thresholds (e.g. to 65% from 55%)."*
Electronic Membership Evidence (s. 4.3.1.2)	ONA supports Option 4 as outlined in the interim report, namely: *"4. Permit some form of electronic membership evidence."* Permitting electronic membership evidence is less of a reform than it is a necessary modernization of

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	process under the *Labour Relations Act (LRA).* Society as a whole is increasingly reliant on online and electronic forms of communication, and precluding unions from fully utilizing the resources available to it for organizing purposes only hinders their ability to organize.
Off-site, Telephone and Internet Voting (s. 4.3.1.4)	ONA supports Option 2 as outlined in the interim report, namely: *"2. Explicitly provide for alternative voting procedures outside the workplace and/or greater use of off-site, telephone and internet voting."* In our submission, this type of reform would maximize the opportunities for part-time, shift and weekend workers to truly express their wishes. As an example, part-time or casual RNs may work at more than one workplace. Moreover, employers, such as home care providers, may employ teams of social workers who work from home on the phone, or primarily in their car travelling between clients' homes. These types of workplace arrangements – increasingly common – are not conducive to "on-site" voting.
Remedial Certification (s. 4.3.1.5)	ONA supports Options 2 and 3 as outlined in the interim report, namely: *"2. Make remedial certification more likely to be invoked by removing the requirement to consider whether a second vote is likely to reflect the true wishes of the employees.* *3. Remove the requirement to consider whether the union has adequate membership support for bargaining."* We note that we have no knowledge of a union that has won a second vote; once an anti-union employer threatens employees, a free vote has proven very difficult to obtain.
First Contract Arbitration (s. 4.3.2)	In ONA's view, Option 3 as outlined in the interim report should be automatic: *"3. Provide for first contract arbitration on either an automatic or discretionary basis in circumstances where the OLRB has ordered remedial certification without a vote*." In a situation not involving remedial certification, ONA submits that Option 2 as outlined in the interim report is the most appropriate option:

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	"2. Provide for 'automatic' access to first contract arbitration upon the application of a party to the OLRB, after a defined time period (e.g. thirty days), in which the parties have been in a legal strike or lockout position, has elapsed." ONA further supports Option 5 as outlined in the interim report: *"5. Not permit decertification or displacement applications while an application for first contract arbitration is pending."* Finally, ONA neither opposes nor supports Option 4. We note that a lengthy process is not likely to be helpful, as bureaucracy may delay resolution and add further conflict. Further, it is ONA's view that this type of mediation already happens on an ad hoc basis in Ontario.
Replacement Workers (s. 4.4.1)	ONA strongly supports Option 2 as outlined in the interim report, namely: *"2. Reintroduce a general prohibition on the use of replacement workers."* On the other hand, ONA opposes Option 3, as the onus on the union is unfair and undermines the very purpose of prohibiting replacement workers.
Refusal of Employers to Reinstate Employees Following a Legal Strike or Lockout (s. 4.4.2.2)	ONA strongly supports Option 4 as outlined in the interim report, namely: *"4. Adopt an approach similar to the LRA, as it was in 1993 to 1995, providing that at the end of a strike or lockout:* *a. the employer is required to reinstate each striking employee to the position he or she held when the strike began;* *b. striking employees generally have a right to displace anyone who performed the work during the strike; and* *c. if there is insufficient work, the employer is required to reinstate employees as work becomes available, based on seniority."*

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	Alternatively, ONA would support Options 2 or 3 (in that order), or a combination of both. In our submission, these options raise the spectre of additional delay, and thus any such issue should be dealt with in expedited fashion. Ideally, the Union would be able choose whether to bring any such concern to the OLRB or arbitration. Crucially, any change to these provisions must include the right for the Union to challenge a decision of the employer's, and the onus for justifying their decision must be on the employer.
Renewal Agreement Arbitration (s. 4.4.3)	ONA supports Option 3 as outlined in the interim report, namely: *"3. Empower the OLRB to order interest arbitration as a remedy following a finding of bargaining in bad faith after the commencement of a strike or lockout, provided that:* *a. certain conciliation and/or mediation steps have been followed;* *b. the applicant for interest arbitration has bargained in good faith; and* *c. it appears that the parties are unlikely to reach a settlement."* ONA would also support Option 2 as set out in the interim report. As previously noted, ONA has a concern that any mediation-heavy model could result in further delays for the parties.
Interim Orders and Expedited Hearings (s. 4.5.1)	ONA supports the following elements of Option 2 as outlined in the interim report, namely (in order in preference): *"2. Implement one or more of the following:* *a. restore the power of the OLRB to issue interim orders and decisions pursuant to section 16.1(1) of the Statutory Powers Procedure Act;* *….* *d. eliminate statutory requirements that must be met by an applicant for interim relief and leave it to*

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	the OLRB to develop its own jurisprudence about when it will issue interim orders; and *e. require that the OLRB expedite hearings for interim relief by establishing prescribed statutory time limits so that hearings proceed without unnecessary delays."* Alternatively, ONA would support Option 2(b), and in the further alternative, Option 2(c).
Just Cause Protection (s. 4.5.2)	ONA supports Option 2 as outlined in the interim report, namely: *"2. Provide for protection against unjust dismissal for bargaining unit employees after certification, but before the effective date of the first contract."*
Prosecutions and Penalties (s. 4.5.3)	After consideration of the options set out in the interim report, ONA makes a new proposal: *Add a provision that would require the Ontario Labour Relations Board to deal with complaints of an unfair labour practice or of bargaining in bad faith, rather than deferring to an arbitration board.* Further, ONA generally supports changes that will remove any barriers to organizing. More specifically, ONA wishes to see both increased penalties under the unfair labour practices and bargaining in bad faith provisions and increased and broadened remedies for such findings. Finally, as a note, it is our view that prosecutions are likely to complicate matters, and not necessarily to assist in addressing the violations.
Employee Voice (s. 4.6.2)	ONA takes the general position that the best way to support the employee voice is to enact legislation that supports representation and collective bargaining for all workers. Therefore, it is our recommendation that any changes emerging from this process must facilitate union organizing. After reviewing the options set out in the interim report, ONA supports the Workers' Action Centre in its submissions regarding these options. That being said, ONA has some reservations on how the proposal in Option 5 would integrate into Canadian law. The American labour relations system is based on different values and context than the Canadian system, and it is our view that the differences in context should be taken into account when formulating any similar provisions for the Canadian system.

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Additional LRA Issues (s. 4.7)	*Ability of Arbitrators to Extend Arbitration Time Limits:* ONA strongly supports the proposal permitting arbitrators to extend time limits along the same lines as the pre-1995 provisions of the LRA. *Benefits for Striking Employees:* ONA reiterates our prior submission on the importance of extending benefits to striking employees. Currently, there is no provision under the LRA with respect to the continuation of benefits during a legal strike or lockout. Bill 7 required employers to continue benefits during a legal strike or lockout in circumstances where the union paid the costs of doing so. Section 81 also prohibited the threat of cancellation or denial of benefits as a means to interfere with legal strikes/lockouts. ONA recommends that these or similar provisions be re-enacted.