Court File No. CV-20-00636529-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E N:

ONTARIO NURSES' ASSOCIATION VICKI MCKENNA AND BEVERLY MATHERS

Applicants

and

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AS REPRESENTED BY THE ATTORNEY GENERAL OF ONTARIO, THE PRESIDENT OF THE TREASURY BOARD, MINISTER OF HEALTH AND MINISTER OF LONG-TERM CARE

Respondents

APPLICATION UNDER Rule 14.05(3) of the *Rules of Civil Procedure* and the *Canadian Charter of Rights and Freedoms*, ss. 1, 2(b), 2(d), 24, *Constitution Act, 1982*, s. 52 and *Constitution Act, 1867*, preamble*

FACTUM OF THE APPLICANTS, ONTARIO NURSES' ASSOCIATION, VICKI MCKENNA AND BEVERLY MATHERS

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TABLE OF CONTENTS

Page No.

PART I - INTRODUCTION

1. The Applicant Ontario Nurses' Association ("**ONA**") and the individual Applicants Vicki McKenna (Provincial President at the time of the Application) and Beverly Mathers (Chief Executive Officer of ONA at the time of the Application) bring this application challenging the constitutionality of the *Protecting a Sustainable Public Sector for Future Generations Act, 2019*, SO 2019, c 12 (" the *Act*" or "**Bill 124**") on the grounds that the Act violates both the Applicants' *Charter of Rights and Freedoms* ("*Charter*")[1] rights to meaningful collective bargaining under s. 2(d) and to sex/gender equality under ss. 15 and 28 of the *Charter*.

2. ONA seeks Declarations that the *Act* breaches ss. 2(d), 15 and 28 of the *Charter*, damages and costs. ONA seeks a further Order that any affected collective agreements be remitted for bargaining or determination in accordance with reopener provisions set out in ONA's applicable interest arbitration awards or agreements between the affected parties.

3. Section 2(d) of the *Charter* mitigates the "inherent inequality of bargaining power" between workers and employers by protecting meaningful collective bargaining and, for those essential workers whose right to strike has been removed by statute, effective interest arbitration. Section 15 guarantees sex/gender equality, including by guarding against disadvantage created by facially neutral rules that act as "built-in headwinds" to prevent protected groups from accessing equality under the law. Bill 124 imposes restrictions on all forms of compensation and has undermined nurses' bargaining power during a crisis shortage of their skilled labour, exacerbated by a global pandemic, that would otherwise have amplified that power. The extensive evidentiary record in this Application clearly demonstrates that under Bill 124 meaningful collective bargaining and effective interest arbitrations are not possible. The *Act* has caused extensive harm

[1] *Canadian Charter of Rights and Freedoms, Constitution Act 1982* ["*Charter*"].

to nurses including: paralyzed collective bargaining; ineffective interest arbitration awards; increasing vacancies impacting health care delivery; a demoralized workforce with crippling workloads; and backlash toward the union. Bill 124's scope further carves up the broader public sector along gender lines. To use a phrase from the SCC, Bill 124 turns nurses and other women in the broader public sector into "the economy's ordained shock absorbers" and it contravenes ss. 2(d), 15 and 28 of the Charter.

PART II - SUMMARY OF FACTS

A. BACKGROUND OF ONA AND THE NURSING PROFESSION

4. ONA is the bargaining agent for over 68,000 Registered Nurses ("**RN**s"), as well as Nurse Practitioners ("**NP**s"), Registered Practical Nurses ("**RPN**s") and other health care professionals and workers including Respiratory Therapists, Occupational Therapists, Physiotherapists, Radiation Therapists, Personal Support Workers ("**PSW**s") and others across Ontario, as well as more than 18,000 nursing student affiliates.[2] Nurses are highly educated and skilled regulated health professionals, governed by a regulatory college similar to physicians.[3]

5. ONA represents members across the full spectrum of health services in Ontario including in approximately 150 public hospitals, two private hospitals, 400 long-term care ("**LTC**") facilities or nursing homes, home care, community health and primary care clinics, Home and Community Care Support Services ("**HCCSS**", formerly known as Local Health Integration Networks), boards of public health, and other workplaces such as Canadian Blood Services, community mental health

[2] Affidavit of Beverly Mathers, Sworn January 14, 2021 ["Mathers Aff (Jan 14/21"], Application Record of the Ontario Nurses' Association ["AR"], Volume 1, Tab A ["V1TA"], para 8, p 4-5; henceforth in this factum for brevity we will refer to nurses when referring to ONA members.
[3] McKenna Aff (Jan 14/21), AR, V4TB, para 10, p1661; Mathers Reply Aff (Apr 20/22), V1, para 46, p 21; Armstrong Aff (Jan 19/21), Supplementary Application Record of the Ontario Nurses' Association ["SAR"], V1TC, Ex C ["Armstrong Report (Jan/21)"], para 106-107, p 150.

agencies and occupational health departments in industry.[4] The health care sector is part of the "Broader Public Sector", as health care in Canada is publicly funded.

6. ONA has half a century of history of collective bargaining for Ontario nurses. At present, ONA is party to and responsible for negotiating over 568 different collective agreements for its members. In its history, ONA has engaged in thousands of rounds of collective bargaining. In the hospital sector where ONA is going into its 20th round of centralized collective bargaining with the Ontario Hospital Association ("**OHA**") on behalf of over 130 participating hospitals. Similarly in the LTC sector, ONA largely bargains collectively with employer associations representing groups of "for profit" and "not-for profit" (i.e. owned by municipalities or charities) LTC facilities. These bargaining relationships are mature and supported by well-established bargaining protocols.

7. Approximately 90% of ONA's members do not have the right to strike.[5] This right was taken away from nurses and other health care workers in 1965 and replaced by a compulsory binding interest arbitration regime because these workers are considered too essential to public health and safety to allow an interruption of their work.[6] This is similar to the compulsory interest arbitration regime in place for police and firefighters.[7]

8. Nursing is a clear example of work that has been traditionally associated with being female.[8] Unlike police and firefighters who are overwhelmingly male, nursing and health care

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[4] Mathers Aff (Jan 14/21), AR, V1TA, para 10, p 5.
[5] Mathers Aff (Jan 14/21), AR, V1TA, para 17, pp 07.
[6] Mathers Aff (Jan 14/21), AR, V1TA, paras 48-49, p 19-20. The remaining members with the technical right to strike are in very small bargaining units such as in medical clinics and physician's offices, at private agencies providing one-on-one care in the home, working as case managers at HCSSs or in occupational health departments in private industry: McKenna Aff (Jan 14/21), AR, V4TB, para 11, p 1661.
[7] *Police Services Act*, RSO 1990, c P15, s. 122; *Fire Protection and Prevention Act, 1997*, SO 1997, c 4, s 49-50.7.
[8] Armstrong Report (Jan/21), SAR, V1TC, para 38, 73-78, p 112-13, 131-36; Armstrong Reply Aff (Apr 14/22), Ex A ["Armstrong Reply Report (Apr/22)"], paras 39-44, 48-51, 71-75, p 17-21, 27-29.

workers more broadly have historically been and continue to be extremely female-dominated.[9] Over 90% of ONA's members are female and over 92% of Ontario nurses overall are female.[10] In the health care sector as a whole, 82.6% of workers in the health care and social assistance sectors are women.[11] Most LTC bargaining units are composed entirely of female members.[12] Racialized women, in particular, are overrepresented in health occupations, particularly in the lowest paid occupations, and are barely present in the protective service occupations dominated by men.[13]

9. Nurses occupy a disproportionate number of part time positions especially in the hospital and LTC sectors.[14] ONA membership is comprised of 55% full-time, 30% part-time and 15% casual nurses, which is a higher rate of part-time employment than the average in the health and social services sectors.[15] Many nurses work for two or more employers in part-time or casual employment to try to cobble together full-time wages to support themselves and their families. Part-time nurses do not receive health benefits or paid sick leaves.[16]

10. Nurses are overwhelmingly employed in the public and broader public sectors where there is a high rate of unionization. Due to Canada's publicly funded health system, there are very few RNs in the private sector and RN wages have increased over time due to unionization.[17]

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[9] Armstrong Report (Jan/21), SAR, V1TC, paras 5-8, p 94-95.
[10] McKenna Aff (Jan 14/21), AR, V4TB, paras 16-19, p 1663-64; Armstrong Report (Jan/21), SAR, V1TC, paras 6-8, p 95.
[11] Armstrong Report, SAR, V1TC, paras 45-49, p 116-19.
[12] Mathers Aff (Jan 14/21), AR, V1TA, para 30, p 12; Armstrong Report, SAR, V1TC, para 74-76, p 132-33.
[13] Armstrong Report (Jan/21), SAR, V1TC, paras 5-6, 9, 49-50, 57, 60, 63, p 94-96, 119, 122-26.
[14] McKenna Aff (Jan 14/21), AR, V4TB, para 49-54, pp 1676-78.
[15] Armstrong Report (Jan/21), SAR, V1TC, paras 64-65, p 126-28. According to Ontario's Long-term Care Staffing Study, in 2018 only 40% of RNs and RPNs in LTC homes were employed full-time: Mathers Aff (Jan 14/21), AR, V1TA, para 84, p 33 & V2TA, Ex 16, p 990, 1003.
[16] McKenna Aff (Jan 14/21), AR, V4TB, para 49, p 1676.
[17] Riddell Cross (Jun 21/22), JTB, V8T25, Q 1603, p 6625-26; Riddell Cross (Jun 10/22), JTB, V5T17, Q 834-36, 867, p 2831-33, 2844.

11. Nursing is a stressful, mentally and physically demanding profession. Nurses typically work long shifts to provide coverage 24 hours a day, 7 days a week, 365 days a year. Nursing is also hazardous front-line work, and as with police officers and firefighters, can result in serious illness and injury at work, with nurses regularly facing workplace violence and injury due to the physical and interpersonal nature of the work. Nurses are regularly exposed to risk of infection, including deadly diseases (COVID-19 and many others), and hazardous chemicals and bacteria.[18]

12. Nursing is also highly mobile and in-demand profession. There is a severe worldwide shortage of nurses, where the demand for their services greatly exceeds their numbers. Nurses are in demand worldwide and other countries such as the United States and other provinces are constantly actively seeking out and hiring Ontario nurses. Nurses leave for better wages and benefits and to obtain full-time positions, as there is limited availability in Ontario of full-time positions with access to benefit plans.[19]

B. INTEREST ARBITRATION REGIME: ALTERNATIVE TO RIGHT TO STRIKE

13. For hospital and LTC nurses, and other essential workers in health care who do not have the right to strike, the only recourse if a collective agreement cannot be agreed upon is to proceed to interest arbitration. Most of these workers are covered by the *Hospital Labour Arbitration Disputes Act*,[20] which came into force in 1965, and covers not only hospitals but many other health care institutions due to the broad definition of "hospital" in this Act.

14. The adjudicative process under *HLDAA* uses interest arbitration boards, who are agreed upon by the parties to the collective agreement and experienced in both interest arbitration and the

[18] Armstrong Report (Jan/21), SAR, V1TC, para 89-90, p 141; Armstrong Reply Report (Apr/22), para 59, p 23-24 & Appendix B, p 222-23, 233, 239, 271.
[19] McKenna Aff (Jan 14/21), AR, V4TB, para 62-69, p 1680-83; Mathers Aff (Jan 14/21), AR, V1TA, para 77, p 30;
[20] *Hospital Labour Disputes Arbitration Act*, RSO 1990, ch14 ["*HLDAA*"].

sector. The board is tasked with replicating free collective bargaining (the "replication principle") and mandated to consider the following statutory criteria in s. 9(1.1): (1) the employer's ability to pay in light of its fiscal situation; (2) the economic situation in Ontario and in the municipality where the hospital is located; (3) a comparison with other "comparable employees in the public and private sectors"; (4) and "the employer's ability to attract and retain qualified employees".

15. The three *HLDAA* factors combined of (i) ability to pay, (ii) the replication principle and (iii) consideration of other comparable collective agreements has resulted in the health care interest arbitration process universally being described as a "conservative process" which does not result in either high compensation awards or many "breakthrough provisions".[21] Interest arbitrators tend to make orders that replicate the status quo but in cases where there is evidence of "demonstrated need", arbitrators have made changes to the elements and language of collective agreements such as, for example, to the structure of wage grids to address recruitment and retention problems.[22]

C. SEVERE NURSING SHORTAGE BEFORE BILL 124 & COVID-19 PANDEMIC

16. At the time Bill 124 was introduced in June 2019, the Respondent was well aware through numerous reports of a longstanding and critical shortage of nurses and health care workers in Ontario. For example, the 2018 Public Inquiry into the Safety and Security of Residents in the Long-Term Care Homes System, chaired by the Honourable Justice Eileen Gillese, documented the crippling problems of low wages and poor working conditions in LTC leading to severe staffing shortages. In 2019, prior to Bill 124 being drafted, a Report to the Premier from the Premier's Council, entitled *Hallway Health Care: A System under Strain*,[23] described the systemic shortage

[21] Doney Cross (Jun 7/22), JTB, V5T14, Q 167-69, p 2261-62; Riddell Cross (June 9/22), JTB, V5T16, Q 272-77, p 2558-60; Hebdon Reply Aff, (Apr 12/22), Ex A ["Hebdon Reply Report (Feb/22), para 52-56, p 20-21.
[22] Mathers Reply Aff (Apr 20/22), V1, Ex 1, p 10993-95 & V26, Ex 273 to Ex 1, p 10993-94.
[23] Mathers Aff (Jan 14/21), AR, V1TA, paras 71, 78, p 027, 030 & Ex 12, V2TA, p 876-909.

of staff in Ontario hospitals, confirming similar findings of the Ontario Hospital Association in its 2018 report, *A Sector on the Brink*.[24] Even an authority relied on by the Respondent's expert called Ontario's nursing shortage a "crisis" dating back many years.[25]

17. In 2020-2021, the Honourable Justice Frank Marrocco chaired Ontario's Long-Term Care COVID-19 Commission, which noted that there have been no less than 35 reports given to the Ontario government on staffing shortages in LTC.[26] Justice Marrocco referred to these staffing shortages as a "chronic crisis," which he said was well known to government before 2019.[27] The lack of full-time employment opportunities and low wages in the sector had created a shortage of health care workers in LTC so urgent that he issued interim recommendations on this subject prior to completing the Commission's Final Report.[28] Justice Marrocco concluded that when the pandemic hit, staffing shortages and resulting poor working conditions were major factors in the tragedies that occurred in LTC facilities.[29] As mobile, in-demand professionals, nurses can move to other workplaces with better pay and working conditions; the vacancy rates in LTC grew during the pandemic to unworkable levels to the extent that Ontario called in support from other provinces and the Canadian Armed Forces to help staff many Ontario LTC homes.[30]

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[24] Mathers Aff (Jan 14/21), AR, V1TA, para 79, p 031 & Ex 15, V2TA, p 960-68.
[25] Riddell Aff (Feb 22/22), para 54, footnote 53, p 1859 (Mark Geiger, "Bargaining in the healthcare sector: Towards a new model," Health Law in Canada, Volume 29, 2009: Riddell Cross (Jun 10/22), JTB, V5T17, Ex 12, p 3173).
[26] Frank Marrocco et al, "Ontario's Long-Term Care COVID-19 Commission Final Report," pp 51-55 ["COVID-19 LTC Commission Report"], Brief of Unreported Authorities ["BoA"] V1T1.
[27] COVID-19 LTC Commission Report, p 4-5, 48-51, BoA V1T1.
[28] COVID-19 LTC Commission Report, p 51-55 and, generally, "Chapter 1: Long-Term Care before COVID-19", p 48-64 & "Chapter 5: Recommendations, Address the Human Resources Challenges, p 301-307, BoA V1T1.
[29] Mathers Aff (Jan 14/21), AR, V1TA, para 91, p 36; COVID-19 LTC Commission Report, p 4-5, 48-51, 54, BoA V1T1.
[30] Mathers Aff (Jan 14/21), AR, V1TA, para 43, p 18; COVID-19 LTC Commission Report, p 152-53, 185, BoA V1T1.

18. In hospitals, staffing shortages and high workload issues are crippling Ontario hospitals, as documented by the OHA and others and daily media reports. The already high pre-existing vacancy rates have also grown at an alarming rate during the pandemic, causing units to constantly work at critically low staffing levels resulting in individual nurses being responsible for abnormally high numbers of patients,[31] causing unit and emergency room shutdowns and hospitals' unprecedented use of the hospital emergency disaster response "Code Orange," for situations of hospital staff shortages.[32]

19. There have been many calls by physicians and employers, in addition to nurses, for the Respondent to repeal Bill 124 or exempt the health care sector from its application due to these extreme labour shortages.[33] Rather than heeding those calls, the Respondent instead chose to circumvent collective bargaining by unilaterally giving emergency pandemic payments to some health care workers as "Retention bonuses" without discussion of the eligibility criteria for or the amount of these payments with the unions representing the workers.[34]

D. BILL 124

(i) Lack of Meaningful Consultation

20. Approximately four weeks prior to the introduction of Bill 124 in June 2019, ONA attended two separate meetings with Respondent and other unions, where unions were invited to discuss "how to manage public sector compensation growth".[35] On May 7, 2019, ONA attended the "health sector" meeting with other invited unions. The information provided before and at these

[31] Latimer Aff (Jan 14/21), AR, V4TC, para 44, p 1869.
[32] Lobsinger Reply Aff (May 2/22), paras 30-31, 38, p 11, 15.
[33] Lobsinger Reply Aff (May 2/22), para 35-37, p 13-14 & Ex 17-19, p 203-31.
[34] Lobsinger Reply Aff (May 2/22), para 44-47, p 17-18; Porter Cross (Jun 17/22), JTB, V6T21, Q1667-70, 1675-82, p 4203-06; Armstrong Reply Report (Apr/22), para 68, 71, p 26-28; Porter Supplemental Aff (April 25/22), para 8-13, p 9-10.
[35] Mathers Aff (Jan 14/21), AR, V3TA, Ex 20, p 1306-17; Porter Aff (Mar 4/22), RAR, V1T1, para 230, p 88 & V2T1, Ex N, p 505-07 & Ex HH, p 798-802.

meetings was sparse and contained no particulars about what measures the government was considering. There were only vague and cursory references to the possibilities of "growth-sharing or gains-sharing", without explanation or definition, and of "legislated caps on allowable compensation increases" without contemplated amounts or mechanisms. The Respondent provided the unions with four vague and broadly worded discussion questions.[36]

21. At no time prior to the introduction of the legislation did the Respondent inform ONA of the contemplated design elements of what was to become Bill 124,[37] despite the legislation being well under development before the "consultation" process ended.[38] Following the sector-wide meetings in May 2019, ONA requested further information and particulars, which the Respondent declined to provide, and made written submissions and recommendations based on the limited information available.[39] ONA received no response to any of its submissions nor were any of its areas of concern or proposed revisions addressed in the legislation. Shortly before Bill 124 received Royal Assent, ONA was granted a short *pro forma* meeting with Premier Doug Ford and others on October 7, 2019.[40] At each meeting and in its written submissions ONA raised serious concerns that compensation restraint legislation would exacerbate the well-documented labour shortage crisis in health care and deepen systemic sex/gender discrimination in the compensation of its women workers who were disproportionally affected by Bill 124.[41]

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[36] Mathers Aff (Jan 14/21), AR, V1TA, paras 105-109, p 42-43 & V3TA, Ex 20-21, p 1306-20; Porter Aff (Mar 4/22), RAR, V2T1, Ex HH, p798-802.
[37] Porter Cross (June 15/22) JTB, V5T19, Q 348-350, p 3529; Porter Affidavit (Mar 4/22), RAR V1T1, Ex E, p 193 & Exhibit F p 230-34.
[38] Porter Cross (June 15/22), JTB, V5T19, Q 342-50, p 3527-29; Porter Aff (Mar 4/22), RAR, V1T1, Ex E, p 199.
[39] Mathers Aff (Jan 14/21), AR, V3TA, Ex 22, p 1322-26.
[40] McKenna Aff (Jan 14/21), AR, V4TB, para 46, 75-77, p 1675, 1684.
[41] Mathers Aff (Jan 14/21), AR, V1TA, para 110-115, p 43-44 & V3TA, Ex 22, p 1329-31; Mathers Reply Aff (Apr 20/22), V1, paras 97-101, p 41-42.

22. The Respondent's evidence demonstrates that employers and employer associations and other unions also raised similar concerns in this process about health care staffing shortages, recruitment and retention issues and concerns about the effect of compensation restraint on female, lower-waged and/or racialized workers.[42]

23. The Respondent's only response was to include staffing shortages as a "Risk" in its confidential Brief to Cabinet about Bill 124 one day before the *Act* was introduced that said this risk could be addressed through Ministerial powers under the *Act* to provide discretionary "exemptions" from its application.[43] The Respondent completed no policy analysis of the potential sex/gender discriminatory impacts of the legislation.[44] It was only in the course of responding to this Application that the Respondent took any steps to gather available data on the gender predominance of employees covered by Bill 124.[45] The Respondent's data demonstrates that the vast majority of covered health care workers, teachers and others covered by Bill 124 are female.[46]

24. The Respondent relies on a "key" 2018 document in support of Bill 124, which it commissioned from Ernst & Young, entitled *Managing Transformation: A Modernization Action Plan For Ontario* ("**EY Report**"). This report, however, does not recommend wage restraint legislation as part of the "action plan". It does recommend taking a number of steps, including conducting a "socio-economic impact" analysis before implementing any measures.[47] The

[42] Porter Affidavit (Mar 4/22), RAR, V1T1, Ex F, p 204-05, 231.
[43] Porter Aff (Mar 4/22), RAR, V1T1, Ex F, p 243; Porter Cross (Jun 15/22), JTB, V5T19, Q 88, 150, 376, 387-88, p 3453, 3474-75, 3538, 3540.
[44] Porter Aff (Mar 4/22), RAR, V1T1, Ex F, p 283; Porter Cross (Jun 15/22), JTB, V5T19, Q 88, 150, 376, 387-88, p 3453, 3474-75, 3538, 3540.
[45] Porter Cross (Jun 15/21), JTB, V5T19, Q376, p 3538.
[46] Porter Aff (Mar 4/21), RAR, V2T1, Ex H, p 445-58
[47] Porter Aff (Mar 4/22), RAR, V1T1, Ex C, p 158; Porter Cross (Jun 15/22), JTB, V5T19, Q165, p 3478.

Respondent did not take any of these steps, instead drafting and introducing Bill 124 on an expedited basis.[48]

(ii) Relevant Bill 124 Provisions

25. Bill 124 has a number of components relevant to this Application.

26. **1% cap (ss. 10, 11)**: Bill 124 imposes maximum compensation increases of no more than 1% of total compensation per year. Inflation at the time of this Bill being introduced was 2%[49] and is now well over 6% and growing with no means for unions to address this for their members.

27. **"Compensation" broadly defined (s. 2)**: Compensation is defined very broadly to include: "anything paid or provided, directly or indirectly, to or for the benefit of an employee, and includes salary, benefits, perquisites and all forms of non-discretionary and discretionary payments". As a result, Bill 124 restricts not only wages and benefits (such as health and welfare benefits) and leaves (such as bereavement and pregnancy leaves), but it also impacts many diverse payments in ONA's collective agreements such as scheduling premium penalties and call-back pay designed for patient safety[50] and mileage payments to reimburse workers for out-of-pocket expenses incurred to perform their duties.[51]

28. **Three-year "moderation period" (s. 9)**: Each collective agreement has a unique "moderation period" depending on its status as of June 5, 2019, the date the *Act* was introduced and can extend over multiple agreements depending on the length of each one. This means ONA's various moderation periods extend over many more than three years; its earliest moderation periods started in 2016, three years prior to the *Act's* introduction, and its latest extend to 2025, with some bargaining units not yet having started their moderation period. The variable moderation

[48] Porter Cross (June 15/22), JTB, V5T19, Q 351-53 p 3529-30.
[49] Mathers Aff (Jan 14/21), AR, V1TA, para 117, p 45.
[50] Mathers Aff (Jan 14/21), AR, V1TA, paras 140-143, p 52-53.
[51] Mathers Aff (Jan 14/21), AR, V1TA, para 144, p 54.

periods also mean that similar workers are under compensation restraints at different times depending on their bargaining unit or union.[52] The conservative interest arbitration process means that the effect of the moderation period will suppress compensation for many years beyond three.

29. **Scope of application (ss. 5, 6)**: Bill 124 excludes some broader public sector workers from compensation restraint. Excluded from the scope of the *Act* are male-dominated workers such as firefighters and municipal police, who comprise the majority of police in Ontario.[53] As a result, while nurses are limited to 1% compensation increases, other "front line workers" like municipal police and firefighters have received salary increases in the range of 2-3.6% per year plus very significant benefits improvements[54] despite requiring less education and not being subject to the same level of labour shortages, but facing similar levels of workplace risk and shift work schedules as required to meet staffing needs 24 hours a day.[55] Physicians are also outside the scope of Bill 124, while NPs who perform many of the same primary care functions in clinics are covered.[56]

30. **Act binds interest arbitrators (ss. 10, 11)**: Interest arbitration awards can be voided by the Respondent if arbitrators award anything deemed by the Treasury Board Secretariat ("**TBS**") to be contrary to the *Act*, despite the arbitrators' statutory mandate and powers under *HLDAA*, which are designed to take into account broader economic and labour market factors.

31. **Exemptions (ss. 6, 27)**: The *Act* sets out a process where exemptions from the *Act* can theoretically be granted with respect to particular workplaces or sectors by the President of the Treasury Board, as the designated Minister. However, the Respondent's evidence shows that in

[52] Mathers Aff (Jan 14/21), AR, V1TA, para 60, 64, p 24-26; Lobsinger Reply Aff (May 2/22), para 32, p 12-13; Porter Aff (Mar 4/22), RAR, V1T1, Ex F, p 215.
[53] The Act does cover Ontario Provincial Police but excludes municipal police forces (eg Toronto Police Services) which are the vast majority of police in Ontario. It also excludes managers in the Broader Public Sector: Porter Aff (Mar 4/22), RAR, V1T1, Ex F, p 203, 216.
[54] Mathers Aff (Jan 14/21), AR, V1TA, para 32-40, p 15-16.
[55] McKenna Aff (Jan 14/21), AR, V4TB, para 26, p 1666.
[56] Him Aff (Jan 14/21), AR, V4TG, para 10, 56, p 1902, 1914.

the approximately 2.5 years since the *Act* has been in force there have been many exemption applications from unions; virtually all have been denied, including ONA's requests in the hospital, charitable homes, and homecare sectors, as well as joint requests with employers to exempt specific collective agreements based on the employer's inability to recruit or retain employees.[57]

32. **Ministerial power to void collective agreements (ss. 16, 26)**: The President of the TBS further has powers to police the outcomes of collective bargaining or interest awards and to make orders declaring inconsistent agreements or awards "void and deemed never to have had effect". The TBS has exercised these powers frequently, as detailed below.[58]

33. **Anti-Avoidance Provision (s. 24)**: Section 24 states "An employer shall not provide compensation before or after the applicable moderation period to an employee" to make up for the losses under Bill 124. Unlike previous wage restraint legislation, such as the *Social Contract Act* and the *Expenditure Restraint Act*, Bill 124 thus extends the reach of its broad compensation restrictions into the future to maintain restrictions bargaining beyond the 3-year moderation period and will effectively carry forward effect to lower nurses' lifetime and pensionable earnings.[59]

E. EXPERT EVIDENCE

34. On s. 2(d), the Applicants adduced the Expert Report of Professor Robert Hebdon on the nature of collective bargaining and the impacts of Bill 124. Prof. Chris Riddell was retained by the Respondent to provide an expert report responding to Prof. Hebdon. Prof. Hebdon provided a reply to that report.[60] Prof. Hebdon's expert opinion is that meaningful collective agreement is not viable

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[57] Porter Cross (June 15/22), JTB, V5T19, Q433-434, 501, 506-509, 515-516, 528 p 3552-53, 3577-81, 3584; Mathers Aff (Jan 14/21), AR, V1TA, para 103, p 41 & V3TA, Ex 23, 25, p 1335-47; Lobsinger Reply Aff (May 2/22), para 6-29, p 3-11.
[58] Lobsinger Reply Aff (May 2/22), para 6, 19, p 3, 7.
[59] Mathers Aff (Jan 14/21), AR, V1TA, para 177-178, p 65-66; Mathers Reply Aff (Apr 20/22), V1, para 34-36, p 15-16; *Social Contract Act, 1993*, SO 1995, c 5; Hebdon Reply Aff (Feb/22), para 7, 10, 37-38, p 5-6, 14; *Expenditure Restraint Act*, SC 2009, c 2, s 393, s. 16-62 [*ERA*].
[60] Riddell Aff (Feb 22/22), RAR, V5T9; Hebdon Reply Report (Feb/22).

under the terms of Bill 124 and is likely to result in the erosion of members' confidence in the institution of collective bargaining and loss of trust in their union.[61] As detailed below, his opinion has been borne out by ONA's experience.

35. The expert evidence of Prof. Hebdon should be preferred over that of the Respondent's expert, Prof. Riddell, for many reasons. Prof. Riddell is not an expert on collective bargaining and his experience and expertise is certainly not equal to that of Prof. Hebdon.[62] Prof. Riddell had no knowledge of the mechanics of Bill 124 and how it affects collective bargaining. In cross-examination he ultimately stated that he has no opinion on Bill 124.[63] Despite criticizing Prof. Hebdon for not relying on "actual" facts, Prof. Riddell never read the Applicants' affidavits or reviewed the facts in these proceedings and has not been involved in "actual" bargaining or interest arbitrations under Bill 124 or otherwise. When presented with the facts under Bill 124, he changed his opinion and agreed that Bill 124 effectively interferes with free collective bargaining.[64] Prof. Riddell also misstated the findings of authorities relied on in his report.[65] His report mainly relies on a so-called public sector "premium",[66] yet he agreed that authorities he did not cite said there was virtually no "premium" paid to nurses and other health care workers and any "premium" is largely unionization, their high skills and education and that, under Ontario's publicly funded health care system, nurses have very few if any comparators in the private sector.[67]

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[61] Hebdon Aff (Feb 25/21) ["Hebdon Report (Feb/21)"], OECTA SAR, T1, Ex A, para 2, 16, 56, 60, p 10, 15-16, 33, 35; Hebdon Reply Report (Feb/22), para 39, p 15.
[62] Hebdon Reply Report (Feb/22), para 40-41, p 15-16; Riddell Cross (Jun 9/22), JTB, V5T16, Q 4-134, p 2480-2513; Riddell Aff (Feb 22/22), RAR, V5T9, para 3-13, p 1828-32; Hebdon Aff (Feb 25/21), OECTA SAR, T1, para 3, p 1-2.
[63] Riddell Cross (June 10/22), JTB, V5T17, Q785, 792, p 2814-2815.
[64] Riddell Cross Exam (June 10/22), JTB, V5T17 Q 834-836, 866-67, p 2831-33, 2844.
[65] Riddell Cross Exam (June 10/22), JTB, V5T17 Q 1004, 1009, 1012-1014, p 2895, 2897, 2898.
[66] Riddell Aff (Feb 22/22), RAR V5T1 para 14, 84, 105, p 1832, 1868, 1879.
[67] Riddell Cross (June 10/22), JTB, V5T17, Q 1086-93, 1098-1107, 1112-20, 1130, 1148-50, 1163, p 2920-21, 2923-29, 2931-32, 2939-40, 2944 & Ex 13, p 3200-3201, 3204-3205, 3208 (Gunderson et al.) & Ex 14, p 3258iv-3258v (Shillington).

36. With respect to s. 15, ONA adduced the Expert Report of Prof. Patricia Armstrong, an established expert on gender and the labour market.[68] The Respondents retained Prof. Dionne Pohler to respond.[69] Prof. Armstrong provided a Reply Report.[70] The expert witnesses of both the Applicants and Respondent on gender and the labour market agree that: 1) women remain concentrated in sectors of the economy associated with caregiving work and lower pay;[71] 2) the gender pay gap has existed for decades and continues to persist;[72] and 3) systemic discrimination is a factor contributing to the persistence of lower pay for women compared to men.[73] Both Prof. Armstrong and Prof. Pohler further agreed that unions have an important role to play in advancing women's equality in the labour market.[74] In cross-examination, Prof. Pohler stated that "unions are a critical institution especially in addressing inequities at work".[75] To the extent they differ, the expert opinion of Prof. Armstrong should be preferred over that of Prof. Pohler who, lacked comparable expertise and whose report did not apply internationally recognized concepts such as "occupational segregation" which is key to assessing Bill 124 and any s. 15 breach.

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[68] Armstrong Report (Jan/21), SAR, V1TC.
[69] Pohler Aff (Oct 22/21) ["Pohler Report (Oct/21)"], RAR, V5T10, Ex II.
[70] Armstrong Reply Report (Apr/22).
[71] Pohler Cross (Jun 20/22), JTB, V7T22, Q 123-24, 206-07, 277-79, 307, p 4394-96, 4433-34, 4468-69, 4480-81; Pohler Cross (Jun 21/22), JTB, V8T23, Q 403-05, 516-18, 657, 671, p 6160-61, 6193-94, 6237-39, 6246; Armstrong Report (Jan/21), SAR, V1TC, para 74-76, p 133-35; *Centrale des syndicats du Québec v Quebec (Attorney General)*, 2018 SCC 18 at para 24 ["*CSQ*"].
[72] Pohler Cross (Jun 20/22), JTB, V7T22, Q 89-90, 142-43, 185-86, p 4380-81, 4402-03, 4426-27 & Ex 4, p 5787; Pohler Cross (Jun 21/22), Q 385-90, p 6156-57; Armstrong Report (Jan/21), SAR, V1TC, para 93-95, 128, p 143-44, 161; *CSQ*, para 24.
[73] Armstrong Report (Jan/21), SAR, V1TC, para 73-78, p 131-36; Pohler Cross (Jun 20/22), JTB, V7T22, Q156-57, 163, 167-69, 185-87, 226-28, p 4408-09, 4411, 4413-16, 4426-27, 4444; Pohler Cross (Jun 21/22), JTB, V8T23, Q383-84, 390, 455-56, 485, p 6155-57, 6172-73, 6184.
[74] Pohler Report (Oct/21), RAR, V5T10, Ex II, para 40, p 2027-28; Pohler Cross (Jun 20/22), JTB, V7T22, Q 321-22, p 4489; Pohler Cross (Jun 21/22), JTB, V8T23, Q 679, 748, p 6249-50, 6296; Armstrong Report (Jan/21), SAR, V1TC, para 98-103, p 145-49.
[75] Pohler Cross (Jun 21/22), JTB, V8T23, Q679, p 6250, line 12-14. See also: Pohler Cross (Jun 20/22), JTB, V7T22, Q321-322, p 4489.

37. The Respondent and Applicants further adduced the Expert Reports of David Dodge and Sheila Block, respectively, regarding the fiscal and economic context of Bill 124,[76] primarily relevant if there is an issue of whether Bill 124 is justified under s. 1 of the *Charter*.

F. COLLECTIVE BARGAINING UNDER BILL 124

(i) Hospital Sector

38. Under Bill 124, there have been two sets of central hospital collective bargaining between ONA and OHA covering the 3 year "moderation period" for over 64,000 nurses employed with the 131 Participating Hospitals.[77] The central ONA hospital bargaining is typically the lead for the health care sector; other agreements both covered and not covered by Bill 124, including in the long-term care sector seek "parity" with this agreement.[78]

2019-2020 Central Hospital Agreement and Arbitrator Stout HLDAA Award

39. Prior to the start of bargaining for the 2019-2020, the 18th round of central bargaining with the OHA, ONA members set out five priorities and drafted proposals seeking: 1) a pay increase on the wage grid of 2%; 2) normative benefit and premium increases; 3) language changes including changes to grid steps; 4) full-time and part-time staffing ratios in line with longstanding expert recommendations; and 5) other job security language changes.[79] The OHA, on behalf of employer hospitals sought, among other things, to limit movement of nurses between units and revised layoff language. ONA was not able to meet any of its members' priorities for collective

[76] Block Aff (Apr 14/22); Dodge Aff (Jul 12/13), RAR, V4T7; Dodge Aff (Jul 11/13), RAR, V4T8.
[77] Mathers Aff (Jan 14/21), AR, V1TA, para 13-14, p 6; Mathers Reply Aff (Apr 20/22), V1, para 3, p 2.
[78] Mathers Aff (Jan 14/21), AR, V1TA, para 127, p 48.
[79] Mathers Aff (Jan 14/21), AR, V1TA, para 193, p 71-72; COVID-19 LTC Commission Report, p 54, BoA V1T1.

bargaining with respect to either compensation or non-compensation proposals; OHA said in bargaining and mediation that with only 1% available, nothing could be negotiated or traded.[80]

40. The uncontested evidence of ONA's affiants Beverly Mathers, Vicki McKenna and Steve Lobsinger, each with decades of direct experience at bargaining tables, is that bargaining under Bill 124 was completely different than the previous 17 rounds of central bargaining between these parties. With nothing to trade off due to the 1% cap, ONA was unable to meaningfully pursue its members' key priorities with respect to compensation, workplace health and safety and remedying gender discrimination in its existing wage grids.[81]

41. Even in previous periods of fiscal restraint, ONA has been able to settle collective agreements with the OHA through free collective bargaining. As Ms. Mathers states:

> . . . in 1991-1993, ONA freely negotiated with the OHA the . . . collective agreement that included a wage freeze at the bottom of the wage grid in exchange for recognition of past nursing experience in placing new employees on the wage grid and narrower wage increases for senior nurses. In 2011-2014 . . . ONA agreed to wage freezes in 2011 and 2012, with a 2.75% increase in 2013 in exchange in part for changes to retiree benefits and lump sum payments for the years of the wage freeze. . . . even during the wage freeze years, normative premium and benefit increases were negotiated as were vacation improvements.[82]

42. The elected Chair of the Central Negotiation Team in 2020 called collective bargaining "a futile exercise"[83] and Ms. Mathers it "paralyzing" and "like nothing I have ever seen in my 32 year history with ONA in collective bargaining".[84] The parties could not negotiate comparable or "normative" compensation increases and could not address the nursing shortage to jointly agree

[80] Mathers Aff (Jan 14/21), AR, V1TA, para 191, 199, p 70-71, 73; Mathers Reply Aff (Apr 20/22), V1, para 16, p 6-7.
[81] Mathers Aff (Jan 14/21), AR, V1TA, para 25, 116-18, 130-39, p 10, 45-46, 49-52; Mathers Reply Aff (Apr 20/22), V1, para 2-4, 14-16, p 1-2, 6-7.
[82] Mathers Aff (Jan 14/21), AR, V1TA, para 126, p 48.
[83] Latimer Aff (Jan 14/21), AR, V4TC, para 5-14, p 1856-60.
[84] Mathers Aff (Jan 14/21), AR, V1TA, para 25, 189-96, p 70-73.

on recruitment and retention measures or non-compensation language changes. For instance the OHA tried to introduce modified language to deal with nurses' movement between units within in a facility, often referred to by the parties to the collective agreement as "churning". However, as noted by the Chair of ONA's Negotiation Team, Bill 124 made it impossible to meaningfully discuss even such non-compensation related language:[85]

> Not only could the parties not agree to normative wage, benefit or premium increases, that are usually agreed to, but they could not discuss other changes such as posting, new job security or other language in the collective agreement, which normally would be traded off in negotiations as a whole. The OHA could not agree to a normal "give", even something in exchange for one of their proposals such as posting language let alone discuss meaningful changes in the party's priorities to change working conditions. The back and forth and the give and take in bargaining just did not, and could not, happen under the restraints of Bill 124. We went to bargaining but mostly sat in our respective rooms as we had nothing we could discuss when it was "1% and that's it".[86]

43. In accordance with *HLDAA*, the parties went to an interest arbitration Board to settle their collective agreement in the midst of the second wave of the COVID-19 pandemic in Ontario. The Board was chaired by an experienced interest arbitrator in the health sector, John Stout, who said while he normally would have awarded normative higher compensation increase he could not do so as his "hands were tied" by Bill 124. Rather than being able to apply the *HLDAA* criteria to replicate free collective bargaining based on the parties' priorities or demonstrated need, Arbitrator Stout had to go through the mechanical mathematical "bean counting process" that Prof. Hebdon predicted would result from wage restraint legislation.[87] All that fit under the Bill 124 restraints was what the arbitrator at the hearing referred to as "crumbs".[88] He calculated the 1% wage increase on the salary grid amounted to .938 % of total compensation based on the hospital

[85] Latimer Aff (Jan 14/21), AR, V1TC, para 10, p 1858-59.
[86] Latimer Aff (Jan 14/21), AR, V4TC, para 11, p 1859, see also para 5-12, 18, 34, p 1856-61, 1866.
[87] Hebdon Report (Feb/21), OECTA SAR, T1, Ex A, para 75, p 41; Hebdon Reply Report (Feb/22), para 4, 43-44, 48, 51, p 4, 16-19.
[88] Mathers Aff (Jan 14/21), AR, V1TA, para 201, p 74-76.

costings. He then had to search for a proposal small enough to fit under the remaining 0.062%. Accordingly, he awarded a non-normative small increase of pay in lieu of benefits to the part-time nurses over age 75 (which is only a tiny percentage of hospital nurses) and increased the call-back premium, which most nurses never receive as hospitals instead simply understaff their units. This took the costing up to 0.999% of total compensation.[89]

44. As result, the vast majority of members got a mere 1% increase on their grid step and nothing else. This was an increase of about $0.47 per hour for nurses at the bottom of the grid and $0.48 per hour for experienced nurses with over 25 years of nursing experience. Many nurses in this sector have at least 8 years experience and have no movement up the wage grid until they reach 25 years service.[90] This was given to the front line nurses battling a major health care pandemic. It was considered, in the words of one member, "a slap in the face" to nurses.[91]

2021-2023 Collective Agreement and Arbitrator Gedalof HLDAA Award

45. ONA and OHA engaged in a second round of central hospital bargaining under Bill 124 for the 2021-23 agreement. ONA sought normative compensation increases, enhanced job security and workload language and letters of understanding to make structural changes to the salary grid similar to police and firefighters to redress gender discrimination in the existing wage grids.[92] Again the parties had to proceed to *HLDAA* interest arbitration to settle the collective agreement. Similar to Arbitrator Stout, Arbitrator Eli Gedalof also said his hands were tied by Bill 124 and had to engage in a "bean counting" exercise to find a proposal small enough to fit under Bill 124 restraints on his jurisdiction. He said:

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[89]Latimer Aff (Jan 14/21), AR, V4TC, para 23-24, p 1862-63; Mathers Aff (Jan 14/21), AR, V1TA, para 197-203, p 73-77 & V2TA, Ex 10, para 39, p 840-41.
[90] Mathers Aff (Jan 14/21), AR, V1TA, para 132, 139, p 52; Riddell Aff (Feb 22/22), Ex E, p 1988-91.
[91] McKenna Aff (Jan 14/21), AR, V4TB, para 119, p 1696.
[92] Mathers Reply Aff (Apr 20/22), V1, para 4, p 2.

> Even highly normative and modest improvements to health and welfare benefits—commonly awarded by past boards of interest arbitration between these parties—are beyond the scope of our jurisdiction…Neither can we consider proposals such as the vacation improvement proposed for long-service nurses, pregnancy and parental leave, or any other 17 monetary improvements. We are similarly precluded from awarding enhanced placement on the salary grid for NPs, which would also represent an incremental increase in compensation within the meaning of Bill 124.[93]

46. In contrast to these decisions, an interest arbitrator in respect of a private hospital not constrained by Bill 124, awarded health care workers a 3% wage increase.[94] Both Arbitrator Stout and Arbitrator Gedalof inserted "reopener clauses" in the event that this Application at court was successful so that the parties could reopen and negotiate compensation again if Bill 124 was declared unconstitutional or repealed.[95]

(ii) Long-Term Care Sector

47. While the government may not have predicted the pandemic starting in 2020, by the time Bill 124 was introduced, the sector was deeply entrenched in a chronic and well-known health care labour shortage as discussed above. The scope of Bill 124 has arbitrarily carved up the LTC sector and fragmented established bargaining relationships and further limited the ability of employers and ONA to mitigate the deepening staffing crisis. Charitable nursing homes are covered by compensation restraints, while municipally owned, for-profit, and charitable nursing homes operated by for-profit companies are excluded.[96] This is despite the fact that all the homes receive government funding under the exact same funding model and charitable and municipal homes both

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[93] Mathers Cross (Jun 1/22), JTB, V3T8, Ex 1, para 39, p 1228-29; Mathers Reply Aff (Apr 20/22), V1, para 5, p 3.
[94] Lobsinger Reply Aff (May 2/22), Ex 24, para 28, p 307.
[95] Mathers Aff (Jan 14/21), AR, V2T8, Ex 8, para 25, 48, p 728, 735 & Ex 10, para 24, 47, p 836, 843.
[96] Bill 124, s. 5(1)5 (inclusion of long-term care homes except those operated for profit) and s. 5(2)(1) (exclusion of municipalities).

have access to funds outside the funding model.[97] This has resulted in fragmentation of longstanding central bargaining relationships, forcing historical groups of LTC to bargain separately for the first time in 30 years.[98]

48. The first decision under Bill 124 arose from ONA's bargaining unit at Mon Sheong long-term care facility. Arbitrator Gedalof stated "there can be no doubt that but for the application of Bill 124" the Board would have awarded more in wages, vacation entitlements, increase and premiums and benefit improvements but "we are compelled to break with the established bargaining patterns and the principle of replication in this sector, and limit our award on monetary items to the 1% per year salary and total compensation limits in Bill 124".[99]

49. In the many subsequent interest awards in the LTC sector under Bill 124, the repeated refrain from interest arbitrators was that "Bill 124 interferes with free collective bargaining" and "our hands are tied".[100] As a result they stated that they could not exercise their discretion or perform their statutory obligations under *HLDAA*, such as considering comparable homes and "the employer's ability to attract and retain qualified employees".[101] As in hospital awards, Arbitrators have also inserted reopener clauses in LTC awards under Bill 124.[102]

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[97] Mathers Aff (Jan 14/21), AR, V1TA, paras 22, 150, p 9, 56.
[98]Mathers Aff (Jan 14/21), AR, V1TA, paras 22-23, p 9; Mathers Reply Aff (Apr 20/22), V1, para 10, footnote 4, p 4, citing: *Participating Charitable Nursing Homes v Ontario Nurses' Association,* 2021 CanLII 106877 (ONLA) at para 7.
[99] Mathers Aff (Jan 14/21), AR, V2TA, Ex 8, para 24, p 728.
[100] Mathers Aff (Jan 14/21), AR, V2TA, Ex 11, p 857 & Ex 10, para 4, 831-32.
[101] Mathers Aff (Jan 14/21), AR, V2TA, Ex 8, p 738; *HLDAA*, s 9(1.1)4.-5.
[102] Mathers Aff (Jan 14/21), AR, V2T8, Ex 8, para 25, 48, p 728, 735 & Ex 10, para 24, 47, p 836, 843

G. TREASURY BOARD INTERFERENCE WITH COLLECTIVE BARGAINING

(i) Requests for Exemption Denied

50. ONA sought exemption from Bill 12 for bargaining in charitable homes, hospital and home care sectors under ss. 6 and/or 27 of Bill 124. ONA also sought exemptions for individual collective agreements, including in requests made jointly or in parallel to separate employer requests.[103] TBS did not respond to ONA's arguments regarding recruitment, retention or systemic sex/gender discrimination. In the case of both the requests relating to the hospital and home care sectors, TBS did not respond for nearly a year, and collective bargaining proceeded in the shadow of this uncertainty.[104]

(ii) Direct Interference in and Voiding of Collective Agreements

51. TBS has to date intervened directly in six ONA collective agreements so far, initiating inquiries into collective agreements freely bargained by the parties including several in which the parties had reached an agreement before Bill 124 received Royal Assent. In the majority of these cases, ONA and the employer both requested that Bill 124 not apply to the collective agreements in question. The Minister has voided the freely bargained collective agreements despite both the union and employers' serious concerns about labour shortages, and in one case, the parties continue to wait for a response after more than a year.[105] Examples include:

(a) At Royal Victoria Hospital in Barrie, ONA and the employer jointly requested that a first collective agreement for Respiratory Therapists be left intact, citing recruitment and retention challenges, pandemic pressures, and the importance to good labour relations of

[103] Mathers Aff (Jan 14/21), AR, V1TA, paras 160-167, p 59-61; Lobsinger Reply Aff (May 2/22), paras 5-27, p 3-10.
[104] Mathers Aff (Jan 14/21), AR, V1TA, paras 160-165, 167, p 59-61 & V3TA, Ex 23-25, 28-29, p 1335-53, 1364-80.
[105] Lobsinger Reply Aff (May 2/22), paras 5-27, p 3-10; Mathers Aff (Jan 14/21), AR, V1TA, para 166, p 60.

allowing a freely bargained first collective agreement to stand. TBS delayed responding for nearly a year, then denied the joint request. The parties were forced to renegotiate and reduce the compensation increase to 1%.[106]

(b) At AbleLiving, an LTC facility, TBS similarly voided a collective agreement despite submissions from both ONA and the employer regarding serious recruitment and retention challenges. ONA further argued that failing to provide an exemption would increase the pandemic-related hardship and systemic sex/gender discrimination experienced by these nurses. These requests were denied.[107]

(c) At Canadian Mental Health Association ("**CMHA**") in Windsor, ONA and CMHA provided detailed submissions in March 2021 requesting exemption from the application of Bill 124, with the employer emphasizing outside sources of funding and Ministry of Health direction to prioritize retention of NPs, and ONA raising concerns regarding gender-based impacts.[108] They have received no response from TBS for well over a year despite following up and have been unable to conclude negotiations on an now-expired collective agreement.[109]

H. HARM TO THE MEMBERS AND THE UNION

(i) Harm to Nurses

52. There is much harm to nurses, not least of which is that nurses have been demoralized by an only 1% increase especially during a pandemic. Nurses' evidence is that they are breadwinners for their families and a cap below normative increases causes significant harm to themselves and

[106] Mathers Aff (Jan 14/21), AR, V1TA, para 166, p 60 & V3TA, Ex 26-27, p 1354-62; Lobsinger Reply Aff (May 2/22), para 19, p 7.
[107] Lobsinger Reply Aff (May 2/22), paras 7-10, p 3-5 & Ex 1-4, p 29-55.
[108] Lobsinger Reply Aff (May 2/22), paras 21-27, p 8-10 & Ex 10-12, p 97-111.
[109] Lobsinger Reply Aff (May 2/22), paras 21-27, p 8-10 & Ex 10-12, p 97-111.

their families by reducing their real earnings and spending ability in relation to the cost of living.[110] For nurses in the North the cost of living is even higher and their income does not stretch as far; members have expressed worry that they cannot afford to have children and remain in the region.[111]

53. Part-time nurses, particularly those many who are seeking but not getting full-time work, are particularly hard hit by Bill 124. One described Bill 124 as the "straw that broke the camel's back" that, with the increases to the cost of living, caused her to not be able to make ends meet to pay family expenses and to have to sell her house. She stated that with a "more reasonable pay increase, I think we could have kept our house".[112]

54. Bill 124 impacts members differently depending on their age and has significant negative impacts for both younger and older nurses. Younger nurses are paid at lower rate on the wage grid and have many costs, such as student loans after obtaining their nursing degrees. Not only will the cap will affect them directly for three years, a long period for a young family, but indirectly for much longer as they will also accrue cumulative lifetime losses as a result of their compensation being capped early in their careers.[113] Older members approaching retirement are adversely affected through reductions to their pension contributions in crucial years; for instance, the hospital pension is based on the best five years of earnings which are typically the last five at the top of the wage grid. Lower contributions means lower pension entitlements nurses who have commonly entered the workforce later in life for childcare reasons but, as women, tend to live longer.[114]

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[110] Mathers Aff (Jan 14/21), AR, V1TA, para 101-02, p 40-41; Casselman Aff (Jan 15/21), AR, V4TE, para 4-7, p 1891-92; Latimer Aff (Jan 14/21), AR, V1TC, para 13, p 1860.
[111] Keuhl Aff (Jan 13/21), AR, V1TD, para 9, p 1887.
[112] Casselman Aff (Jan 15/21), AR, V4TE, para 3-7, p 1891-92.
[113] Latimer Aff (Jan 14/21), AR, V1TC, para 7, p 1857.
[114] Latimer Aff (Jan 14/21), AR, V1TC, para 14, 32, p 1860, 1865; Mathers Aff (Jan 14/21), AR, V1TA, para 178.

55. NPs in community health clinics provide equivalent primary care side-by-side with physicians who are not capped by Bill 124. The Ministry of Health has previously recognized their compensation as inadequate to support retention and recruitment,[115] NPs in hospitals do not have a common grid and this could not be negotiated in the Bill 124 rounds of negotiations.[116]

(ii) Harm to the Union

56. Immediately following the release of the central hospital award on June 8, 2021, in which Arbitrator Stout awarded 1% on the grid and little else due to "his hands being tied" by Bill 124, ONA, its Provincial President and their local leaders and members of their negotiating team were inundated by furious social media posts, emails, voicemails, and other angry communication from ONA members brutally criticizing ONA for the 1% award. Despite ONA trying to explain the limits imposed by Bill 124, their members responded with hundreds of posts and emails expressing hostility and disappointment with ONA and its leadership.[117]

57. There is no doubt, as conceded by the Respondent witnesses, that the angry backlash at ONA was causally connected to Bill 124.[118] On June 9, 2020, one day after Arbitrator Stout released the hospital central award, ONA members first stated their criticism of ONA's previously widely respected President and ONA more broadly, and then created two protest Facebook groups as a result of Bill 124 - the "Ontario Nurses for a Protest" and the "ONA Nurses for Change", which quickly grew to over 21,000 members. The posts on these Facebook groups were focussed on the hospital award and highly critical of ONA and blamed its leadership for the 1% wage cap.[119]

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[115] Him Aff (Jan 14/21), AR, V4TG, para 25-32, p 1906-08; Mathers Aff (Jan 14/21), AR, V1TA, para 184, p 69 & V3TA, Ex 31C, p 1474-1502.
[116] Mathers Reply Aff (Apr 20/22), V1, para 5, p 3.
[117] McKenna Aff (Jan 14/21), AR, V4TB, para 99-127, p 1691-98.
[118] Porter Cross (Jun 15/21), JTB, V5T19, Q 472-95, p 3564-75 (in particular: Q 494-95, p 3575); Riddell Cross (Jun 10/22), JTB, V5T17, Q 1203-14, 1219, 1222, 1224-25, p 2957-68, 2970-75.
[119] McKenna Aff (Jan 14/21), AR, V4TB, para 102-09, p 1691-93.

58. The anger arising out of the 2020 central hospital award continued despite ONA engaging on media, social media and holding member town halls to correct the facts. Among members' comments were: accusations that the ONA President had colluded or "agreed" to Bill 124; views that ONA was "disgraceful" and "useless" because of the mere 1% increase and calls for members to get a new union to get rid of the interest arbitration system, which they no longer trusted, and obtain the right to strike; questions about the competency of ONA's leadership and seeking Ms. McKenna's resignation; and sending ONA media articles about the generous wage and benefit increases to municipal police and firefighters in their cities and towns, accompanied by calls to replace Ms. McKenna with a "male President" and a "male union" which they believed would allow them to achieve similar increases.[120]

59. The Bill 124-induced anger was neither isolated nor short-lived but persistent. Ms. McKenna stated: "I think the harm to ONA's reputation and to ONA is permanent as we have lost the trust of our members."[121] The Chair of the Negotiating Team, the experienced local president of a large bargaining unit at Health Sciences North, similarly believes that the large dissenting group will never forgive ONA or its leaders for the meagre interest arbitration award under Bill 124. She stated that members concluded that ONA was "weak and ineffective in representing the priorities of the membership": "I do not think my members will ever forgive me or understand how ONA was not able to bargain because of the restraints of Bill 124".[122]

60. ONA was inundated with the Bill 124 backlash which interfered with its ability to represent their members, a significant harm for any union but particularly when trying to advocate for

[120] Mathers Aff (Jan 14/21), AR, V1TA, para 33-35, p 1670-71; McKenna Aff (Jan 14/21), AR, V4TB, para 114-17, p 1695-96.
[121] McKenna Aff (Jan 14/21), AR, V4TB, para 129, p 1699. She was not challenged or cross-examined on this ongoing backlash against ONA: McKenna Cross (Jun 16/22), JTB, V6T20.
[122]Latimer Aff (Jan 14/21), AR, V1TC, para 27, p 1864.

exhausted health care workers during a pandemic which also required ONA to deal with members' access to personal protective equipment and other legislation and regulations overriding nurses' collective agreement provisions and bargaining rights.[123] ONA hired a third party whose report *Impact Analysis: The Effect of Bill 124 on ONA and its Members* found that the Bill 124 award "was not only a blow to nurses' morale, but for many, already stressed and exhausted, it was incendiary" and that in "a short span of months, the knock-on effects of the [Stout hospital central award] have stimulated a volatile militancy in the nursing community at large, and in ONA's membership" where dissenters were "characterizing ONA and its leadership as ineffective".[124] The report documented "Active Threats" to the union as a result of Bill 124 including "reputational damage", "undermining of ONA's credibility, achievements, and validity", "weakened ability for ONA to frame the public and political discourse related to Bill 124, COVID-19, and other pressing issues", "potential erosion of political influence if ONA is perceived as divided and unable to mobilize", "escalating division and infighting within ONA's membership, consuming organizational resources and, in the longer term, destabilizing orderly governance of the union".[125]

PART III - STATEMENT OF ISSUES, LAW & AUTHORITIES

61. The following issues are engaged by this Application: a) Does the *Act* violate the Applicants' right to freedom of association under s. 2(d) of the *Charter*?; b) Does the *Act* violate the Applicants' right to equality under s 15 of the *Charter*?; c) If so, are these violations justified?

62. It is ONA's position that: Bill 124 violates s. 2(d) by substantially interfering with collective bargaining and other associational activities and/or it violates s. 15 by perpetuating and

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[123] *Ontario Nurses Association v. Eatonville/Henley Place*, 2020 ONSC 2467; *Reopening Ontario (A Flexible Response to COVID-19) Act*, 2020, SO 2020, c 17; *Supporting Retention in Public Services Act, 2022*, SO 2022, c 11, Sch 7; O Reg 241/20: Special Rules re Temporary Pandemic Pay.
[124] McKenna Aff (Jan 14/21), AR, V4TB, Ex 11, p 1846.
[125] McKenna Aff (Jan 14/21), AR, V4TB, Ex 11, p 1847.

exacerbating systemic sex/gender discrimination for ONA's predominantly female members; and that it cannot be justified under s. 1 of the *Charter*.[126]

PURPOSIVE APPROACH TO SECTION 2(D) AND SECTION 15

63. It is well established by the SCC that courts must adopt a "purposive" analysis of *Charter* rights and that such rights must interpreted consistently with s. 28, which provides: "Notwithstanding anything else in the *Charter*, the rights and freedoms referred to in it are guaranteed equally to male and female persons". In *R v Big M Drug Mart*, the SCC directed that the meaning of a *Charter* right is "to be ascertained by an analysis of the purpose of such a guarantee; it [is] to be understood . . . in light of the interests it was meant to protect".[127]

64. Heeding this guidance, Dickson CJ adopted a purposive approach to s. 2(d) in his dissent in the *Alberta Reference*, which has since formed the foundation to the SCC's current framework for s. 2(d) in the labour context. Citing Dickson CJ, the SCC in *Mounted Police* stated:

> The purposive approach, adopted by Dickson C.J. in the *Alberta Reference*, defines the content of s. 2(*d*) by reference to the purpose of the guarantee of freedom of association: ". . . to recognize the profoundly social nature of human endeavours and to protect the individual from state-enforced isolation in the pursuit of his or her ends" . . . Dickson C.J. states that the purpose of the freedom of association encompasses the protection of (1) individuals joining with others to form associations . . .; (2) collective activity in support of other constitutional rights . . .; and (3) collective activity that enables "those who would otherwise be vulnerable and ineffective to meet on more equal terms the power and strength of those with whom their interests interact and, perhaps, conflict". . .
>
> Historically, those most easily ignored and disempowered as individuals have

[126] ONA adopts and endorses the OFL's s. 2(d) legal submissions regarding consultation and reserves the right to rely on other Applicants' submissions on ss. 2(d), 15 and 28.

[127] *R v Big M Drug Mart Ltd*, [1985] 1 SCR 295 at para 116 [*Big M Drug Mart*]; *Hunter v. Southam Inc.*, 1984 CanLII 33 (SCC), [1984] 2 S.C.R. 145, at p 146, 156-57; *Health Services and Support – Facilities Subsector Bargaining Assn v British Columbia*, 2007 SCC 27 at paras 32, 39-42, 86 [*Health Services*]; *Reference re Public Service Employee Relations Act (Alta)*, [1987] 1 SCR 313 at para 86-89 [*Alberta Reference*]; *New Brunswick (Minister of Health and Community Services) v. G. (J.)*, [1999] 3 SCR 46 at paras 112, 115 (concurring reasons of L'Heureux-Dubé J); Ruth Sullivan, *The Construction of Statutes, 7th Ed* (Toronto: LexisNexis Canada Inc, 2002) at para 9.01[7], BoA V1T2.

> staked so much on freedom of association precisely because association was the means by which they could gain a voice in society. As Dickson C.J. put it in the *Alberta Reference*:
>
> > Freedom of association is most essential in those circumstances where the individual is liable to be prejudiced by the actions of some larger and more powerful entity, like the government or an employer. Association has always been the means through which political, cultural and racial minorities, religious groups and workers have sought to attain their purposes and fulfil their aspirations; . . .[128]

65. In extending s. 2(d) protection to collective bargaining in *Health Services*, the SCC reasoned that collective bargaining enhances the values and the purposes underlying the *Charter* including "dignity, personal autonomy, equality and democracy" by protecting the workers' right to combine to "overcome the inherent inequalities of bargaining power" in employment.[129]

66. The purpose of both *Charter* guarantees on which ONA relies is thus to protect against inequality: in the case of s. 2(d), against the "inherent inequality of bargaining power" between workers and employers; and in the case of s. 15, against the reinforcement or perpetuation of pre-existing inequality by the state. Section 2(d) protects the right of less powerful individuals to meet powerful entities on more equal terms in order to pursue their interests. Section 15 protects against those "built-in headwinds" that act as barriers to protected groups accessing the equal protection and benefit of the law.[130]

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[128] *Mounted Police Association of Ontario v Canada (Attorney General)*, 2015 SCC 1 at paras 54, 57 (emphasis in original), see also paras 47-50 [*Mounted Police*].
[129] *Health Services*, paras 84-86; *Alberta Reference* (Dickson), para 154; *Mounted Police*, para 71; *OPSEU v Ontario*, 2016 ONSC 2197 (CanLII) at para 197
[130] *Health Services*, paras 84-86; *Alberta Reference* (Dickson), para 154; *Mounted Police*, para 71; *Fraser v. Canada (Attorney General)*, 2020 SCC 28, para 50, 53; Mary Eberts & Kim Stanton, "The Disappearance of the Four Equality Rights and Systemic Discrimination from Canadian Equality Jurisprudence" (2018) 38:1 Nat J Const'l L 89 at p 90, 96-97, 109, 124, BoA V2T3.

67. The SCC has further held that fostering good labour relations and industrial peace is of significant value not only to the workplace parties but to society as a whole.[131] This is particularly true in the case of public sector bargaining relationships, where the employers and employees are partners in the delivery of important and often essential services necessary for the public good and stable functioning of society.[132]

68. In keeping with the purposive approach, the interest protected by both ss. 2(d) and 15 in the context of this Application is the ability of predominantly women public sector and broader public sector workers to meaningfully engage in collective activity to pursue their workplace goals. In this context of these facts, ss. 2(d), 15 and 28 must be purposively read together to recognize and remedy the gendered harms of Bill 124. In so doing, the court must consider women's pre-existing inequality in the labour market due to the historical association of women with unpaid caregiving work[133] and occupational segregation into lower-paid, often caregiving occupations, and the social reality of a "deep and persistent gap between women's pay and men's pay" in the labour market, factors which have been repeatedly recognized by the courts.[134]

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[131] *Toronto (City) Board of Education v OSSTF, District 15*, [1997] 1 SCR 487 para 36 [*Toronto (City)*]; *Nor-Man Regional Health Authority Inc v Manitoba Association of Health Care Professionals*, [2011] 3 SCR 616 paras 47-48, 50 [*Nor-Man*].

[132] *Saskatchewan Federation of Labour v Saskatchewan*, 2015 SCC 4 paras 4, 82 [*SFL*]; *CUPE v City of Montreal*, [1997] 1 SCR 793 at paras 32-34.

[133] *Fraser*, paras 1-2, 97-106; *CSQ*, where claimants were predominantly female childcare centre employees; *Symes v Canada*, [1993] 4 SCR 695 p 762-64; Rosalie Abella, *Report of the Commission on Equality in Employment* (Ottawa: Minister of Supply and Services Canada, 1984) at p 177, BoA V2T4 [Abella Report]; *Brooks v Canada Safeway Ltd*, [1989] 1 SCR 1219 at p 1229-30, 1236-39. See also international human rights instruments: *Convention Concerning Equal Remuneration for Men and Women Workers for Work of Equal Value (No. 100)*, Can. T.S. 1973 No. 37 (ratified by Canada in 1951), BoA V3T5; *Convention on the Elimination of All Forms of Discrimination against Women*, 1249 U.N.T.S. 13 (ratified by Canada in 1981), BoA V3T6.

[134] *CSQ*, paras 2-3, 24, 34-36; *Ontario (Health) v Association of Ontario Midwives*, 2022 ONCA 458 at paras 12-14 [*AOM* (ONCA)]; *Newfoundland (Treasury Board) v NAPE*, 2004 SCC 66 at paras 40-45 [*NAPE*]; *Quebec (Attorney General) v Alliance du personnel professionnel et technique de la santé et des services sociaux*, 2018 SCC 17 at paras 29, 38, 40 [*Alliance*]; *Ontario Nurses' Association v Participating Nursing Homes*, 2021 ONCA 148 at para 71 [*PNH*]; Fay Faraday,

69. Nursing is the prototypical example of women's work, being deeply associated with caregiving and cultural stereotypes and norms about women's inherent abilities, and remaining highly female-dominated.[135] In the context of women's recognized disadvantage in the labour market, the important role of collective bargaining in mitigating the "inherent inequality" between workers and employers is an even more critical to provide nurses and other predominantly women workers with a means to pursue shared workplace goals, thereby enhancing equality, democracy, and stable labour relations to benefit the public good.[136]

BILL 124 SUBSTANTIALLY INTERFERES WITH COLLECTIVE BARGAINING & VIOLATES S. 2(D) OF THE *CHARTER*

70. The right to collective bargaining under s. 2(d) is breached where government legislation substantially interferes with meaningful collective bargaining on matters of significant importance and in a manner that violates the duty of good faith bargaining. In *Health Services*, the SCC articulated the test for determining whether the right to meaningful collective bargaining has been infringed: a) Is the matter affected of such great importance as to undermine the ability to of the employees to pursue goals collectively?; b) Do the measures taken by the state preserve or violate a process of consultation and good faith negotiation?[137]

"Intersectional Feminism, Racial Capitalism, and the COVID-19 Pandemic," (2022) 72 UNBLJ 22 at p 222-23, 228-29, 236-37, BoA V3T7; Pohler Cross (Jun 20/22), JTB, V7T22, Ex 2, p 4557-58, 4560-65, 4571-75 & Ex 5, p 5906-07 & Ex 6, p 5933-36, 5976-78, 5982-84. The recognition of the social fact of the gender pay gap also forms the foundation of human rights statutes including, e.g. *Pay Equity Act*, RSO 1990, cP7 at "Preamble", s 4; *Employment Equity Act*, SC 1995, c 44 at s 2; *Pay Equity Act*, SC 2018, c27, s416 at s 2; *Pay Equity Act*, SQ 1996, c43 at s 1; *Pay Equity Act*, RSPEI 1988, cP2 at s 2

[135] Armstrong Report (Jan/21), SAR, V1TC, para 73-78, p 131-36; Pohler Cross (Jun 20/22), JTB, V7T22, Q206-10, 277-79, p 4433-36, 4468-69; Pohler Cross (Jun 21/22), JTB, V8T23, Q 516-18, 540, 542-48, p 6193-94, 6202-04; *PNH*, para 3, 71-73; *NAPE*, para 45. See also *AOM* (ONCA), para 13, where the Court of Appeal made similar observations regarding midwifery as a female-dominated caregiving profession.

[136] *Health Services*, para 84~~86~~, quoting Dickson CJ in *Alberta Reference* at para 23; *Toronto (City)*, para 36; *Nor-Man*, paras 47-48, 50.

[137] *Health Services*, paras 92-93, see generally paras 90-109; *Mounted Police*, paras 67-68.

A. MATTER AFFECTED IS OF CENTRAL IMPORTANCE TO EMPLOYEES' ABILITY TO PURSUE WORKPLACE GOALS

(i) Compensation for Work of Central Importance to Collective Bargaining

71. Compensation for work is the key element of the employment relationship and of collective bargaining. In light of the fundamental importance of compensation to the employment relationship, courts have repeatedly recognized that placing constraints on compensation substantially interferes with employees' ability to collectively bargain and pursue workplace goals.[138] Wage and benefit increases, premium pay changes and adjustments to salary grid structures were key priorities that ONA members mandated their Negotiating Team to pursue in the rounds of bargaining that have occurred under Bill 124.[139]

(ii) Removing Compensation from Collective Bargaining Undermines ONA's Ability to Pursue Members' Priorities

72. ONA's experience with collective bargaining and interest arbitration under Bill 124 illustrates the impacts predicted by the collective bargaining expert Prof. Hebdon and is undisputed by any fact evidence adduced by the Respondent and was not challenged on cross-examination.

73. The removal of compensation from the bargaining table grossly undermined ONA's bargaining power in key ways. First, and most obvious, it removed the fundamental working condition of compensation from collective bargaining by capping total compensation at 1%. The extremely broad definition of "compensation" limits ONA's ability to negotiate not only wages

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In addition to the submissions below and in keeping with the Court's direction that the parties minimize repetition of argument, ONA reserves the right to rely on the review of the law on s. 2(d) in other Applicants' factums.

[138] *Health Services*; *Meredith v Canada (Attorney General)*, 2015 SCC 2 at para 30 [*Meredith*]; *SFL* at para 54; *Professional Institute of the Public Service of Canada v Northwest Territories (Commissioner)*, [1990] 2 SCR 367 at p 380 per Cory J in dissent, quoted with approval by majority in *Mounted Police*, para 40; *Dunmore v Ontario*, 2001 SCC 94 at para 63; *Alberta Reference*, para 92; *Gordon v Canada (Attorney General)*, 2016 ONCA 625 at para 53.

[139] Mathers Aff (Jan 14/21), AR, V1TA, para 192-96, p 71-73.

but any employment terms with monetary implications, including vacation, health and other benefits, scheduling premiums, and staffing ratios, all key member priorities to address workload, burnout and increased workplace risks to both staff and patients especially during a lengthy global pandemic. Removing these key areas from bargaining on its own constitutes substantial interference with meaningful collective bargaining.[140]

74. Second, the removal of all compensation beyond 1% from bargaining has eliminated any incentive for employers to engage in meaningful negotiation over non-monetary proposals as ONA has nothing to trade for improvements to non-compensatory working conditions. Consistent with Prof. Hebdon's expert opinion, this has undermined ONA's bargaining power to advocate for member priorities at a time when its members' labour is in critically high demand and working conditions particularly strenuous and hazardous. Bill 124 has also undermined employers' ability to negotiate their own non-monetary proposals, as the OHA could offer no incentive to the union to discuss language proposals such as the proposal the OHA sought to reduce RN movement within the hospital that, in other circumstances, would have merited meaningful discussion.[141]

75. Third, Bill 124 fragmented a mature bargaining relationship in the already troubled LTC sector, interfering with the workplace parties' established negotiation protocols, limiting the power of groups now negotiating in isolation and making the bargaining process more inefficient and costly. Arbitrator Stout noted that Bill 124 had forced the parties to bargain separately for the first time in 30 years and stated: "Frankly, we are at a loss why an exemption was not granted to these Charitable Homes in order to preserve the long-standing bargaining relationship".[142]

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[140] Hebdon Report (Feb/21), OECTA SAR, T1, Ex A, para 10-15, p 13-15.
[141] Hebdon Report (Feb/21), OECTA SAR, T1, Ex A, paras 1-2, 16-20, 44-52, p 10-11, 15-17, 29-32; Mathers Aff (Jan 14/21), AR, V1TA, para 116-118, 189-96, p 45-46, 70-73; Mathers Reply Aff (Apr 20/22), V1, para 11-38, p 5-17; Lobsinger Reply Aff (May 2/22), para 28, p 10-11.
[142] Mathers Reply Aff (Apr 20/22), V1, para 10, footnote 4, p 4, citing: *Participating Charitable Nursing Homes v Ontario Nurses' Association,* 2021 CanLII 106877 (ONLA) at para 7.

76. By removing ONA's ability to bargain any issues involving "anything paid or provided, directly or indirectly, to or for the benefit of an employee"[143] beyond 1% Bill 124 clearly removes from bargaining a significant issue central to member priorities and the employment relationship. In light of this restriction, ONA bargaining power to pursue any of its members' mandated monetary or non-monetary priorities was eliminated, clearly "undermin[ing] the ability of the employees to pursue goals collectively" and establishing the first stage of the *Health Services* test.

B. RESPONDENT HAS VIOLATED PROCESS OF CONSULTATION & MADE GOOD FAITH COLLECTIVE BARGAINING IMPOSSIBLE

77. The second stage of the *Health Services* analysis is to determine whether the government's actions have substantially interfered with the process of good faith consultation and negotiation.[144] Under Bill 124, the Respondent has done this in the following ways: 1) failing to engage in good faith consultation prior to and during the legislative process; 2) in the absence of a right to strike, overriding the statutory regime and jurisdiction of interest arbitrators to replicate collective bargaining; 3) directly interfering with and voiding collective agreements; and 4) harming ONA's relationship with its members undermining the integrity of the union.

(i) Bad Faith Consultation

78. The Respondent's so-called "consultations", rushed through a matter of a few weeks before Bill 124 was introduced into the Legislature, was not a meaningful process. ONA and the unions (and employers) were given none of the design elements of the *Act*, despite the Respondent's evidence demonstrating that the legislative process was well underway at the time of sector-wide

[143] Bill 124, s 2.
[144] *Health Services*, para 93.

meetings. In the absence of such key information, ONA and the other unions were left to provide feedback blind and were unable to meaningfully engage in consultation.[145]

(ii) Bill 124 Overrides Jurisdiction of HLDAA Interest Arbitrators to Replicate Collective Bargaining

79. In order to be an effective and constitutional alternative to the right to strike, interest arbitration must be a meaningful process that replicates free collective bargaining.[146] Rather than preserving an effective interest arbitration system, as the SCC has said is required under s. 2(d), Bill 124 overrides the statutory regime established as a trade off for health care workers not having a right to strike due to the essential nature of their work.

80. *HLDAA* provides a functioning, albeit conservative, system for resolving labour disputes that preserves unions' bargaining power while also requiring interest arbitrators to consider economic and labour market factors relevant to ensuring stability of essential public services and sustainability of compensation. Under Bill 124, however, interest arbitrators have had their "hands tied" or been put in a "strait jacket", preventing them from fulfilling their statutory mandate under *HLDAA* and exercising their discretion to replicate free collective bargaining.[147] The *HLDAA* criteria and identified priorities of workplace parties are replaced by a mathematical "bean counting" exercise where the parties and arbitrators must hunt for provisions cheap enough to fit within the 1% compensation cap. Arbitrator Stout awarding a benefits increase to only part-time

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[145] In light of the court's direction to minimize repetition among Applicants, ONA reserves the right to rely on submissions of other unions with respect to the Respondent's so-called consultation process.

[146] *SFL*, paras 92-96.

[147] Mathers Aff (Jan 14/21), AR, V1TA, Ex 2, para 23, 33, 36, p 208-09, 213-15 & V2TA, Ex 8, para 16, 24, p 726, 728; Mathers Reply Aff (Apr 20/22), V1, para 5, p 3, footnote 2, citing: *Participating Hospitals v Ontario Nurses Association*, 2021 CanLII 88531 (ON LA); Mathers Cross (Jun 1/22), JTB, V3T8, Ex 1, p 1222; Riddell Cross (Jun 21/22), JTB, V8T25, Q1603, p 6625-26, referring to: Hauch Aff (Jan 27/21), OFL AR, V8T2, Ex AAA, p 741.

nurses over the age of 75 because it fit within the remaining 0.062% illustrates the absurdity of this exercise. This was not a mandated priority for the 64,000 nurses under the age of 75.

81. With nothing to trade off to achieve its priorities, as predicted by Prof. Hebdon, ONA has been unable to advance its members' priorities in either bargaining or interest arbitration.[148] This undermines the membership's bargaining power and the underlying purpose of the *Charter* "enhance democracy" which the SCC has identified as a benefit of collective bargaining.[149] Also as predicted by Prof. Hebdon, Bill 124 removes interest arbitrators' independence and prevents them from exercising their discretion or their statutory mandate under *HLDAA* and renders the interest arbitration process no longer "adequate, impartial or effective", which the SCC has held is required in order for interest arbitration to be a constitutional alternative to the right to strike.[150]

82. The undermining of bargaining experienced by ONA's members subject to *HLDAA* also extends to the right to strike sector. With so few gains possible under Bill 124, the right to strike is reduced to an empty threat that cannot be meaningfully leveraged in collective bargaining.[151]

(iii) Treasury Board Interference with Freely Bargained Collective Agreements

83. On top of disrupting collective bargaining and overriding interest arbitration through the combination of the compensation cap and the broad definition of compensation, Bill 124 includes other design elements interfering with free and meaningful collective bargaining. The Respondent has, to date, refused all of ONA's requests for exemption and directly interfered to void multiple collective agreements. On the evidence, the Respondent's exemption process is clearly a sham

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[148] Hebdon Report (Feb/21), OECTA SAR, T1, Ex A, para 16-20, p 15-17; See: Riddell Cross (Jun 21/22), JTB, V8T25, Ex 16, p 6850-52; Riddell Cross (Jun 21/22), V8T25, Q 1603, 1822, p 6625-26, 6684.
[149] *Health Services*, paras 81-82.
[150] *SFL*, paras 92-96; Hebdon Report (Feb/21), OECTA SAR, T1, Ex A, para 24-32, p 19-24; Riddell Cross (Jun 21/22), JTB, V8T25, Ex 16, p 6850-51.
[151] Mathers Reply Aff (Apr 20/22), V1, para 58, p 26; Lobsinger Reply Aff (May 2/22), para 65, p 27.

process. Despite compelling joint requests from employers and ONA in all health care sectors, not a single exemption has been granted. The oversight and enforcement powers of the TBS, on the other hand, have been widely used to void collective agreements. This conduct of the Respondent has, in effect: undone and delayed collective bargaining; increased collective bargaining costs to unions and employers; undermined the union's democratic process of pursuing bargaining according to members' priorities; and undermined both union and employer attempts to address a dire recruitment and retention crisis and severe worker shortages during a lengthy pandemic.[152]

(iv) Harm to the Union

84. Prof. Hebdon opined that compensation restraint legislation creates harm to unions as well as the collective bargaining process by interfering with unions' democratic processes of allowing members to formulate bargaining proposals and set priorities for bargaining. This interference fosters "frustration and cynicism on the part of union members in the institution of collective bargaining and can lead to internal union conflict directed at the union." [153]

85. This is certainly ONA's experience under Bill 124 which created a "hellfire of backlash" against ONA and their leaders by their members as set out above. Following the central Bill 124 interest award members' anger quickly turned to outrage toward their union. They blamed ONA, their local leaders and Provincial President, and have become cynical and frustrated with the interest arbitration process, their substitute for the right to strike. This has led to splits among members, including the creation of a large vocal dissenting group calling for the resignation of the President and new "male" union leadership. The anger directed at the union is indisputably causally connected to Bill 124 and has proved to be intense and long lasting.

[152] Porter Aff (Mar 4/22), RAR, V1T1, Ex F, p 205, 232, 243, 290.
[153] Hebdon Report (Feb/21), OECTA SAR, T1, Ex A, para 16, 60, p 15-16, 35.

86. Bill 124 has thus deepened a pre-existing nursing crisis at a time when the need for a union to be able to effectively represent their members, especially in health care, has been critically important. Instead, nurses have faced worsening working conditions, workplace infections, trauma and the mental health impacts[154] of providing care during a pandemic with their compensation capped and bargaining power eviscerated. ONA's members feel deeply disrespected and outraged by Bill 124 in these conditions, compounding the burnout experienced by members and contributing to nurses leaving positions where their skills are critically needed or leaving the profession altogether.[155] Bill 124 has thus exacerbated the well-known nursing shortage and further eroded the stability of the health care system, contrary to Bill 124's stated purpose of "protecting the sustainability of public services" (s. 1).

87. All of the above establishes the second stage of the *Health Services* test by demonstrating that Bill 124 has substantially interfered with ONA's ability to engage in meaningful, good faith collective bargaining to pursue its members' workplace priorities. This has occurred during a global pandemic at a time of unprecedented need for nurses' labour that would, absent Bill 124, have amplified their bargaining power[156] and been taken into account by interest arbitrators under the statutory criteria mandated by s 9 (1.1) of *HLDAA*. Even the Respondent's expert, Prof. Riddell, drily stated that it is not "ideal" to impose wage restraint in a time of labour shortage. In respect of nurses, in particular, he stated in cross-examination that "wage flexibility […] is important right now and for some period of time" and that Bill 124 is inconsistent with wage flexibility.[157]

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[154] McKenna Aff (Jan 14/21), AR, V4TB, paras 34-35, p 1670-71 & Ex 3, p 1745-47; Mathers Aff (Jan 14/21), AR, V1TA, paras 42-45, p 17-18.
[155] McKenna Aff (Jan 14/21), AR, V4TB, para 99, 101, 128, p 1691, 1698-99.
[156] McKenna Aff (Jan 14/21), AR, V4TB, para 39-48, p 1672-76; Lobsinger Reply Aff (May 2/22), para 42, p 17; Hebdon Report (Feb/21), OECTA SAR, Ex A, para 44-52, p 29-32.
[157] Riddell Cross (Jun 10/22), JTB, V5T17, Q1056, p 2912.

C. BILL 124 DISTINGUISHABLE FROM *EXPENDITURE RESTRAINT ACT*

88. Finally, we note that the design of Bill 124 and the manner it which it has substantially interfered with ONA's ability to collectively bargain its members priorities make the present circumstances distinguishable from the cases decided with respect to the *Expenditure Restraint Act* ("***ERA***"), the federal legislation passed in the wake of the 2008 global financial crisis.[158] While the *ERA* was enacted at a time of undisputed fiscal crisis, Bill 124 came into force at the time of a well-documented health care crisis, with no regard for its impact on exacerbating that crisis. While the *ERA* capped wage increases at a level based on collective bargaining that had already occurred in the affected sectors, Bill 124 imposes an arbitrary, below normative wage cap. Unlike the *ERA*, Bill 124 imposes an extremely broad cap on "total compensation", the effects of which extend both into the past and into the future due to the operation of its "moderation period" and "Anti-Avoidance" provision. Unlike the *ERA*, Bill 124 overrides a constitutional interest arbitration regime not only capable of but mandated to consider fiscal and labour market considerations consistent with the sustainability of public services. Unlike the *ERA*, Bill 124 has allowed TBS to directly interfere in and void individual collective agreements. Finally, in the present Application, unlike in the circumstances of the *ERA*, there is additional evidence on the record of significant harms to the union and its relationship with members, as well as the Respondent's refusal to engage in meaningful consultation or consider the disproportionate impact on women workers.

BILL 124 PERPETUATES SYSTEMIC DISCRIMINATION & VIOLATES SECTION 15

89. Section 15(1) of the *Charter* provides that "Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion,

[158] *ERA*; and eg *Meredith*; *Gordon*.

sex, age or mental or physical disability".[159] Section 15 exists to promote substantive equality and protect against discrimination, including adverse effect or systemic discrimination, in which apparently neutral rules disproportionately and negatively impact a protected group.[160] The hallmark of systemic discrimination is its "structural and largely invisible nature"[161] in which "seemingly neutral rules, restrictions or criteria that operate in practice as "built-in headwinds" for members of protected groups". Section 15 protects against perpetuation of disadvantage, including historic disadvantage, by the state. For this reason, it is important to understand the "full context of the claimant group's situation" in order to identify the interest protected and disadvantage produced by the impugned legislation.[162]

90. In its 2020 decision in *Fraser*, the SCC reaffirmed the following test for infringement of equality rights under s 15: a) Does the law, on its face or in its impact, draw a distinction based on an enumerated or analogous ground, including by having an adverse impact on members of a protected group?; b) If so, does it impose burdens or deny a benefit in a manner that has the effect of reinforcing, perpetuating or exacerbating disadvantage, including historical disadvantage?[163]

91. The SCC has held that the analytical framework under s. 15 focuses on whether the distinction at issue "reinforces, perpetuates or exacerbates disadvantage". The test does not require

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[159] *Charter*.
[160] *Fraser*, paras 46-48, 134 ; *CN v Canada (Canadian Human Rights Commission)*, [1987] 1 SCR 1114 at p 1138-39 [*Action Travail*]; *British Columbia (Public Service Employee Relations Commission) v BCGEU*, [1999] 3 SCR 3 at para 41 [*Meiorin*]. See also: Eberts & Stanton, p 94-95, BoA V2T3; F Faraday "One Step Forward, Two Steps Back? Substantive Equality, Systemic Discrimination and Pay Equity at the Supreme Court of Canada," (2020) 94 *SCLR* 301 p 305, 318-22, BoA V3T8; Fay Faraday, "The Elephant in the Room and Straw Men on Fire", (2021) 30:2 *Constitutional Forum* 15, 2021 CanLIIDocs 1013; Jonnette Watson Hamilton, "Cautious Optimism: Fraser v Canada (Attorney General)", (2021) 30:2 *Constitutional Forum* 1, 2021 CanLIIDocs 1012, p 5-8.
[161] *AOM (ONCA)*, para 11; *Action Travail*, p 1138-39.
[162] *Fraser* paras 53, 56-57, 70-72, 76-82.
[163] *Fraser*, para 27.

claimants to establish that the distinction at issue directly "created" or "caused" the disadvantage,[164] but only that they demonstrate "a disproportionate effect…based on his or her membership in an enumerated or analogous group".[165] Intent is irrelevant; the focus is on the impugned law's impact on those claimants.[166] The analysis must not be applied mechanistically or in a decontextualized manner[167] and must proceed from the perspective of the claimants.[168]

92. Bill 124 contravenes the s. 15 rights of ONA's members by perpetuating historic labour market disadvantage, maintaining or reinforcing the gender pay gap that exists for predominantly female health care workers and undermining their bargaining power.

A. BILL 124 HAS A DISPROPORTIONATE IMPACT ON NURSES & OTHER WOMEN WORKERS

93. Section 15 guarantees substantive equality by protecting against adverse effects of apparently neutral legislation. Where a law has a disproportionate impact on members of a protected group, this demonstrates a distinction on the basis of a protected ground and the first stage of the s. 15 test is met. In assessing whether the impugned law has a disproportionate impact on the claimant group, courts must "look beyond the facially neutral criteria on which they [are] based, and examine whether they have the effect of placing members of protected groups at a

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[164] *Fraser*, paras 69-71; *Vriend v Alberta*, [1998] 1 SCR 493 at para 84 [*Vriend*]; *Eldridge v. B.C. (A.G.)*, [1997] 3 S.C.R. at para 55, cited in *CSQ*, at para 32 and *Alliance~~APTS~~*, at paras 41-42; *Quebec v A*, 2013 SCC 5 at para 332 (per Abella dissent). In the context of the Quebec *Charter* and provincial human rights legislation, see also: *Quebec (Commission des droits de la personne et des droits de la jeunesse) v Bombardier Inc (Bombardier Aerospace Training Center)*, 2015 SCC 39 at para 51; *Moore v. BC (Education)*, 2012 SCC 61 at para 33; *Peel Law Association v Pieters*, 2013 ONCA 396 at paras 59-61.

[165] *Kahkewistahaw First Nation v. Taypotat*, 2015 SCC 30 at para 21.

[166] *Withler v Canada (Attorney General)*, 2011 SCC 12 at paras 2, 39 [*Withler*]; *Quebec v A*, para 324; *Ermineskin Indian Band and Nation v Canada*, 2009 SCC 9 at paras 193-194; *R v Turpin*, [1989] 1 SCR 1296 at p 1331-32 [*Turpin*].

[167] *Turpin*, p 1332.

[168] *Law v Canada*, [1999] 1 SCR 497 at paras 59-75 [*Law*]; *Withler*, at paras 2, 37-38; *Quebec v A*, at paras 327-329.

disadvantage". Examples include: pension plans that account only for full-time historically male pattern employment and adversely impact women in temporary part-time job share arrangements due to family caregiving responsibilities; testing requirements that adversely impact members of racialized groups; fitness requirements in the workplace that adversely impact women; and policies requiring employees to work on Saturdays that adversely impact religious minorities. Evidence of "the results of the system" can provide concrete proof that members of protected groups are disproportionately impacted despite the policy or statute being facially neutral.[169]

94. The "results of the system" flowing from Bill 124 provide concrete proof of disproportionate impact. Collective bargaining has been a crucial way for women to obtain improved compensation and working conditions.[170] As outlined in the s. 2(d) argument above, Bill 124 results in ONA being unable to pursue its members' workplace priorities either through negotiation in the context of its diminished bargaining power or *HLDAA* interest arbitration because Bill 124 has disrupted the statutory mandate. Due to the design of the Bill 124 and in particular its scope, the *Act* has the disproportionate effect of suppressing nurses' and other public sector women workers' compensation, their ability to improve their working conditions through collective bargaining and to address changing conditions in their workplaces. Bill 124 has disproportionately capped compensation increases at a time when market forces would have resulted in higher wages for nurses, and has prevented them from addressing changing working

[169] *Fraser*, para 52-58, citing *Griggs v Duke Power Co.*, 401 US 424 (1971), *Meiorin*, *Ont Human Rights Comm v Simpsons-Sears*, [1985] 2 SCR 536, *Central Alberta Dairy Pool v Alberta (Human Rights Commission)*, [1990] 2 SCR 489.

[170] Porter Aff (Mar 4/22), RAR, V2T1, Ex H, p 445-58; Armstrong Report (Jan/21), SAR, V1TC, para 105-13, p 150-55; Armstrong Reply Report (Apr/22), Ex A, Appendix A, para 166-75, p 114-18; Mathers Aff (Jan 14/21), AR, V1TA, para 130-39, 177-79, p 49-52, 65-66; McKenna Aff (Jan 14/21), AR, V4TB, para 27-28, p 1666-67; Pohler Cross (June 21/22), JBT, V8T23, Q 679 p 6249-50.

conditions in a pandemic as well as negotiating more full-time jobs with benefits, scheduling premiums designed to create safer workplaces, and provisions to deal with crippling workloads.

95. The Respondent has sought cost savings through wage caps that disproportionately fall on the shoulders of women in the public sector and broader public sector. The unique carved up scope of Bill 124 means that the male-dominated occupations in the broader public sector, such as municipal police, firefighters, EMS and physicians are not subject to wage restraints. Bill 124 applies a compensation cap, restricts the "give and take" of free collective bargaining on both monetary and non-monetary proposals and "ties the hands" of *HLDAA* interest arbitrations that apply to predominantly female health care workers, while leaving similarly situated, male-dominated public sector workers' bargaining power intact and their interest arbitrators free of the "straitjacket" of Bill 124. The greater adverse effect of the *Act* on women is confirmed on the Respondent's own evidence.

96. This imbalance on the basis of sex/gender was known to the Respondent or ought to have been known and proactively addressed by Respondent.[171] The Respondent had the data, the negative adverse effects on the basis of gender was brought to their attention repeatedly prior to the Act being enacted. Furthermore, the EY Report[172] and government's own policy review[173] recommends that the Respondent take further steps, including socio-economic impact studies, before implementing an economic plan.[174]

[171] *Meiorin*, para 68; *AOM* (ONCA), paras 170-173.
[172] Porter Aff (Mar 4/22), RAR, V2T1, Ex C, p 158.
[173] Porter Cross (June 15/22), JTB, V5T19, Q 352-353, 376, p 3530, 3538.
[174] Porter Aff (Mar 4/22), RAR, V2T1, Ex C, p 158; Porter Cross (Jun 15/22), JTB, V5T19, Q359-63, p 3532-33 & Ex 1, p 3739-40.

97. These resulting effects of Bill 124 and its disproportionate application of Bill 124 to women workers and, in particular, ONA members who are over 90% female, establishes a distinction on the protected ground of sex and satisfies the first stage of the s. 15 test.

B. BILL 124 PERPETUATES GENDER PAY GAP AND SYSTEMIC DISCRIMINATION

98. At the second stage of the s. 15 test, courts must inquire whether the distinction "imposes burdens or denies a benefit in a manner that has the effect of "reinforcing, perpetuating, or exacerbating disadvantage, including historical disadvantage".[175] As the SCC further stated in *Alliance*: "Leaving wage inequities in place makes women "the economy's ordained shock absorbers'".[176] This is precisely the effect of Bill 124: it places the burden of "restoring sustainability" to public sector compensation disproportionately on the backs of women workers.

99. In the context of nursing, a caregiving profession of over 90% women, and health care generally as well as other parts of the broader public sector with historical occupational segregation on the basis of sex, Bill 124 perpetuates and reinforces the historic disadvantage of women in the labour market. As outlined above, courts including the SCC have long recognized women's disadvantage in the labour market, including high concentration in and lower compensation associated with caregiving occupations.[177] The evidence of the Applicant's expert witness, Prof. Armstrong, and, in many instances, that of the Respondent's expert witness, Prof. Pohler, reaffirms these key findings by the courts,[178] confirms the persistence of the gender pay gap,[179] and

[175] *Fraser*, para 5, 27, 35, 47-48, 76-77, 81.
[176] *Alliance*, para 8
[177] See cites at footnote 132.
[178] Pohler Cross (Jun 21/22), JTB, V8T23, Q 408, p 6162.
[179] Armstrong Report (Jan/21), SAR, V1TC, para 50-55, p 119-22; Pohler Report (Oct/21), RAR, V5T1011, para 33-34, 45-46, p 2026, 2029-30; Pohler Cross (Jun 20/22), JTB, V7T22, Q156-57, 163, 167-69, 185-87, 226-28, p 4408-09, 4411, 4413-16, 4426-27, 4444; Pohler Cross (Jun 21/22), JTB, V8T23, Q383-84, 390, 455-56, 485, p 6155-57, 6172-73, 6184.

establishes that the wage caps and design elements of Bill 124 disproportionately adversely impact women workers and reinforce and perpetuate women's historical disadvantage in the labour market by limiting their compensation and undermining their bargaining power to pursue workplace goals.[180]

100. Bill 124 exacerbates these inequities and reinforces and perpetuates women's role as the "the economy's ordained shock absorbers". The exclusions of these predominantly male workers from the *Act*'s application furthers their historical comparative advantage while perpetuating the gender pay gap and reinforces and exacerbates the inherent inequality of bargaining power of predominantly women workers. The second stage of the s. 15 test is manifestly met.

BILL 124 NOT JUSTIFIED UNDER SECTION 1 OF THE *CHARTER*

101. ONA submits that the violations of s. 2(d) and s. 15 outlined above are not justified under s. 1 of the *Charter* and reserves its right to reply to the Respondent's submissions on s. 1.

PART IV - ORDER REQUESTED

102. In light of all of the foregoing, ONA seeks Declarations that the *Act* breaches sections 2(d), 15 and 28 of the *Charter*, damages and costs. ONA seeks a further Order that any impacted collective agreements be remitted for redetermination in accordance with reopener provisions set out in ONA's applicable interest arbitration awards or agreements between the affected parties.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 22nd day of July, 2022.

Kate Hughes/ Janet Borowy/ Danielle Bisnar

[180] Armstrong Report (Jan/21), SAR, V1TC, para 114-36, p 155-65.

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SCHEDULE "A"

LIST OF AUTHORITIES

1. *Centrale des syndicats du Québec v Quebec (Attorney General)*, 2018 SCC 18
2. *Participating Charitable Nursing Homes v Ontario Nurses' Association*, 2021 CanLII 106877 (ONLA)
3. *Ontario Nurses Association v. Eatonville/Henley Place*, 2020 ONSC 2467
4. *R v Big M Drug Mart Ltd*, [1985] 1 SCR 295
5. *Hunter v. Southam Inc.*, 1984 CanLII 33 (SCC), [1984] 2 S.C.R. 145
6. *Health Services and Support – Facilities Subsector Bargaining Assn v British Columbia*, 2007 SCC 27
7. *Reference re Public Service Employee Relations Act (Alta)*, [1987] 1 SCR 313
8. *New Brunswick (Minister of Health and Community Services) v. G. (J.)*, [1999] 3 SCR 46
9. *Mounted Police Association of Ontario v Canada (Attorney General)*, 2015 SCC 1
10. *OPSEU v Ontario*, 2016 ONSC 2197 (CanLII)
11. *Fraser v. Canada (Attorney General)*, 2020 SCC 28
12. *Toronto (City) Board of Education v. O.S.S.T.F., District 15*, [1997] 1 SCR 487
13. *Nor-Man Regional Health Authority Inc. v. Manitoba Association of Health Care Professionals*, [2011] 3 SCR 616
14. *Saskatchewan Federation of Labour v Saskatchewan*, 2015 SCC 4 (CanLII)
15. *CUPE v City of Montreal*, [1997] 1 SCR 793
16. *Symes v Canada*, [1993] 4 SCR 695
17. *Brooks v Canada Safeway Ltd*, [1989] 1 SCR 1219
18. *Ontario (Health) v Association of Ontario Midwives*, 2022 ONCA 458 (CanLII)
19. *Newfoundland (Treasury Board) v NAPE*, 2004 SCC 66 (CanLII)
20. *Quebec (Attorney General) v Alliance du personnel professionnel et technique de la santé et des services sociaux*, 2018 SCC 17 (CanLII)

21. *Ontario Nurses' Association v Participating Nursing Homes*, 2021 ONCA 148 (CanLII)
22. *Meredith v Canada (Attorney General)*, 2015 SCC 2
23. *Professional Institute of the Public Service of Canada v Northwest Territories (Commissioner)*, [1990] 2 SCR 367
24. *Dunmore v Ontario*, 2001 SCC 94 (CanLII)
25. *Gordon v Canada (Attorney General)*, 2016 ONCA 625 (CanLII)
26. *Participating Hospitals v Ontario Nurses Association*, 2021 CanLII 88531 (ON LA)
27. *CN v Canada (Canadian Human Rights Commission)*, [1987] 1 SCR 1114
28. *British Columbia (Public Service Employee Relations Commission) v BCGEU*, [1999] 3 SCR 3
29. *Vriend v Alberta*, [1998] 1 SCR 493
30. *Eldridge v. B.C. (A.G.)*, [1997] 3 S.C.R.
31. *Quebec v A*, 2013 SCC 5 (CanLII)
32. *Quebec (Commission des droits de la personne et des droits de la jeunesse) v Bombardier Inc (Bombardier Aerospace Training Center)*, 2015 SCC 39
33. *Moore v. BC (Education)*, 2012 SCC 61
34. *Peel Law Association v Pieters*, 2013 ONCA 396 (CanLII)
35. *Kahkewistahaw First Nation v. Taypotat*, 2015 SCC 30
36. *Withler v Canada (Attorney General)*, 2011 SCC 12
37. *Ermineskin Indian Band and Nation v Canada*, 2009 SCC 9
38. *R v Turpin*, [1989] 1 SCR 1296
39. *Law v Canada*, [1999] 1 SCR 497
40. *Griggs v Duke Power Co.*, 401 US 424 (1971)
41. *Ont. Human Rights Comm v Simpsons-Sears*, [1985] 2 SCR 536
42. *Central Alberta Dairy Pool v Alberta (Human Rights Commission)*, [1990] 2 SCR 489

Secondary Sources

43. Frank Marrocco et al, "Ontario's Long-Term Care COVID-19 Commission Final Report"

44. Ruth Sullivan, *The Construction of Statutes, 7th Ed* (Toronto: LexisNexis Canada Inc, 2002)

45. Mary Eberts & Kim Stanton, "The Disappearance of the Four Equality Rights and Systemic Discrimination from Canadian Equality Jurisprudence" (2018) 38:1 Nat J Const'l L 89

46. Rosalie Abella, *Report of the Commission on Equality in Employment* (Ottawa: Minister of Supply and Services Canada, 1984)

47. *Convention Concerning Equal Remuneration for Men and Women Workers for Work of Equal Value (No. 100)*, Can. T.S. 1973 No. 37 (ratified by Canada in 1951)

48. *Convention on the Elimination of All Forms of Discrimination against Women*, 1249 U.N.T.S. 13 (ratified by Canada in 1981)

49. Fay Faraday, "Intersectional Feminism, Racial Capitalism, and the COVID-19 Pandemic," (2022) UNBLJ RD UN-B Volume 7

50. Fay Faraday, "One Step Forward, Two Steps Back? Substantive Equality, Systemic Discrimination and Pay Equity at the Supreme Court of Canada," (2020) 94 *SCLR* 301

51. Fay Faraday, "The Elephant in the Room and Straw Men on Fire", (2021) 30:2 *Constitutional Forum* 15, 2021 CanLIIDocs 1013

52. Jonnette Watson Hamilton, "Cautious Optimism: Fraser v Canada (Attorney General)", (2021) 30:2 *Constitutional Forum* 1, 2021 CanLIIDocs 1012

SCHEDULE "B"

TEXT OF STATUTES, REGULATIONS & BY – LAWS

Canadian Charter of Rights and Freedoms, Constitution Act 1982

Fundamental freedoms
2 Everyone has the following fundamental freedoms:
(a) freedom of conscience and religion;
(b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
(c) freedom of peaceful assembly; and
(d) freedom of association.

Equality before and under law and equal protection and benefit of law
15 (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Affirmative action programs
(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.End note(85)

Rights guaranteed equally to both sexes
28 Notwithstanding anything in this Charter, the rights and freedoms referred to in it are guaranteed equally to male and female persons.

Police Services Act, RSO 1990, c P15

Arbitration
122 (1) If matters remain in dispute after bargaining under section 119 and conciliation under section 121, a party may give the chair of the Arbitration Commission and the other party a written notice referring the matters to arbitration. 1997, c. 21, Sched. A, s. 5 (2).

Composition of arbitration board
(2) The following rules apply to the composition of the arbitration board:

1. The parties shall determine whether it shall consist of one person or of three persons. If they are unable to agree on this matter, or if they agree that the arbitration board shall consist of three persons but one of the parties then fails to appoint a person in accordance with the agreement, the arbitration board shall consist of one person.

2. If the arbitration board is to consist of one person, the parties shall appoint him or her jointly. If they are unable to agree on a joint appointment, the person shall be appointed by the chair of the Arbitration Commission.

3. If the arbitration board is to consist of three persons, the parties shall each appoint one person and shall jointly appoint a chair. If they are unable to agree on a joint appointment, the chair shall be appointed by the chair of the Arbitration Commission.

4. If the arbitration board consists of one person who was appointed by the chair of the Arbitration Commission or if the arbitration board consists of three persons and the chair was appointed by the chair of the Arbitration Commission, the chair of the Arbitration Commission shall select the method of arbitration and shall advise the arbitration board of the selection. The method selected shall be mediation-arbitration unless the chair of the Arbitration Commission is of the view that another method is more appropriate. The method selected shall not be final offer selection without mediation and it shall not be mediation-final offer selection unless the chair of the Arbitration Commission in his or her sole discretion selects that method because he or she is of the view that it is the most appropriate method having regard to the nature of the dispute. If the method selected is mediation-final offer selection, the chair of the arbitration board shall be the mediator or, if the arbitration board consists of one person, that person shall be the mediator. R.S.O. 1990, c. P.15, s. 122 (2); 1997, c. 21, Sched. A, s. 5 (3).

When hearings commence

(3) The arbitration board shall hold the first hearing within 30 days after the chair is appointed or, if the arbitration board consists of one person, within 30 days after that person is appointed.

Exception

(3.1) If the method of arbitration selected by the chair of the Arbitration Commission is mediation-arbitration or mediation-final offer selection, the time limit set out in subsection (3) does not apply in respect of the first hearing but applies instead, with necessary modifications, in respect of the commencement of mediation.

Time for submission of information

(3.2) If the method of arbitration selected by the chair of the Arbitration Commission is mediation-arbitration or mediation-final offer selection, the chair of the arbitration board or, if the arbitration board consists of one person, that person may, after consulting with the parties, set a date after which a party may not submit information to the board unless,

(a) the information was not available prior to the date;

(b) the chair or, if the arbitration board consists of one person, that person permits the submission of the information; and

(c) the other party is given an opportunity to make submissions concerning the information.

Hearing

(3.3) If the method of arbitration selected by the chair of the Arbitration Commission is conventional arbitration, the arbitration board shall hold a hearing, but the chair of the arbitration board or, if the arbitration board consists of one person, that person may impose limits on the submissions of the parties and the presentation of their cases.

Consolidation of disputes

(3.4) Disputes may be arbitrated together only if all the parties to the disputes agree.

Time for decision

(3.5) The arbitration board shall give a decision within 90 days after the chair is appointed or, if the arbitration board consists of one person, within 90 days after that person is appointed.

Extension

(3.6) The parties may agree to extend the time described in subsection (3.5), either before or after the time has passed.

Remuneration and expenses

(3.7) The remuneration and expenses of the members of an arbitration board shall be paid as follows:

1. A party shall pay the remuneration and expenses of a member appointed by or on behalf of the party.
2. Each party shall pay one-half of the chair's remuneration and expenses or, if the arbitration board consists of one person, one-half of that person's remuneration and expenses. 1997, c. 21, Sched. A, s. 5 (4).

Representations by council

(4) The municipal council may make representations before the arbitration board if it is authorized to do so by a resolution. R.S.O. 1990, c. P.15, s. 122 (4).

Criteria

(5) In making a decision or award, the arbitration board shall take into consideration all factors it considers relevant, including the following criteria:

1. The employer's ability to pay in light of its fiscal situation.
2. The extent to which services may have to be reduced, in light of the decision or award, if current funding and taxation levels are not increased.
3. The economic situation in Ontario and in the municipality.
4. A comparison, as between the employees and other comparable employees in the public and private sectors, of the terms and conditions of employment and the nature of the work performed.
5. The employer's ability to attract and retain qualified employees.

6. The interest and welfare of the community served by the police force.
7. Any local factors affecting that community.

Transition

(5.1) Subsection (5) does not apply if, on or before the day the *Savings and Restructuring Act, 1996* receives Royal Assent,

(a) an oral or electronic hearing has begun; or

(b) the arbitration board has received all the submissions, if no oral or electronic hearing is held.

Restriction

(5.2) Nothing in subsection (5) affects the powers of the arbitration board. 1996, c. 1, Sched. Q, s. 3.

Filing of award

(6) The arbitration board shall promptly file a copy of its decision or award with the Arbitration Commission. R.S.O. 1990, c. P.15, s. 122 (6).

Fire Protection and Prevention Act, 1997, SO 1997, c 4

Referral to arbitration

49 Where, after bargaining under section 48, either of the parties is satisfied that an agreement cannot be reached, the party may, by notice in writing to the other party and to the Minister, require all matters remaining in dispute to be decided by arbitration in accordance with this Part. 2016, c. 37, Sched. 9, s. 2.

50 Repealed: 2016, c. 37, Sched. 9, s. 2.

Arbitrator

50.1 (1) Within seven days after the day upon which notice is given under section 49, the parties shall appoint a person as arbitrator and forthwith notify the Minister of the name and address of the person appointed. 2018, c. 17, Sched. 18, s. 3.

Extension of time

(2) The parties, by mutual agreement in writing, may extend the period of seven days mentioned in subsection (1) for one further period of seven days. 2018, c. 17, Sched. 18, s. 3.

Notice to Minister

(3) If the parties extend the period under subsection (2), they shall inform the Minister. 2018, c. 17, Sched. 18, s. 3.

Appointment by Minister

(4) If the parties fail to notify the Minister within the time set out in subsection (1) or the time extended under subsection (2), the Minister shall forthwith appoint as arbitrator a person who is, in the opinion of the Minister, qualified to act and notify the parties of the name and address of the person appointed. 2018, c. 17, Sched. 18, s. 3.

Replacement

(5) If the person appointed as arbitrator is unable or unwilling to perform his or her duties so as to make an award, the Minister shall forthwith appoint another person as arbitrator and the arbitration process shall begin anew. 2018, c. 17, Sched. 18, s. 3.

Restriction

(6) No person shall be appointed as an arbitrator under this Act who has any pecuniary interest in the matters coming before him or her or who is acting or has, within a period of six months preceding the date of his or her appointment, acted as solicitor, counsel or agent of either of the parties. 2018, c. 17, Sched. 18, s. 3.

Not subject to judicial review

(7) It is conclusively determined that the appointment of an arbitrator made under this section is properly made, and no application shall be made to question the appointment or to prohibit or restrain any of the arbitrator's proceedings. 2018, c. 17, Sched. 18, s. 3.

Hospital Labour Disputes Arbitration Act, RSO 1990, ch14

Definitions

1 (1) In this Act,

"hospital" means any hospital, sanitarium, sanatorium, long-term care home or other institution operated for the observation, care or treatment of persons afflicted with or suffering from any physical or mental illness, disease or injury or for the observation, care or treatment of convalescent or chronically ill persons, whether or not it is granted aid out of moneys appropriated by the Legislature and whether or not it is operated for private gain; ("hôpital")

"hospital employee" means a person employed in the operation of a hospital; ("employé d'hôpital")

"Minister" means the Minister of Labour; ("ministre")

"party" means the trade union that is the bargaining agent for a bargaining unit of hospital employees, on the one hand, or the employers of such employees, on the other hand, and "parties" means the two of them. ("partie", "parties") R.S.O. 1990, c. H.14, s. 1 (1); 2007, c. 8, s. 211.

Idem

(2) Unless the contrary intention appears, expressions used in this Act have the same meaning as in the *Labour Relations Act, 1995*. R.S.O. 1990, c. H.14, s. 1 (2); 2000, c. 38, s. 39 (1).

Laundry

(3) A laundry that is operated exclusively for one or more than one hospital shall be deemed to be a hospital for the purposes of this Act. R.S.O. 1990, c. H.14, s. 1 (3).

Stationary power plant

(4) A stationary power plant as defined in the *Operating Engineers Act* that is operated principally for one or more than one hospital shall be deemed to be a hospital for the purposes of this Act. R.S.O. 1990, c. H.14, s. 1 (4).

Ontario Agency for Health Protection and Promotion

(5) The Ontario Agency for Health Protection and Promotion established under the *Ontario Agency for Health Protection and Promotion Act, 2007* shall be deemed to be a hospital for the purposes of this Act. 2007, c. 10, Sched. K, s. 31.

Canadian Blood Services

1.1 (1) Canadian Blood Services shall be deemed to be a hospital for the purposes of this Act. 2018, c. 8, Sched. 12, s. 1 (1).

Transition

(2) If, on the day this section comes into force, the Minister has already released, or is deemed to have released under subsection 122 (2) of the *Labour Relations Act, 1995*, a notice to the parties under clause 21 (a) or (b) of that Act in respect of Canadian Blood Services in connection with the round of bargaining underway as of that day, the matters in dispute shall be decided in accordance with this Act. 2018, c. 8, Sched. 12, s. 1 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 1.1 (2) of the Act is repealed. (See: 2018, c. 8, Sched. 12, s. 1 (2))

Same

(3) If any employees of Canadian Blood Services are on strike on the day this section comes into force, the employees shall cease the strike. 2018, c. 8, Sched. 12, s. 1 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 1.1 (3) of the Act is repealed. (See: 2018, c. 8, Sched. 12, s. 1 (2))

Same

(4) If Canadian Blood Services is locking out any employees on the day this section comes into force, it shall cease locking those employees out. 2018, c. 8, Sched. 12, s. 1 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 1.1 (4) of the Act is repealed. (See: 2018, c. 8, Sched. 12, s. 1 (2))

Same

(5) If the rates of wages or any other term and condition of employment of any employee of Canadian Blood Services or any right, privilege or duty of Canadian Blood Services has been altered in compliance with subsection 86 (1) of the *Labour Relations Act, 1995* in connection with the round of bargaining underway as of the day this section comes into force, it shall be restored to that which was in effect on the day before such a change was permitted under that subsection and shall continue in effect until the next collective agreement is settled, unless the parties agree otherwise. 2018, c. 8, Sched. 12, s. 1 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 1.1 (5) of the Act is repealed. (See: 2018, c. 8, Sched. 12, s. 1 (2))

Application of Act

2 (1) This Act applies to any hospital employees to whom the *Labour Relations Act, 1995* applies, to the trade unions and councils of trade unions that act or purport to act for or on behalf of any such employees, and to the employers of such employees. R.S.O. 1990, c. H.14, s. 2 (1); 2000, c. 38, s. 39 (2).

Application of *Labour Relations Act, 1995*

(2) Except as modified by this Act, the *Labour Relations Act, 1995* applies to any hospital employees to whom this Act applies, to the trade unions and councils of trade unions that act or purport to act for or on behalf of any such employees, and to the employers of such employees. R.S.O. 1990, c. H.14, s. 2 (2); 2000, c. 38, s. 39 (3).

Act does not apply to Crown employees

(3) This Act does not apply to Crown employees as defined in the *Crown Employees Collective Bargaining Act, 1993*. 1993, c. 38, s. 66.

Notice of no collective agreement

3 (1) Subject to subsection (3), if a conciliation officer appointed under section 18 of the *Labour Relations Act, 1995* is unable to effect a collective agreement within the time allowed under section 20 of that Act, the Minister shall forthwith by notice in writing inform each of the parties that the conciliation officer has been unable to effect a collective agreement, and sections 19 and 21 of that Act shall not apply. 1997, c. 21, Sched. A, s. 4 (1); 2000, c. 38, s. 39 (4); 2001, c. 9, Sched. C, s. 2 (1).

Reference to OLRB

(2) The Minister may refer to the Ontario Labour Relations Board any question which in his or her opinion relates to the exercise of his or her power under subsection (1) and the Board shall report its decision on the question. 1992, c. 21, s. 62.

Non-application

(3) Subsection (1) and sections 4 to 17 do not apply to hospital employees, the trade unions and councils of trade unions that act or purport to act for or on behalf of those employees or to the

employers of those employees if, on the day a conciliation officer is appointed under section 18 of the *Labour Relations Act, 1995*, the employer,

(a) provides services funded under the *Services and Supports to Promote the Social Inclusion of Persons with Developmental Disabilities Act, 2008*; or

(b) is a party to an agreement with the Ministry of Community and Social Services to provide services funded under that Act. 2001, c. 9, Sched. C, s. 2 (2); 2008, c. 14, s. 54.

Notice by employer

(4) An employer who was providing services funded under the *Services and Supports to Promote the Social Inclusion of Persons with Developmental Disabilities Act, 2008* on the day a conciliation officer was appointed under section 18 of the *Labour Relations Act, 1995* shall forthwith notify the conciliation officer of that fact. 2001, c. 9, Sched. C, s. 2 (2); 2008, c. 14, s. 54.

Same

(5) An employer who was a party to an agreement with the Ministry of Community and Social Services to provide services funded under the *Services and Supports to Promote the Social Inclusion of Persons with Developmental Disabilities Act, 2008* on the day a conciliation officer was appointed under section 18 of the *Labour Relations Act, 1995* shall forthwith notify the conciliation officer of that fact. 2001, c. 9, Sched. C, s. 2 (2); 2008, c. 14, s. 54.

Same

(6) If an employer does not know the day a conciliation officer was appointed for the purposes of subsection (4) or (5), the employer shall forthwith inquire as to the day of that appointment. 2001, c. 9, Sched. C, s. 2 (2).

Transition

(7) Despite subsection (3), if, before the day on which the *Government Efficiency Act, 2001* receives Royal Assent, the Minister gave notice to the parties under subsection (1) in relation to an attempt of a trade union and an employer to make a collective agreement, sections 4 to 17 do apply with respect to the making of that collective agreement and the related matters addressed in those provisions. 2001, c. 9, Sched. C, s. 2 (2).

Same

(8) For greater certainty, sections 4 to 17 do not apply with respect to the making of a collective agreement that is,

(a) made after the collective agreement referred to in subsection (7); and

(b) binding on the parties to whom that subsection applies. 2001, c. 9, Sched. C, s. 2 (2).

Arbitration

4 Where the Minister has informed the parties that the conciliation officer has been unable to effect a collective agreement, the matters in dispute between the parties shall be decided by arbitration in accordance with this Act. R.S.O. 1990, c. H.14, s. 4.

Appointment of single arbitrator

5 (1) Where the parties agree to have the matters in dispute between them decided by a single arbitrator, they shall, within the time set out in subsection 6 (1), jointly appoint a person who agreed to act. R.S.O. 1990, c. H.14, s. 5 (1).

Single arbitrator's powers

(2) The person so appointed shall constitute the board of arbitration for the purposes of this Act and he or she shall have the powers and duties of the chair of a board of arbitration. R.S.O. 1990, c. H.14, s. 5 (2).

Notice to Minister

(3) As soon as the parties appoint a person to act as a single arbitrator, they shall notify the Minister of the name and address of the person appointed. R.S.O. 1990, c. H.14, s. 5 (3).

Appointment of board of arbitration

6 (1) Within seven days after the day upon which the Minister has informed the parties that the conciliation officer has been unable to effect a collective agreement, each of the parties shall appoint to a board of arbitration a member who has agreed to act. R.S.O. 1990, c. H.14, s. 6 (1).

Extension of time

(2) The parties by a mutual agreement in writing may extend the period of seven days mentioned in subsection (1) for one further period of seven days. R.S.O. 1990, c. H.14, s. 6 (2).

Failure to appoint member

(3) Where a party fails to appoint a member of a board of arbitration within the period or periods mentioned in subsection (1), the Minister, upon the written request of either of the parties, shall appoint such member. R.S.O. 1990, c. H.14, s. 6 (3).

Third member

(4) Within ten days after the day on which the second of the members was appointed, the two members appointed by or on behalf of the parties shall appoint a third member who has agreed to act, and such third member shall be the chair. R.S.O. 1990, c. H.14, s. 6 (4).

Failure to appoint third member

(5) Where the two members appointed by or on behalf of the parties fail within ten days after the appointment of the second of them to agree upon the third member, notice of such failure shall be given forthwith to the Minister by the parties, the two members or either of them and the Minister shall appoint as a third member a person who is, in the opinion of the Minister, qualified to act. R.S.O. 1990, c. H.14, s. 6 (5).

Notice of appointment by party

(6) As soon as one of the parties appoints a member to a board of arbitration, that party shall notify the other party and the Minister of the name and address of the member appointed. R.S.O. 1990, c. H.14, s. 6 (6).

Notice of appointment by members

(7) As soon as the two members appoint a third member, they shall notify the Minister of the name and address of the third member appointed. R.S.O. 1990, c. H.14, s. 6 (7).

Selection of method

(7.1) If the chair of the arbitration board was appointed by the Minister, subject to subsections (7.2) to (7.4), the Minister shall select the method of arbitration and shall advise the chair of the board of arbitration of the selection. 1997, c. 21, Sched. A, s. 4 (2).

Same, mediation-arbitration

(7.2) The method selected shall be mediation-arbitration unless the Minister is of the view that another method is more appropriate. 1997, c. 21, Sched. A, s. 4 (2).

Same, final offer selection

(7.3) The method selected shall not be final offer selection without mediation. 1997, c. 21, Sched. A, s. 4 (2).

Same, mediation-final offer selection

(7.4) The method selected shall not be mediation-final offer selection unless the Minister in his or her sole discretion selects that method because he or she is of the view that it is the most appropriate method having regard to the nature of the dispute. 1997, c. 21, Sched. A, s. 4 (2).

Vacancies

(8) If a person ceases to be a member of a board of arbitration by reason of resignation, death or otherwise before it has completed its work, the Minister shall appoint a member in his or her place after consulting the party whose point of view was represented by such person. R.S.O. 1990, c. H.14, s. 6 (8).

Replacement of member

(9) If, in the opinion of the Minister, a member of a board of arbitration has failed to enter on or to carry on his or her duties so as to enable it to render a decision within the time set out in subsection 9 (4) or within the time extended under subsection 9 (5), the Minister may appoint a member in his or her place after consulting the party whose point of view was represented by such person. 1997, c. 21, Sched. A, s. 4 (3).

Replacement of chair

(10) If the chair of a board of arbitration is unable to enter on or to carry on his or her duties so as to enable it to render a decision within the time set out in subsection 9 (4) or within the time extended under subsection 9 (5), the Minister may appoint a person to act as chair in his or her place. 1997, c. 21, Sched. A, s. 4 (3).

Where single arbitrator unable to act

(11) If the person appointed jointly by the parties as a single arbitrator dies before completing his or her work or is unable to enter on or to carry on his or her duties so as to enable him or her to

render a decision within the time set out in subsection 9 (4) or within the time extended under subsection 9 (5), the Minister may, upon notice or complaint to him or her by either of the parties and after consulting the parties, inform the parties in writing that the arbitrator is unable to enter on or to carry on his or her duties and the provisions of this section relating to the appointment of a board of arbitration shall thereupon apply with necessary modifications. 1997, c. 21, Sched. A, s. 4 (3).

Idem

(12) No person shall be appointed a member of a board of arbitration under this Act who has any pecuniary interest in the matters coming before it or who is acting or has, within a period of six months preceding the date of his or her appointment, acted as solicitor, counsel or agent of either of the parties. R.S.O. 1990, c. H.14, s. 6 (12).

Time and place of hearings

(13) Subject to subsection (13.1), the chair of the board of arbitration shall fix the time and place of the first or any subsequent hearing and shall give notice thereof to the Minister and the Minister shall notify the parties and the members of the board of arbitration thereof. 1997, c. 21, Sched. A, s. 4 (4).

When hearings commence

(13.1) The board of arbitration shall hold the first hearing within 30 days after the last (or only) member of the board is appointed. 1997, c. 21, Sched. A, s. 4 (4).

Exception

(13.2) If the method of arbitration selected by the Minister under subsection (7.1) is mediation-arbitration or mediation-final offer selection, the time limit set out in subsection (13.1) does not apply in respect of the first hearing but applies instead, with necessary modifications, in respect of the commencement of mediation. 1997, c. 21, Sched. A, s. 4 (4).

Failure of member to attend

(14) Where a member of a board of arbitration appointed by a party or by the Minister is unable to attend the first hearing at the time and place fixed by the chair, the party shall, upon the request in writing of the chair, appoint a new member in place of such member and where such appointment is not made within five days of the date of the request, the Minister shall, upon the written request of the chair, appoint a new member in place of such member. R.S.O. 1990, c. H.14, s. 6 (14).

Order to expedite proceedings

(15) Where a board of arbitration has been established, the chair shall keep the Minister advised of the progress of the arbitration and where the Minister is advised that the board has failed to render a decision within the time set out in subsection 9 (4) or within the time extended under subsection 9 (5), the Minister may, after consulting the parties and the board, issue whatever order he or she considers necessary in the circumstances to ensure that a decision will be rendered within a reasonable time. 1997, c. 21, Sched. A, s. 4 (5).

Procedure

(16) Subject to the other provisions of this section, a board of arbitration shall determine its own procedure but shall give full opportunity to the parties to present their evidence and make their submissions. 1997, c. 21, Sched. A, s. 4 (5).

Time for submission of information

(16.1) If the method of arbitration selected by the Minister under subsection (7.1) is mediation-arbitration or mediation-final offer selection, the chair of the board of arbitration may, after consulting with the parties, set a date after which a party may not submit information to the board unless,

(a) the information was not available prior to the date;

(b) the chair permits the submission of the information; and

(c) the other party is given an opportunity to make submissions concerning the information. 1997, c. 21, Sched. A, s. 4 (5).

Idem

(17) If the members of a board of arbitration are unable to agree among themselves on matters of procedure or as to the admissibility of evidence, the decision of the chair governs. R.S.O. 1990, c. H.14, s. 6 (17).

Decision

(18) The decision of a majority of the members of a board of arbitration is the decision of the board, but, if there is no majority, the decision of the chair is the decision of the board. R.S.O. 1990, c. H.14, s. 6 (18).

Notice of agreement to recommence

(18.1) If any member of the board of arbitration was appointed by the Minister, the parties may, at any time before the arbitrator or board renders a decision, jointly serve written notice on the Minister that they have agreed that the arbitration should be recommenced before a different board of arbitration. 1997, c. 21, Sched. A, s. 4 (6).

Termination of appointments

(18.2) If notice is served on the Minister under subsection (18.1), the appointments of all the members of the board of arbitration are terminated. 1997, c. 21, Sched. A, s. 4 (6).

Effective date of terminations

(18.3) The terminations are effective on the day the Minister is served with the notice. 1997, c. 21, Sched. A, s. 4 (6).

Obligation to appoint

(18.4) Within seven days after the day the Minister is served with the notice, the parties shall jointly appoint, under subsection 5 (1), a person who agreed to act or shall each appoint, under

subsection (1) of this section, a member who has agreed to act and section 5 and this section apply with respect to such appointments. 1997, c. 21, Sched. A, s. 4 (6).

Powers

(19) The chair and the other members of a board of arbitration established under this Act have, respectively, all the powers of a chair and the members of a board of arbitration under the *Labour Relations Act, 1995*. R.S.O. 1990, c. H.14, s. 6 (19); 2000, c. 38, s. 39 (5).

Appointment or proceedings of board not subject to review

7 Where a person has been appointed as a single arbitrator or the three members have been appointed to a board of arbitration, it shall be presumed conclusively that the board has been established in accordance with this Act and no application shall be made, taken or heard for judicial review or to question the establishment of the board or the appointment of the member or members, or to review, prohibit or restrain any of its proceedings. R.S.O. 1990, c. H.14, s. 7.

Single arbitration of several disputes

8 (1) Where there are matters in dispute between parties to be decided by more than one arbitration in accordance with this Act, the parties may agree in writing that the matters in dispute shall be decided by one board of arbitration. R.S.O. 1990, c. H.14, s. 8 (1).

Parties

(2) For the purposes of section 6, the trade unions and councils of trade unions that are the bargaining agents for or on behalf of any hospital employees to whom this Act applies shall be one party and the employers of such employees shall be the other party. R.S.O. 1990, c. H.14, s. 8 (2).

Powers of board

(3) In an arbitration to which this section applies, the board may, in addition to the powers conferred upon a board of arbitration by this Act,

(a) make a decision on matters of common dispute between all of the parties; and

(b) refer matters of particular dispute to the parties concerned for further bargaining. R.S.O. 1990, c. H.14, s. 8 (3).

Idem

(4) Where matters of particular dispute are not resolved by further collective bargaining under clause (3) (b), the board shall decide the matters. R.S.O. 1990, c. H.14, s. 8 (4).

Duty of board

9 (1) The board of arbitration shall examine into and decide on matters that are in dispute and any other matters that appear to the board necessary to be decided in order to conclude a collective agreement between the parties, but the board shall not decide any matters that come within the jurisdiction of the Ontario Labour Relations Board. R.S.O. 1990, c. H.14, s. 9 (1).

Criteria

(1.1) In making a decision or award, the board of arbitration shall take into consideration all factors it considers relevant, including the following criteria:

1. The employer's ability to pay in light of its fiscal situation.
2. The extent to which services may have to be reduced, in light of the decision or award, if current funding and taxation levels are not increased.
3. The economic situation in Ontario and in the municipality where the hospital is located.
4. A comparison, as between the employees and other comparable employees in the public and private sectors, of the terms and conditions of employment and the nature of the work performed.
5. The employer's ability to attract and retain qualified employees. 1996, c. 1, Sched. Q, s. 2.

Transition

(1.2) Subsection (1.1) does not apply if, on or before the day the *Savings and Restructuring Act, 1996* receives Royal Assent,

(a) an oral or electronic hearing has begun; or

(b) the board of arbitration has received all the submissions, if no oral or electronic hearing is held. 1996, c. 1, Sched. Q, s. 2.

Restriction

(1.3) Nothing in subsection (1.1) affects the powers of the board of arbitration. 1996, c. 1, Sched. Q, s. 2.

Board to remain seized of matters

(2) The board of arbitration shall remain seized of and may deal with all matters in dispute between the parties until a collective agreement is in effect between the parties. R.S.O. 1990, c. H.14, s. 9 (2).

Procedure

(3) The *Arbitrations Act* does not apply to arbitrations under this Act. R.S.O. 1990, c. H.14, s. 9 (3).

Time for decision

(4) The board of arbitration shall give a decision within 90 days after the last (or only) member of the board is appointed. 1997, c. 21, Sched. A, s. 4 (7).

Extension

(5) The parties may agree to extend the time described in subsection (4), either before or after the time has passed. 1997, c. 21, Sched. A, s. 4 (7).

Remuneration and expenses

9.1 (1) The remuneration and expenses of the members of a board of arbitration shall be paid as follows:

1. A party shall pay the remuneration and expenses of a member appointed by or on behalf of the party.

2. Each party shall pay one-half of the chair's remuneration and expenses. 1993, c. 32, s. 3.

Transition

(2) Subsection (1) does not apply if the Minister gives notice under section 3 before July 1, 1993. 1993, c. 32, s. 3.

Delegation

9.2 (1) The Minister may delegate in writing to any person the Minister's power to make an appointment, order or direction under this Act. 1997, c. 21, Sched. A, s. 4 (8).

Proof of appointment

(2) An appointment, an order or a direction made under this Act that purports to be signed by or on behalf of the Minister shall be received in evidence in any proceeding as proof, in the absence of evidence to the contrary, of the facts stated in it without proof of the signature or the position of the person appearing to have signed it. 1997, c. 21, Sched. A, s. 4 (8).

Where agreement reached

10 (1) Where, during the bargaining under this Act or during the proceedings before the board of arbitration, the parties agree on all the matters to be included in a collective agreement, they shall put them in writing and shall execute the document, and thereupon it constitutes a collective agreement under the *Labour Relations Act, 1995*. R.S.O. 1990, c. H.14, s. 10 (1); 2000, c. 38, s. 39 (6).

Failure to make agreement

(2) If the parties fail to put the terms of all the matters agreed upon by them in writing or if having put the terms of their agreement in writing either of them fails to execute the document within seven days after it was executed by the other of them, they shall be deemed not to have made a collective agreement, and the provisions of sections 3 and 4 or sections 6 and 9, as the case may be, shall apply. R.S.O. 1990, c. H.14, s. 10 (2).

Decision of board

(3) Where, during the bargaining under this Act or during the proceedings before the board of arbitration, the parties have agreed upon some matters to be included in the collective agreement and have notified the board in writing of the matters agreed upon, the decision of the board shall be confined to the matters not agreed upon by the parties and to such other matters that appear to the board necessary to be decided to conclude a collective agreement between the parties. R.S.O. 1990, c. H.14, s. 10 (3).

Idem

(4) Where the parties have not notified the board of arbitration in writing that, during the bargaining under this Act or during the proceedings before the board of arbitration, they have agreed upon some matters to be included in the collective agreement, the board shall decide all matters in dispute and such other matters that appear to the board necessary to be decided to conclude a collective agreement between the parties. R.S.O. 1990, c. H.14, s. 10 (4).

Execution of agreement

(5) Within five days of the date of the decision of the board of arbitration or such longer period as may be agreed upon in writing by the parties, the parties shall prepare and execute a document giving effect to the decision of the board and any agreement of the parties, and the document thereupon constitutes a collective agreement. R.S.O. 1990, c. H.14, s. 10 (5).

Preparation of agreement by board

(6) If the parties fail to prepare and execute a document in the form of a collective agreement giving effect to the decision of the board and any agreement of the parties within the period mentioned in subsection (5), the parties or either of them shall notify the chair of the board in writing forthwith, and the board shall prepare a document in the form of a collective agreement giving effect to the decision of the board and any agreement of the parties and submit the document to the parties for execution. R.S.O. 1990, c. H.14, s. 10 (6).

Failure to execute agreement

(7) If the parties or either of them fail to execute the document prepared by the board within a period of five days from the day of its submission by the board to them, the document shall come into effect as though it had been executed by the parties and the document thereupon constitutes a collective agreement under the *Labour Relations Act, 1995*. R.S.O. 1990, c. H.14, s. 10 (7); 2000, c. 38, s. 39 (7).

Effective date

(8) Except in arbitrations under section 8, the date the board of arbitration gives its decision is the effective date of the document that constitutes a collective agreement between the parties. R.S.O. 1990, c. H.14, s. 10 (8).

Idem

(9) The date the board of arbitration gives its decision under section 8 upon matters of common dispute shall be deemed to be the effective date of the document that constitutes a collective agreement between the parties. R.S.O. 1990, c. H.14, s. 10 (9).

Term of agreement

(10) Except where the parties agree to a longer term of operation, any document that constitutes a collective agreement between the parties shall remain in force for a period of one year from the effective date of the document. R.S.O. 1990, c. H.14, s. 10 (10).

Idem

(11) Despite the provisions of subsection (10) and except where the parties agree to a longer term of operation, a document that constitutes a collective agreement shall cease to operate on the expiry of a period of two years,

(a) from the day upon which notice was given under section 16 of the *Labour Relations Act, 1995*; or

(b) from the day upon which the previous collective agreement ceased to operate where notice was given under section 59 of the *Labour Relations Act, 1995*. R.S.O. 1990, c. H.14, s. 10 (11); 2000, c. 38, s. 39 (8, 9).

Idem

(12) Where under subsection (11), the period of two years has expired on or will expire within a period of less than ninety days from the date the board of arbitration gives its decision, the document that constitutes a collective agreement shall continue to operate for a period of ninety days from the date the board of arbitration gives its decision for the purposes of subsections 7 (4), 59 (1) and 63 (2) of the *Labour Relations Act, 1995*. R.S.O. 1990, c. H.14, s. 10 (12); 2000, c. 38, s. 39 (10).

Idem

(13) In making its decision upon matters in dispute between the parties, the board of arbitration may provide,

(a) where notice was given under section 16 of the *Labour Relations Act, 1995*, that any of the terms of the agreement except its term of operation shall be retroactive to such day as the board may fix, but not earlier than the day upon which such notice was given; or

(b) where notice was given under section 59 of the *Labour Relations Act, 1995*, that any of the terms of the agreement except its term of operation shall be retroactive to such day as the board may fix, but not earlier than the day upon which the previous agreement ceased to operate. R.S.O. 1990, c. H.14, s. 10 (13); 2000, c. 38, s. 39 (11, 12).

Strikes and lock-outs prohibited

11 (1) Despite anything in the *Labour Relations Act, 1995*, no hospital employees to whom this Act applies shall strike and no employer of such employees shall lock them out. R.S.O. 1990, c. H.14, s. 11 (1); 1997, c. 21, Sched. A, s. 4 (9).

Application of *Labour Relations Act, 1995*

(2) Sections 81 and 82, subsection 83 (1) and sections 84, 100, 101 and 103 of the *Labour Relations Act, 1995* as amended or re-enacted from time to time apply with necessary modifications under this Act as if such sections were enacted in and form part of this Act. R.S.O. 1990, c. H.14, s. 11 (2); 1997, c. 21, Sched. A, s. 4 (10).

Timeliness of representation applications

12 (1) Despite s5ection 67 of the *Labour Relations Act, 1995*, where a trade union that has been certified as bargaining agent for a bargaining unit of employees of a hospital has given to the employer of such employees notice under section 16 of that Act and the Minister has appointed a conciliation officer, an application for a declaration that the trade union no longer represents the employees in the bargaining unit determined in the certificate may be made only in accordance with subsection 63 (2) of the *Labour Relations Act, 1995*. R.S.O. 1990, c. H.14, s. 12 (1); 1997, c. 21, Sched. A, s. 4 (11).

Idem

(2) Despite section 67 of the *Labour Relations Act, 1995*, where notice has been given under section 59 of that Act by or to a trade union that is the bargaining agent for a bargaining unit of employees of a hospital to or by the employer of such employees and the Minister has appointed a conciliation officer, an application for certification of a bargaining agent of any of the employees of the hospital in the bargaining unit defined in the collective agreement or an application for a declaration that the trade union that was a party to the collective agreement no longer represents the employees in the bargaining unit defined in the agreement shall not be made after the day upon which the agreement ceased to operate or the day upon which the Minister appointed a conciliation officer, whichever is later, except in accordance with section 7 or subsection 63 (2) of the *Labour Relations Act, 1995*, as the case may be. R.S.O. 1990, c. H.14, s. 12 (2); 1997, c. 21, Sched. A, s. 4 (12).

Working conditions may not be altered

13 Despite subsection 86 (1) of the *Labour Relations Act, 1995*, if notice has been given under section 16 or 59 of that Act by or to a trade union that is the bargaining agent for a bargaining unit of hospital employees to which this Act applies to or by the employer of such employees and no collective agreement is in operation, no such employer shall, except with the consent of the trade union, alter the rates of wages or any other term or condition of employment or any right, privilege or duty of the employer, the trade union or the employees, and no such trade union shall, except with the consent of the employer, alter any term or condition of employment or any right, privilege or duty of the employer, the trade union or the employees, until the right of the trade union to represent the employees has been terminated. R.S.O. 1990, c. H.14, s. 13; 1997, c. 21, Sched. A, s. 4 (13).

Offences

14 Except where inconsistent with this Act, sections 104, 105, 106, 107 and 109 of the *Labour Relations Act, 1995*, as amended or re-enacted from time to time, apply with necessary modifications under this Act as if such sections were enacted in and form part of this Act. R.S.O. 1990, c. H.14, s. 14; 1997, c. 21, Sched. A, s. 4 (14).

Mailed notice

15 A notice by the Minister that a conciliation officer has been unable to effect a collective agreement if sent by mail to a party addressed to the party at its last known address shall be deemed

to have been received on the second day after the day on which the notice was so mailed. R.S.O. 1990, c. H.14, s. 15.

Filing of decisions

16 Every chair of a board of arbitration shall file a copy of every decision of the board with the Minister. R.S.O. 1990, c. H.14, s. 16.

Existing proceedings discontinued

17 (1) Proceedings before an arbitrator or arbitration board under this Act commenced before the date on which subsection 4 (2) of the *Public Sector Dispute Resolution Act, 1997* comes into force are terminated and any decision in such proceedings is void. 1997, c. 21, Sched. A, s. 4 (15).

Exception, completed proceedings

(2) This section does not apply with respect to proceedings commenced before June 3, 1997 if,

(a) a final decision is issued on or before June 3, 1997; or

(b) a final decision is issued after June 3, 1997 and the decision is served before the date on which subsection 4 (2) of the *Public Sector Dispute Resolution Act, 1997* comes into force. 1997, c. 21, Sched. A, s. 4 (15).

Exception, by agreement

(3) This section does not apply if the parties agree in writing after the date on which subsection 4 (2) of the *Public Sector Dispute Resolution Act, 1997* comes into force to continue the proceedings. 1997, c. 21, Sched. A, s. 4 (15).

Procedure

18 The *Statutory Powers Procedure Act* does not apply to proceedings before a board of arbitration established under this Act. R.S.O. 1990, c. H.14, s. 18; 1994, c. 27, s. 59.

Regulations

19 The Lieutenant Governor in Council may make regulations,

(a) providing for and regulating the engagement of experts, investigators and other assistants by boards of arbitration;

(b) providing for and fixing the remuneration and expenses of chairs and other members of boards of arbitration;

(c) prescribing rules of practice and procedure;

(d) prescribing forms and providing for their use;

(e) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act. R.S.O. 1990, c. H.14, s. 19.

Social Contract Act, 1993, SO 1995, c 5

Preamble

In order to achieve significant savings in public sector expenditures in a fair and equitable manner, the Government is committed to facilitating negotiations between representatives of public sector employers and their employees for the purpose of maintaining effective and efficient public services.

To this end, the Government invited public sector employer and employee representatives and representatives of independent health practitioners to negotiate a Social Contract with the Government. During the negotiations, which took place in April, May and June of 1993, the Government tabled a framework agreement that included provisions for:

— savings through unpaid leaves of absence while protecting public services and accommodating the preference of individual employees.

— job security including redeployment and training and adjustment for employees.

— the encouragement of efficiency and productivity savings in the public sector.

— access to a fund to supplement unemployment insurance benefits or to permit the extension of notice periods or to allow for retraining.

— protection for those earning less than $30,000 a year.

It is desirable that legislation be enacted that carries out the general intent of the framework Social Contract by encouraging negotiated settlements while recognizing that a resolution is essential so that the necessary savings in public expenditures may be realized in a fair and equitable manner.

Purposes

1 The purposes of this Act are as follows:

1. To encourage employers, bargaining agents and employees to achieve savings through agreements at the sectoral and local levels primarily through adjustments in compensation arrangements.
2. To maximize the preservation of public sector jobs and services through improvements in productivity, including the elimination of waste and inefficiency.
3. To provide for expenditure reduction for a three-year period and to provide criteria and mechanisms for achieving the reductions.
4. To provide for a job security fund. 1993, c. 5, s. 1.

PART I
GENERAL

Definitions

2 In this Act,

"Administrator" means the person appointed to administer the Fund; ("administrateur")

"bargaining agent" means a trade union or other organization that, under any Act, has bargaining rights in respect of any unit of employees and includes any other organization that is recognized under section 5 as a bargaining agent; ("agent négociateur")

"bargaining unit employee" means an employee for whom there is a bargaining agent; ("employé compris dans une unité de négociation")

"collective agreement" means an agreement in writing between an employer and a bargaining agent providing for compensation of those covered by the agreement; ("convention collective")

"compensation" means all payments and benefits paid or provided to or for the benefit of a person who performs functions that entitle the person to be paid a fixed or ascertainable amount; ("rétribution")

"employee" means an employee of an employer in the public sector and includes the officers of employers and, unless exempted by the regulations, the holders of offices elected or appointed under the authority of any Act; ("employé")

"employer" means an employer in the public sector; ("employeur")

"Fund" means the Public Sector Job Security Fund; ("Fonds")

"local agreement" means an agreement entered into for the purposes of this Act between one employer and one or more of the bargaining agents that have bargaining rights in respect of employees of the employer; ("accord local")

"Minister" means the member of the Executive Council to whom the administration of this Act is assigned; ("ministre")

"non-bargaining unit employee" means an employee who is not represented by a bargaining agent; ("employé non compris dans une unité de négociation")

"non-bargaining unit plan" means a plan established under section 16; ("plan s'appliquant aux employés non compris dans une unité de négociation")

"public sector" means the public sector as described in the Schedule; ("secteur public")

"regulation" means a regulation made under this Act; ("règlement")

"sectoral framework" means a plan designated under section 11 or 36 as a sectoral framework; ("cadre sectoriel")

"year" means the period beginning April 1 and ending with March 31 in the following year unless otherwise provided in the regulations. ("exercice") 1993, c. 5, s. 2.

Sectors

3 (1) For the purposes of this Act, the public sector is divided into the following sectors:

1. The Ontario Public Service Sector.
2. The Health Sector.
3. The Community Services Sector.
4. The Schools Sector.

5. The Colleges Sector.

6. The Universities Sector.

7. The Agencies, Boards and Commissions Sector.

8. The Municipalities Sector.

Same

(2) Unless otherwise provided by the Minister, each sector consists of the same parties as were in that sector during the Social Contract negotiations.

Same

(3) The Minister may assign employers to sectors.

Same

(4) A sector may contain one or more than one employer.

Same

(5) Every employer belongs to a sector; it is the responsibility of an employer to determine, through the ministry of the Minister, the sector to which the employer belongs.

Same

(6) The Minister may divide a sector into two or more subsectors and name the parties in respect of negotiating in the subsectors.

Same

(7) For the purposes of this Act, a subsector shall be deemed to be a sector. 1993, c. 5, s. 3.

Persons bound

4 This Act binds the Crown in right of Ontario and all employers, employees and bargaining agents in the public sector. 1993, c. 5, s. 4.

Additional bargaining agents

5 (1) The Minister may recognize as a bargaining agent for the purposes of this Act an organization that in his or her opinion represents employees but that does not have bargaining rights under an Act.

Same

(2) The recognition may be subject to such restrictions as the Minister specifies.

Limitation

(3) The Minister shall not designate an organization as a bargaining agent under subsection (1) for employees who are represented by a bargaining agent.

Bargaining rights

(4) A bargaining agent designated under subsection (1) has the right to bargain on behalf of the employees for the purposes of this Act. 1993, c.5, s. 5.

Human Rights Code*, *Pay Equity Act

6 Nothing in this Act shall be interpreted or applied so as to reduce any right or entitlement under the *Human Rights Code* or under the *Pay Equity Act*. 1993, c. 5, s. 6.

PART II
EXPENDITURE REDUCTION TARGETS

Expenditure reduction targets

7 (1) The Minister shall establish expenditure reduction targets for sectors and for employers.

Reduced targets if sectoral framework

(2) If there is a sectoral framework in respect of a sector, the Minister shall establish lower expenditure reduction targets for every employer in the sector who,

(a) enters into a local agreement, not later than August 1, 1993, that implements the sectoral framework; or

(b) implements a non-bargaining unit plan, not later than August 1, 1993, that implements the sectoral framework.

Ten-day delay

(3) For the purpose of clause (2) (a), a local agreement shall be deemed to have been entered into on August 1, 1993 if the Minister makes a direction under subsection 13 (4) that applies to the local agreement and the local agreement is entered into not later than August 10, 1993.

Expression of target

(4) The Minister may express an expenditure reduction target as a specific amount of money or by means of a formula or other method for determining an amount of money. 1993, c. 5, s. 7.

PART III
PUBLIC SECTOR JOB SECURITY FUND

Fund

8 (1) A fund to be known in English as the Public Sector Job Security Fund and in French as Fonds de securité d’emploi du secteur public is established.

Purpose

(2) The purpose of the Fund is to provide, in accordance with this Act and the regulations,

(a) payments to employees who are released from employment by their employers; and

(b) payments to employers for the purpose of extending the employment of employees who will be released from employment by the employers. 1993, c. 5, s. 8.

Administration

9 (1) The Lieutenant Governor in Council shall appoint a person to administer the Fund. 1993, c. 5, s. 9 (1).

Audit

(2) The accounts and financial transactions of the Fund shall be audited annually by the Auditor General. 1993, c. 5, s. 9 (2); 2004, c. 17, s. 32.

Annual report

(3) The Administrator shall make an annual report to the Minister on the operation of the Fund. 1993, c. 5, s. 9 (3).

Tabling

(4) The Minister shall submit the report to the Lieutenant Governor in Council and shall then table the report in the Assembly. 1993, c. 5, s. 9 (4).

Other reports

(5) The Administrator shall submit to the Minister such other reports as the Minister may require. 1993, c. 5, s. 9 (5).

Payments from Fund

10 An employee, bargaining agent or employer may apply to the Administrator for payments out of the Fund in accordance with Part V, Part VI and the regulations. 1993, c. 5, s. 10.

PART IV
SECTORAL FRAMEWORK

Designation of sectoral framework

11 (1) The Minister may designate, as a sectoral framework, a plan that relates to a sector.

Deadline for designation

(2) The Minister shall not designate a plan as a sectoral framework after August 1, 1993.

Criteria

(3) The Minister shall not designate a plan as a sectoral framework unless, in the opinion of the Minister, the plan meets the following criteria:

1. There is sufficient support for the plan, based on negotiations leading to the development of the plan, for the plan to form the basis for local agreements in the sector.
2. The plan includes provisions that will assist employers in the sector in achieving the expenditure reduction target established by the Minister for the sector.
3. The plan will not adversely affect employees in the sector who earn less than $30,000 annually, excluding overtime pay.

4. The plan contains appropriate provisions to minimize job losses in the sector, appropriate provisions respecting the redeployment of employees in the sector who are released from employment or who receive notice that they will be released from employment, and appropriate provisions relating to employee training and adjustment programs.

5. The plan will be fair and equitable in its application to all employees.

Special circumstances

(4) Subsection (3) does not apply to a plan if, in the opinion of the Minister, special circumstances apply and it is desirable to designate the plan as a sectoral framework.

Standard form local agreement

(5) A sectoral framework may contain a standard form of local agreement to implement the framework. 1993, c. 5, s. 11.

Negotiation of sectoral framework

12 In addition to the provisions referred to in subsection 11 (3), persons seeking to negotiate the contents of a sectoral framework may consider including the following provisions in the framework:

1. Provisions relating to organizational restructuring, including early retirement options and labour adjustment programs.

2. Provisions relating to improvements in productivity, including the elimination of waste and inefficiency.

3. Provisions relating to alternate work arrangements.

4. Provisions relating to the binding resolution of disputes.

5. Provisions relating to the sharing of information and decision-making by employers and employee representatives, including the sharing of financial and planning information.

6. Provisions relating to sectoral bargaining.

7. Provisions relating to the establishment of joint committees at the sectoral and local level.

8. Provisions relating to pensions, including the joint trusteeship of pension funds.

9. Any other provisions proposed by a party to the negotiations. 1993, c. 5, s. 12.

PART V
LOCAL AGREEMENTS WITH BARGAINING AGENTS

Local agreements

13 (1) One or more bargaining agents may, not later than August 1, 1993, enter into a local agreement with an employer.

Provincial, national and international trade unions

(2) A provincial, national or international trade union may enter into local agreements on behalf of bargaining agents that are affiliated with the trade union and have authorized the trade union to act on their behalf.

Employer associations

(3) An employer association may enter into local agreements on behalf of employers that are members of the association and have authorized the employer association to act on behalf.

Ten-day delay

(4) Despite subsection (1), a local agreement may be entered into not later than August 10, 1993 if there is a sectoral framework that relates to the sector of the employer and the Minister directs that this subsection applies to the sector.

Interpretation

(5) For the purposes of this Act, a local agreement is entered into when it has been signed by the parties and has been ratified, if ratification is required. 1993, c. 5, s. 13.

Payments out of Fund to bargaining unit employees

14 (1) Subject to the regulations, a bargaining unit employee who is released from employment by his or her employer is entitled to payments out of the Fund if the following criteria are met:

1. The employer has entered into a local agreement that,

   i. implements the sectoral framework, if there is a sectoral framework that relates to the sector of the employer, or

   ii. meets the criteria set out in subsection (2), if there is no sectoral framework that relates to the sector of the employer.

2. The bargaining agent that has bargaining rights in respect of the employee is a party to the local agreement.

3. The local agreement is entered into and comes into force not later than August 1, 1993 or, if subsection 13 (4) applies to the agreement, not later than August 10, 1993.

4. The local agreement applies until March 31, 1996.

5. The employee is released from employment on or after June 14, 1993 and before April 1, 1996.

Criteria for local agreement if no sectoral framework

(2) The criteria referred to in subparagraph ii of paragraph 1 of subsection (1) are:

1. The agreement includes provisions that will assist the employer in achieving the expenditure reduction target established by the Minister for the employer.

2. The agreement will not adversely affect employees who earn less than $30,000 annually, excluding overtime pay.

3. The agreement contains appropriate provisions to minimize job losses, appropriate provisions respecting the redeployment of employees who are released from employment or who receive notice that they will be released from employment, and appropriate provisions relating to employee training and adjustment programs.

4. The agreement will be fair and equitable in its application to all employees.

Other payments

(3) Subject to the regulations, the Administrator shall make payments out of the Fund to a bargaining unit employee who is released from employment by his or her employer if,

(a) the employee is released from employment on or after June 14, 1993 and before April 1, 1996;

(b) there is a sectoral framework that relates to the sector of the employer;

(c) the employer and the bargaining agent that has bargaining rights in respect of the employee have not entered into a local agreement that complies with the criteria set out in paragraphs 1, 3 and 4 of subsection (1); and

(d) the Administrator is satisfied that the bargaining agent that has bargaining rights in respect of the employee made all reasonable efforts to enter into a local agreement with the employer to implement the sectoral framework. 1993, c. 5, s. 14.

Effect on holidays, vacations, etc.

15 (1) The provisions of a local agreement that apply to employees in respect of whom a party to the agreement has bargaining rights prevail over any provision in any other Act or the regulations thereunder that relates to holidays, vacations, hours of work or overtime pay if the agreement meets the criteria set out in paragraphs 1, 3 and 4 of subsection 14 (1).

Conflict with collective agreement

(2) The provisions of a local agreement prevail over the provisions of a collective agreement. 1993, c. 5, s. 15.

PART VII
WHERE NO AGREEMENT OR PLAN

Employees affected

23 (1) This Part applies to,

(a) those bargaining unit employees in respect of whom there is no local agreement that meets the criteria set out in paragraphs 1, 3 and 4 of subsection 14 (1); and

(b) those non-bargaining unit employees whose employer has not implemented a non-bargaining unit plan under section 16 by August 1, 1993.

Exclusion

(2) This Part does not apply to employees who earn less than $30,000 annually, excluding overtime pay. 1993, c. 5, s. 23.

No increase in compensation

24 (1) The rate of compensation of an employee is, for the period beginning June 14, 1993 and ending with March 31, 1996, fixed at the rate that was in effect immediately before June 14, 1993.

Same

(2) For greater certainty, "compensation" in this section includes,

(a) merit increases;

(b) cost-of-living increases or other similar movement of or through ranges; and

(c) increases resulting from any movements on any pay scale or other grid system.

Promotions

(3) Nothing in this section prevents increases in compensation as a result of a promotion or acting promotion of an employee to a different position.

Existing collective agreements

(4) An increase in compensation after June 14, 1993 under a collective agreement existing on that date is void.

Election re: certain increases

(5) Despite subsection (4), a bargaining agent, by written notice to the employer, may elect to preserve increases in compensation provided for in a collective agreement existing on June 14, 1993, other than compensation described in clause (2) (a), (b) or (c).

Notice

(6) The notice of the election must be delivered to the employer not later than when the bargaining agent gives notice to the employer to bargain a renewal or new collective agreement which may extend beyond March 31, 1996.

Deferral

(7) If an election is made under subsection (5),

(a) any increase in compensation shall be deferred until the third anniversary following the day on which it would have occurred under the collective agreement; and

(b) no increase in compensation, other than those preserved by the election, shall be given before the third anniversary following the day the collective agreement expires, or, if the collective agreement has been extended under section 35, before the third anniversary of the day it would have expired had it not been extended.

Post-1995 merit increases, etc.

(8) An employee is not entitled to any increases in compensation after March 31, 1996 by way of,

(a) merit increases;

(b) cost-of-living increases or other similar movement of or through ranges; or

(c) increases resulting from any movements on any pay scale or other grid system, except as prescribed by regulation,

in respect of employment during the period beginning June 14, 1993 and ending March 31, 1996.

Expired collective agreement

(9) If a collective agreement has expired before June 14, 1993 and on that date the employees that were formerly bound by it are without a collective agreement, the compensation of these employees is fixed at the amount they were receiving under the last collective agreement in force before June 14, 1993.

First collective agreements

(10) Despite subsection (1), if employees are represented by a bargaining agent that,

(a) was certified or recognized as the employees' bargaining agent before June 14, 1993; or

(b) applied for certification as the employees' bargaining agent before June 14, 1993,

and a first collective agreement comes into force on or after June 14, 1993, the rate of compensation of an employee to whom the first collective agreement applies is, for the period beginning on the day the first collective agreement comes into force and ending with March 31, 1996, fixed at the rate first payable under the first collective agreement.

New employees

(11) The compensation of an employee who starts employment after June 14, 1993 is fixed at the starting amount until March 31, 1996 and the employee is bound by the program established under section 27 if the program is applicable to that employee. 1993, c. 5, s. 24.

Unpaid leaves of absence

25 (1) If necessary to meet the expenditure reduction target established by the Minister, an employer may require employees to take unpaid leaves of absence to a maximum of twelve days or their equivalent in each of the following periods:

1. June 14, 1993 to March 31, 1994.

2. April 1, 1994 to March 31, 1995.

3. April 1, 1995 to March 31, 1996.

Adjustments

(2) The Minister may make necessary adjustments to the periods set out in subsection (1) to take into consideration the annual cycle of operations of an employer or class of employers.

Variation

(3) If a full-time employee normally works a longer than regular work day, excluding overtime, in return for working fewer days in a year, the maximum number of days set out in subsection (1) shall be reduced by a proportionate amount.

Pension

(4) Despite any provision to the contrary in any Act, or any regulation thereunder or any pension plan, an employer's or employee's obligation to contribute to a pension plan and an employee's

entitlement under a pension plan are not affected by any reduction in earnings that results from the employee taking unpaid leaves of absence under subsection (1) or special leave under section 26.

Restriction

(5) If the employer utilizes the provisions in a collective agreement to provide for unpaid leaves, the number of days specified in subsection (1) is reduced by the number of days of unpaid leave of absence taken under the agreement.

Voluntary leaves

(6) If an employee takes voluntary unpaid leave after June 14, 1993 and before the program under section 27 is implemented, the number of days specified in subsection (1) is reduced for that employee for the applicable period by the same number of days taken as unpaid leave.

Restriction

(7) An employer may not require an employee to take unpaid leaves of absence under this section or section 26 before the program has been posted under section 29. 1993, c. 5, s. 25.

Special leave

26 (1) If employees perform critical functions as prescribed by regulation and the employer is unable, without impairing those functions, to meet its expenditure reduction target by utilizing unpaid leaves of absence under section 25, the employer may require those employees to take special leaves.

Interpretation

(2) For the purposes of this section, a special leave is an unpaid leave on days when the employee would normally be absent from work on paid holidays or paid vacation.

Consequences

(3) If an employee is required to take a special leave, the employer shall grant to the employee the same number of compensating days off.

Same

(4) If an employee is required to take special leave on a day to which premium pay applies, the number of compensating days shall be increased by a proportionate amount.

Compensating days

(5) The compensating days off,

(a) shall be paid days off, taken on mutually convenient dates;

(b) may be carried forward to future years including years after March 31, 1996; and

(c) may not be converted to money.

Same

(6) For the purpose of clause (5) (a), the employer shall make all reasonable efforts to accommodate an employee's request for compensating days off.

Same

(7) Despite clause (5) (c), compensating days off may be converted to money for an employee who ceases to be employed by the employer. 1993, c. 5, s. 26.

Obligations of employer

27 (1) If the fixing of compensation under section 24 does not result in an employer achieving its expenditure reduction target, the employer shall,

(a) make all reasonable efforts to achieve its target by utilizing unpaid leaves of absence under section 25 or, if applicable, special leaves under section 26 before taking other actions available to it at law; and

(b) develop a program setting out the manner in which these leaves are to be implemented.

Criteria

(2) The program shall be developed consistent with the following criteria:

1. Employees described in subsection 23 (2) will not be adversely affected.

2. Employees will not be required to take an unpaid leave of absence to the extent that it would result in their annual earnings, excluding overtime pay, being reduced to under $30,000.

3. The program will assist the employer in achieving the expenditure reduction target established by the Minister for the employer.

4. The program will be fair and equitable in its application to all employees.

5. The employer will participate in any redeployment plan that exists under a sectoral framework for the applicable sector or that is established by the Minister under section 50 for the applicable sector.

Duration

(3) The program shall apply from the day of posting under section 29 to March 31, 1996 or to the last date adjusted by the Minister under subsection 25 (2), as appropriate.

Financial records

(4) In order to enable employees to evaluate the basis for the program, the employer shall, upon request, make such financial information available to the employees as is prescribed in the regulations.

Mandatory participation

(5) For the purposes of this Part, the employer shall participate in any sectoral redeployment plan that exists in the sector applicable to that employer. 1993, c. 5, s. 27.

Written summary

28 (1) A written summary of the program shall be made setting out,

(a) the manner in which the unpaid leaves of absence are to be administered;

(b) whether the employer intends to use special leaves to meet the expenditure reduction targets;

(c) a statement that the compensation of all employees to whom this Part applies has been fixed in accordance with subsection 24 (1); and

(d) a statement that a sectoral redeployment plan applies to the employees, if such is the case.

Details

(2) The summary of the program shall contain sufficient details so that employees are aware of how they will be affected. 1993, c. 5, s. 28.

Posting

29 (1) The summary of the program and a copy of this Part shall be posted in such a manner that they are likely to come to the attention of the employees affected by the program.

Posting date

(2) The summary of the program shall not be posted before August 2, 1993.

Objection

(3) An employee or bargaining agent who objects to the program because it fails to meet the criteria set out in section 27 may within ten days of the summary of the program being posted request in writing that the employer amend it.

Reasons

(4) The request for amendment shall set out the reasons for the objection.

Review

(5) The employer shall, within ten days after the objection period has expired, review the objections and post in the same manner,

(a) a notice of confirmation of the original program; or

(b) a summary of the amended program.

Implementation

(6) The program may take effect on the day the summary is posted under subsection (1) and shall remain in effect even though a request for amendment has been made under this section or a request for a review has been made under section 30.

Amendments

(7) If at any time during the currency of the program the employer considers it necessary to further amend it, the amended program shall be treated as a new program and this section and sections 30 and 31 apply with necessary modifications. 1993, c. 5, s. 29.

Request for further review

30 (1) If following the employer review under subsection 29 (5), an employee or a bargaining agent considers that the program or amended program still does not meet the criteria set out in section 27, he, she or it may, within ten days after the posting under subsection 29 (5), request a review of the program by the person or body designated in the regulations as an adjudicator for that purpose.

Written request

(2) The request shall be in writing and shall specify the grounds for the objection to the program. 1993, c. 5, s. 30.

Procedures

31 (1) Subject to the regulations, if any, the adjudicator may establish procedures for carrying out the review.

Powers

(2) The adjudicator shall review the program and shall,

(a) confirm the program if it meets the criteria set out in section 27; or

(b) amend the program so that, in the opinion of the adjudicator, it is consistent with the criteria set out in section 27.

Written submissions

(3) The adjudicator may make the decision based on the written submissions of the employer, bargaining agent, if any, and employees and is not required to hold a hearing.

One decision

(4) The adjudicator shall make only one decision on the program irrespective of the number of requests made for a review.

Decision final

(5) The decision of the adjudicator is final. 1993, c. 5, s. 31.

Special leaves

32 If the program being objected to contains provisions requiring special leaves under section 26, the adjudicator shall not confirm those provisions unless the adjudicator is satisfied that the employer has made reasonable efforts to achieve the savings required to meet the expenditure reduction target by utilizing unpaid leaves of absence. 1993, c. 5, s. 32.

Grievances under collective agreement

33 (1) An employee to whom a collective agreement applies may use the grievance or arbitration procedures under the collective agreement to decide any difference between the employee and his or her employer arising out of the interpretation, application, administration or alleged contravention of a program developed by the employer under this Part.

Limitation

(2) In a grievance or arbitration under subsection (1), the arbitrator or board of arbitration shall not make any decision that an adjudicator is entitled to make under subsection 31 (2). 1993, c. 5, s. 33.

Limitation

34 (1) Nothing in this Part alters the termination date of a collective agreement. 1993, c. 5, s. 34 (1).

Same

(2) Nothing in this Part interferes with any right to carry on collective bargaining so long as any collective agreement reached is not inconsistent with this Act. 1993, c. 5, s. 34 (2).

Effect on holidays, vacations, etc.

(3) This Part prevails over any provision that relates to holidays, vacations, hours of work or overtime pay in any other Act or the regulations thereunder or in any collective agreement. 1993, c. 5, s. 34 (3).

Effect on certain proceedings

(4) Actions of an employer taken in accordance with section 24, 25 or 26 shall not be the subject of any proceeding brought by any person against an employer. 1993, c. 5, s. 34 (4).

Grievance rights

(5) An employee has no right to grieve under the *Public Service of Ontario Act, 2006* or any other Act or a collective agreement in respect of actions taken by his or her employer in accordance with section 24, 25 or 26. 1993, c. 5, s. 34 (5); 2006, c. 35, Sched. C, s. 123 (2).

Extension of collective agreement

35 (1) A bargaining agent may, by written notice to the employer of employees to whom this Part applies, require that a collective agreement be extended to March 31, 1996 if the agreement was or is governed by an Act that permits the employees to strike.

Notice

(2) The notice may be given before or after the collective agreement expires.

Application

(3) The giving of the notice extends an existing collective agreement or, in the case of a collective agreement that has expired, revives and extends the expired agreement to March 31, 1996.

Same

(4) This section applies despite subsections 34 (1) and (2) and is subject to,

(a) regulations excluding from the application of this section collective agreement provisions respecting staffing levels or workplace restructuring; and

(b) subsections 24 (4) to (9).

Same

(5) This section is not limited to collective agreements that expire after June 14, 1993. 1993, c. 5, s. 35.

PART VIII
TWO-YEAR SECTORAL FRAMEWORKS AND LOCAL AGREEMENTS

Sectoral framework after August 1, 1993

36 (1) Despite subsection 11 (2), the Minister may, after August 1, 1993 and not later than March 1, 1994, designate as a sectoral framework a plan that relates to a sector and that applies to the period beginning April 1, 1994 and ending with March 31, 1996.

Application

(2) Subsection (1) does not apply to a sector in respect of which a sectoral framework is designated under section 11 on or before August 1, 1993.

Application of subss. 11 (3) to (5) and s. 12

(3) Subsections 11 (3) to (5) and section 12 apply to a sectoral framework designated under this section.

Effect on existing local agreements

(4) If a local agreement is entered into under section 13 and a sectoral framework that relates to the sector of the employer is designated under this section,

(a) it is not necessary for the local agreement to implement the sectoral framework for the purpose of obtaining payments out of the Fund under subsection 14 (1) if the local agreement meets the criteria set out in subsection 14 (2); and

(b) the employer shall participate in any redeployment plan that exists under the sectoral framework. 1993, c. 5, s. 36.

Local agreement after August 1, 1993

37 (1) Despite subsection 13 (1), one or more bargaining agents may, after August 1, 1993 and not later than March 1, 1994, enter into a local agreement with an employer.

Term of agreement

(2) A local agreement under this section shall apply to the period beginning April 1, 1994 and ending with March 31, 1996.

Application

(3) Subsection (1) does not apply to a bargaining agent and employer who entered into a local agreement under section 13.

Ten-day delay

(4) Despite subsection (1), a local agreement may be entered into under this section not later than March 10, 1994 if a sectoral framework is designated under section 36 that relates to the sector of the employer and the Minister directs that this subsection applies to the sector.

Application of subss. 13 (2), (3) and (5)

(5) Subsections 13 (2), (3) and (5) apply to a local agreement entered into under this section. 1993, c. 5, s. 37.

Expenditure reduction targets

38 (1) If a sectoral framework is designated under section 11 or 36 in respect of a sector, the Minister shall establish lower expenditure reduction targets under section 7 for the period beginning April 1, 1994 and ending with March 31, 1996 for every employer in the sector who enters into a local agreement under section 37, not later than March 1, 1994, that implements the sectoral framework.

Ten-day delay

(2) For the purpose of subsection (1), a local agreement shall be deemed to have been entered into on March 1, 1994 if the Minister makes a direction under subsection 37 (4) that applies to the local agreement and the local agreement is entered into not later than March 10, 1994. 1993, c. 5, s. 38.

Payments out of Fund to bargaining unit employees

39 (1) Subject to the regulations, a bargaining unit employee who is released from employment by his or her employer is entitled to payments out of the Fund if the following criteria are met:

1. The employer has entered into a local agreement under section 37 that,

   i. implements the sectoral framework, if there is a sectoral framework designated under section 11 or 36 that relates to the sector of the employer, or

   ii. meets the criteria set out in subsection 14 (2), if there is no sectoral framework that relates to the sector of the employer.

2. The bargaining agent that has bargaining rights in respect of the employee is a party to the local agreement.

3. The employee is released from employment on or after April 1, 1994 and before April 1, 1996.

Other payments

(2) Subject to the regulations, the Administrator shall make payments out of the Fund to a bargaining unit employee who is released from employment by his or her employer if,

(a) the employee is released from employment on or after April 1, 1994 and before April 1, 1996;

(b) a sectoral framework has been designated under section 36 that relates to the sector of the employer;

(c) the employer and the bargaining agent that has bargaining rights in respect of the employee have not entered into a local agreement under section 37 that implements the sectoral framework; and

(d) the Administrator is satisfied that the bargaining agent that has bargaining rights in respect of the employee made all reasonable efforts to enter into a local agreement with the employer under section 37 to implement the sectoral framework. 1993, c. 5, s. 39.

Effect on holidays, vacation, etc.

40 (1) The provisions of a local agreement entered into under section 37 that apply to employees in respect of whom a party to the agreement has bargaining rights prevail over any provision in any other Act or the regulations thereunder that relates to holidays, vacations, hours of work or overtime pay if the agreement,

(a) implements the sectoral framework, if there is a sectoral framework designated under section 11 or 36 that relates to the sector of the employer; or

(b) meets the criteria set out in subsection 14 (2), if there is no sectoral framework that relates to the sector of the employer.

Conflict with collective agreement

(2) The provisions of a local agreement entered into under section 37 prevail over the provisions of a collective agreement. 1993, c. 5, s. 40.

Part VII ceases to apply

41 On April 1, 1994, Part VII ceases to apply to employees in respect of whom a local agreement is entered into under section 37 if the agreement,

(a) implements the sectoral framework, if there is a sectoral framework designated under section 11 or 36 that relates to the sector of the employer; or

(b) meets the criteria set out in subsection 14 (2), if there is no sectoral framework that relates to the sector of the employer. 1993, c. 5, s. 41.

PART X
MISCELLANEOUS

Salary arbitration

48 (1) No increase in compensation shall be given as a result of any arbitration award or decision made on or after June 14, 1993.

Same

(2) Despite subsection (1), if one or more days of hearings have been held before June 14, 1993 in an arbitration, but the award or decision is not made until on or after that date, any increase in compensation awarded to take effect before June 14, 1993 is valid, but any increase to take effect on or after that date is suspended.

Same

(3) Despite subsection (1), an arbitration award or decision may increase the annual earnings of employees to a maximum of $30,000.

Same

(4) Despite subsection (1), an arbitration award or decision may increase compensation to an employee to the extent required to redress any improper denial of a promotion or improper classification.

Same

(5) Subsection (1) does not apply to an arbitration award or decision that settles a first collective agreement applicable to employees represented by a bargaining agent that,

(a) was certified or recognized as the employees' bargaining agent before June 14, 1993; or

(b) applied for certification as the employees' bargaining agent before June 14, 1993.

Same

(6) For greater certainty, "compensation" in this section includes,

(a) merit increases;

(b) cost-of-living increases or other similar movement of or through ranges; and

(c) increases resulting from any movements on any pay scale or other grid system. 1993, c. 5, s. 48.

Regulations

49 (1) The Lieutenant Governor in Council may make such regulations as the Lieutenant Governor in Council considers necessary or advisable for carrying out the intent and purposes of this Act, including, without limiting the generality of the foregoing,

(a) adding to the Schedule any person or class of persons or any agency, authority, board, commission, corporation or other organization of any kind or exempting any of them from the application of this Act;

(b) defining any word or expression used in this Act or the regulations for the purposes of the Act and the regulations;

(c) fixing the amount of the Fund and governing the operation of the Fund;

(d) prescribing procedures to be used by the Administrator;

(e) establishing adjudicators, designating adjudicators and prescribing procedures to be used by them;

(f) prescribing amounts for the purposes of sections 42, 43, 44 and 45;

(g) designating employers for the purpose of section 43;

(h) identifying persons and entities for the purpose of section 43;

(i) prescribing the manner in which and the time or times at which amounts shall be paid or credited under section 43;

(j) establishing maximum amounts for the purpose of subsection 45 (3);

(k) prescribing percentages for the purposes of subsections 46 (1) and (2);

(l) relating to authority of trade unions and employer associations for the purposes of section 13;

(m) relating to or providing for any matter referred to in this Act as being prescribed or as being dealt with by regulation.

Same

(2) A regulation made under subsection (1) may be general or particular in its application and may be restricted in its application to such class or classes of employers or employees as is set out in the regulations.

Same

(3) A regulation under subsection (1) may be made retroactive to such date, not earlier than June 14, 1993, as is set out in the regulation.

Payments out of Fund

(4) Regulations under clause (1) (c) may prescribe criteria for payments out of the Fund and may regulate the amounts payable out of the Fund.

Effect of certain regulations

(5) A regulation made under clause (1) (f) or (j) is not effective to reduce an amount payable referred to in section 44 or 45 if an agreement reciting that it is made for the purpose of this Act is made between the Government of Ontario and the physician, practitioner, health facility, health service organization, other person or entity referred to in subsection 44 (2), independent health facility or operator of a pharmacy concerned or his, her or its agent before August 2, 1993.

Same

(6) A regulation made under clause (1) (k) is not effective to increase a threshold payment adjustment referred to in subsection 46 (1) or to reduce a threshold level referred to in subsection 46 (2) if an agreement reciting that it is made for the purpose of this Act is made between the Government of Ontario and the Ontario Medical Association before August 2, 1993.

Same

(7) An agreement referred to in subsection (5) or (6) that needs to be ratified shall be deemed to have been made before August 2, 1993 for the purpose of this Act, if it is signed before that date by the parties to it and ratified no later than August 10, 1993. 1993, c. 5, s. 49.

Redeployment plans, implementation

50 The Minister may require employers in any sector to implement a redeployment plan established by the Minister. 1993, c. 5, s. 50.

Transition

51 (1) The repeal of this Act does not affect the right of a person in respect of access to the Fund or to retraining and adjustment or redeployment benefits provided pursuant to this Act or pursuant to a plan, agreement or program under this Act if the person had an enforceable claim in respect of the right at the time of the repeal.

Same

(2) Despite the repeal of this Act, the provisions respecting the Fund, retraining and adjustment, and redeployment in this Act and the regulations and in plans and agreements shall be deemed to continue in force to the extent necessary to protect the rights described in subsection (1). 1993, c. 5, s. 51.

Conflict with other Acts, etc.

52 The provisions of this Act and the regulations prevail over the provisions of any other Act and the regulations thereunder but only to the extent necessary to carry out the intent and purposes of this Act. 1993, c. 5, s. 52.

Office holders

53 The following provisions apply to elected and to appointed office holders:

1. The Legislative Assembly, on motion of the Minister of Finance, may by resolution take such action as it considers appropriate for carrying out the intent and purposes of this Act, including reducing the indemnities and allowances of members.

2. The Minister, for the purposes of carrying out the intent and purposes of this Act, may perform the functions and duties of an employer in respect of persons appointed by the Lieutenant Governor in Council to any office.

3. The body to which a person is elected or appointed shall be deemed to be the employer of any other office holder. 1993, c. 5, s. 53.

Non-application of *S.P.P.A.*

54 Despite anything in the *Statutory Powers Procedure Act*, that Act does not apply to any review conducted by an adjudicator under this Act or any decision of the Administrator under this Act. 1993, c. 5, s. 54.

Delegation of powers

55 (1) Any power or duty conferred or imposed on the Minister under this Act may be delegated by the Minister to any person designated by the Minister and, when purporting to exercise a delegated power or duty, the delegate shall be presumed conclusively to act in accordance with the delegation.

Same

(2) Any power or duty conferred or imposed on the Administrator or an adjudicator may be delegated by the Administrator or adjudicator, as the case may be, to a person designated by him or her and, when purporting to exercise a delegated power or duty, the delegate shall be presumed conclusively to act in accordance with the delegation.

Conditions

(3) A delegation under this section shall be in writing and may be subject to such limitations, conditions and requirements as are set out in it.

Subdelegation

(4) In a delegation under this section, the Minister, Administrator or adjudicator may authorize a person to whom a power or duty is delegated to delegate to others the exercise of the delegated power or duty, subject to such limitations, conditions and requirements as the person may impose.

Facsimile signature

(5) The Minister, Administrator or an adjudicator may authorize the use of a facsimile of his or her signature on any document except an affidavit or statutory declaration and may authorize a person to whom a power or duty is delegated under this section to authorize the use of a facsimile of the person's signature on any document except an affidavit or statutory declaration.

Same

(6) A facsimile signature referred to in subsection (5) shall be deemed to be the signature of the person who authorized its use. 1993, c. 5, s. 55.

Appropriation

56 (1) Money required for the purposes of this Act before April 1, 1994 shall be paid out of the Consolidated Revenue Fund and thereafter, subject to subsection (2), out of the money appropriated for those purposes by the Legislature.

Same

(2) Money required for the purposes of the Fund shall be paid by the Minister of Finance out of the Consolidated Revenue Fund. 1993, c. 5, s. 56.

Repeal

57 (1) Subject to subsection (2), this Act, except subsections 24 (7) and (8) and section 51, is repealed on a day to be named by proclamation of the Lieutenant Governor. 1993, c. 5, s. 57 (1).

(2) Spent: 1993, c. 5, s. 57 (2).

58 Omitted (provides for coming into force of provisions of this Act). 1993. c. 5, s. 58.

59 Omitted (enacts short title of this Act). 1993, c. 5, s. 59.

SCHEDULE

1 The public sector in Ontario consists of,

(a) the Crown in right of Ontario, every agency thereof, and every authority, board, commission, corporation, office or organization of persons a majority of whose directors, members or officers are appointed or chosen by or under the authority of the Lieutenant Governor in Council or a member of the Executive Council;

(b) the corporation of every municipality in Ontario, every local board as defined by the *Municipal Affairs Act*, and every authority, board, commission, corporation, office or organization of persons some or all of whose members, directors or officers are appointed or chosen by or under the authority of the council of the corporation of a municipality in Ontario;

(c) every board as defined in the *Education Act* (R.S.O. 1990, c. E.2), the Metropolitan Toronto School Board and the Ottawa-Carleton French-language School Board, including its public sector and its Roman Catholic sector;

(d) every university in Ontario and every college of applied arts and technology and post-secondary institution in Ontario whether or not affiliated with a university, the enrolments of which are counted for purposes of calculating annual operating grants entitlements;

(e) every hospital listed in the Schedule to the Classification of Hospitals Regulation made under the *Public Hospitals Act* and every private hospital operated under the authority of a licence issued under the *Private Hospitals Act*;

Note: On a day to be named by proclamation of the Lieutenant Governor, clause 1 (e) of the Schedule to the Act is repealed and the following substituted: (See: 2017, c. 25, Sched. 9, s. 119 (1))

(e) every public hospital within the meaning of the *Public Hospitals Act* and every community health facility within the meaning of the *Oversight of Health Facilities and Devices Act, 2017* that was formerly licensed under the *Private Hospitals Act*;

(f) every corporation with share capital, at least 90 per cent of the issued shares of which are beneficially held by or for an employer or employers described in clauses (a) to (d), and every wholly-owned subsidiary thereof;

(g) every corporation without share capital, the majority of whose members, directors or officers are members of, or are appointed or chosen by or under the authority of, an employer or employers described in clauses (a) to (d), and every wholly-owned subsidiary thereof;

(h) every board of health under the *Health Protection and Promotion Act*, and every board of health under an Act of the Legislature that establishes or continues a regional municipality;

(i) the Office of the Lieutenant Governor of Ontario, the Office of the Assembly, members of the Assembly and the offices of persons appointed by order of the Assembly; and

(j) any authority, board, commission, corporation, office, person or organization of persons, or any class of authorities, boards, commissions, corporations, offices, persons or organizations of persons, set out in the Appendix to this Schedule or added to the Appendix by the regulations made under this Act.

2 For the purposes of this Schedule,

"municipality" includes a metropolitan, regional or district municipality and the County of Oxford.

APPENDIX

MINISTRY OF AGRICULTURE AND FOOD

1. Ontario Dairy Herd Improvement Corporation.

2. Ontario Food Terminal Board.

3. Ontario Stock Yards Board.

MINISTRY OF THE ATTORNEY GENERAL

1 Community legal clinics that receive funding from the legal aid plan established under the *Legal Aid Act*.

2 Supervised access centres that receive funding from the Ministry of the Attorney General.

MINISTRY OF CITIZENSHIP

1 Organizations providing services for immigrants and other newcomers to Ontario that receive funding through the Ontario Settlement and Integration Program of the Ministry of Citizenship.

MINISTRY OF CULTURE, TOURISM AND RECREATION

1. The Art Gallery of Ontario.

2. CJRT-FM Inc.

3. Royal Botanical Gardens.

4. Community information centres.

5. The Northern Ontario Library Service Board.

6. The Southern Ontario Library Service Board.

7. St. Clair Parkway Commission.

8. Ontario Educational Communications Authority.

9. Ontario Lottery Corporation.

10. Ontario Trillium Foundation.

11. Ottawa Congress Centre.

12. Province of Ontario Council for the Arts.

13. Royal Ontario Museum.

MINISTRY OF COMMUNITY AND SOCIAL SERVICES

1 Any authority, board, commission, corporation, office, person or organization of persons that,

(a) operates a children's residence under the authority of a licence issued under clause 193 (1) (a) of the *Child and Family Services Act* (R.S.O. 1990, c. C.11);

(b) provides residential care under the authority of a licence issued under clause 193 (1) (b) of the *Child and Family Services Act* (R.S.O. 1990, c. C.11);

(c) Repealed: 2007, c. 8, s. 228 (1).

(d) provides counselling services and staff training if the provision of those services is funded under the *General Welfare Assistance Act* (R.S.O. 1990, c. G.6);

(e) provides counselling services if the provision of those services is funded under the *Ministry of Community and Social Services Act* (R.S.O. 1990, c. M.20);

(f) operates a hostel providing services if the provision of those services is funded under the *General Welfare Assistance Act* (R.S.O. 1990, c. G.6);

(g) provides community services for adults if the provision of those services is funded by the Ministry of Community and Social Services under the *Ministry of Community and Social Services Act* (R.S.O. 1990, c. M.20);

(h) provides vocational rehabilitation services if the provision of those services is funded under the *Vocational Rehabilitation Services Act* (R.S.O. 1990, c. V.5);

(i) provides the services of homemakers or nurses if the provision of those services is funded under the *Homemakers and Nurses Services Act* (R.S.O. 1990, c. H.10);

(j) operates an approved home or auxiliary residence if the operation is funded under the *Homes for Retarded Persons Act* (R.S.O. 1990, c. H.11);

(k) operates a child care centre or is a home child care agency under the authority of a licence issued under the *Child Care and Early Years Act, 2014*;

(l) provides services for young offenders under Part IV of the *Child and Family Services Act* (R.S.O. 1990, c. C.11) or under an agreement with the Ministry of Community and Social Services under the *Ministry of Community and Social Services Act* (R.S.O. 1990, c. M.20);

(m) provides services under the *Young Offenders Act* (Canada) if the provider receives funding from the Ministry of the Solicitor General and Correctional Services;

(n) provides children's services funded or purchased by the Ministry of Community and Social Services under the *Child and Family Services Act* (R.S.O. 1990, c. C.11).

2 Municipalities and other corporations operating child care centres under the *Child Care and Early Years Act, 2014* and receiving direct subsidies from the Ministry of Education.

3 Societies within the meaning of the *Child and Family Services Act* (R.S.O. 1990, c. C.11) and agencies from whom such societies purchase services for children.

4, 5 Repealed: 2007, c. 8, s. 228 (1).

6 District Welfare Administration Boards operating under the *District Welfare Administration Boards Act* (R.S.O. 1990, c. D.15).

7 Approved corporations as defined in the *Elderly Persons Centres Act* (R.S.O. 1990, c. E.4).

MINISTRY OF ECONOMIC DEVELOPMENT AND TRADE

1. Ortech Corporation.

MINISTRY OF EDUCATION AND TRAINING

1. Youth employment centres providing community-based planning and counselling that receive funding from the Ministry of Education and Training.

2. The Ontario School for the Deaf and any other school for the deaf established under section 13 of the *Education Act* (R.S.O. 1990, c. E.2).

3. The Ontario School for the Blind and any other school for the blind established under section 13 of the *Education Act* (R.S.O. 1990, c. E.2).

4. Any demonstration school established under section 13 of the *Education Act* (R.S.O. 1990, c. E.2).

5. Ontario Institute for Studies in Education.

MINISTRY OF ENVIRONMENT AND ENERGY

1. Ontario Energy Corporation.

2. Ontario Hydro.

MINISTRY OF FINANCE

1. Stadium Corporation of Ontario Ltd.

MINISTRY OF HEALTH AND LONG-TERM CARE

1 Any authority, board, commission, corporation, office, person or organization of persons which operates or provides,

(a) an ambulance service, under the authority of a licence issued under the *Ambulance Act* (R.S.O. 1990, c. A.19);

(b) a long-term care home, under the authority of a licence or an approval under the *Long-Term Care Homes Act, 2007*;

(c) a laboratory or a specimen collection centre, under the authority of a licence issued under the *Laboratory and Specimen Collection Centre Licensing Act* (R.S.O. 1990, c. L.1);

(d) a psychiatric facility within the meaning of the *Mental Health Act* (R.S.O. 1990, c. M.7), the operation of which is funded in whole or in part by the Ministry of Health or a local

health integration network as defined in section 2 of the *Local Health System Integration Act, 2006*;

(e) a home for special care established, approved or licensed under the *Homes for Special Care Act* (R.S.O. 1990, c. H.2);

(f) a home care facility within the meaning of the General Regulation made under the *Health Insurance Act* (R.S.O. 1990, c. H.6) or a facility which, by arrangement with any such home care facility,

(i) provides nursing, physiotherapy, occupational therapy, speech therapy, nutritional counselling, social work, homemaking or other services to persons in their homes that are insured home care services under the General Regulation made under the *Health Insurance Act* (R.S.O. 1990, c. H.6), and

(ii) is entitled to payment from the home care facility for or in respect of supplying such services;

(g) a rehabilitation centre or a crippled children's centre listed in the relevant Schedule to the General Regulation made under the *Health Insurance Act* (R.S.O. 1990, c. H.6);

(h) a detoxification centre that receives funding from the Ministry of Health or a local health integration network as defined in section 2 of the *Local Health System Integration Act, 2006*;

(i) services relating to addiction if the provider of the services receives funding from the Ministry of Health or a local health integration network as defined in section 2 of the *Local Health System Integration Act, 2006*;

(j) an adult community mental health service the operation of which is, pursuant to an agreement in writing, funded in whole or in part by the Ministry of Health or a local health integration network as defined in section 2 of the *Local Health System Integration Act, 2006*;

(k) a placement service the operation of which is, pursuant to a "Placement Co-ordination Service Agreement" or other agreement in writing, funded in whole or in part by the Ministry of Health or a local health integration network as defined in section 2 of the *Local Health System Integration Act, 2006*.

2 Repealed: 2006, c. 4, s. 53 (2).

3 A laundry that is operated exclusively for one or more than one hospital.

4 Hospital Food Services - Ontario Inc.

5 Alcoholism and Drug Addiction Research Foundation.

6 The Canadian Red Cross Society in respect of its operations in Ontario.

7 The Hospital Council of Metropolitan Toronto.

8 The Hospital Medical Records Institute.

9 The Ontario Cancer Institute.

10 The Ontario Cancer Treatment and Research Foundation.

11 Repealed: 2017, c. 25, Sched. 8, s. 4.

12 Michener Institute for Applied Health Sciences.

13 A community health centre, being an employer,

(a) who provides primary health services primarily to,

(i) a group or groups of individuals who, because of culture, language, socio-economic factors or geographic isolation, would be unlikely to receive some or all of those services from other sources, or

(ii) a group or groups of individuals who, because of age, socio-economic factors or environmental factors, are more likely to be in need of some or all of those services than other individuals; and

(b) who receives funding from the Ministry of Health and Long-Term Care or a local health integration network as defined in section 2 of the *Local Health System Integration Act, 2006* in accordance with the number or type of services provided.

14 A comprehensive health care organization, being a non-for-profit corporation that,

(a) provides or arranges for the provision of comprehensive health care services for individuals who are enrolled as members of the patient roster of the corporation; and

(b) receives funding from the Ministry of Health and Long-Term Care or a local health integration network as defined in section 2 of the *Local Health System Integration Act, 2006* in accordance with the number of individuals on the roster.

15 A person operating an independent health facility to which the *Independent Health Facilities Act* (R.S.O. 1990, c. I.3) applies.

Note: On a day to be named by proclamation of the Lieutenant Governor, section 15 under the heading "Ministry of Health and Long-Term Care" in the Appendix to the Act is repealed and the following substituted: (See: 2017, c. 25, Sched. 9, s. 119 (2))

15 A person operating a community health facility to which the *Oversight of Health Facilities and Devices Act, 2017* applies.

16 A practitioner whose services are insured services under the *Health Insurance Act* (R.S.O. 1990, c. H.6).

17 Repealed: 2017, c. 25, Sched. 8, s. 4.

18 A community advisory board for a psychiatric hospital whose members are appointed by the Minister of Health.

19 An operator of a pharmacy receiving payments under the *Ontario Drug Benefit Act* (R.S.O. 1990, c. O.10).

MINISTRY OF HOUSING

1 A non-profit housing corporation or co-operative receiving funding under the *Housing Development Act* (R.S.O. 1990, c. H.18).

2 North Pickering Development Corporation.

MINISTRY OF LABOUR

1 The Pay Equity Advocacy and Legal Service.

2 A help centre, being an employer providing unemployment and vocational counselling services to adults that receives funding from the Ontario Help Centre Program of the Ministry of Labour.

3 The Workplace Health and Safety Agency.

MINISTRY OF MUNICIPAL AFFAIRS

1 Any authority, board, commission, corporation, office, person or organization of persons which operates or provides,

(a) the collection, removal and disposal of garbage and other refuse for a municipality;

(b) the operation and maintenance of buses for the conveyance of passengers under an agreement with a municipality.

2 Ontario Municipal Employees Retirement Board.

3 Toronto District Heating Corporation.

4 Police Villages.

5 Moosonee Development Area Board.

MINISTRY OF NATURAL RESOURCES

1 Conservation Authorities established under the *Conservation Authorities Act* (R.S.O. 1990, c. C.27).

MINISTRY OF THE SOLICITOR GENERAL AND CORRECTIONAL SERVICES

1 Any agency, board, commission, person or partnership that, under funding from the Ministry of the Solicitor General and Correctional Services,

(a) provides community residential or non-residential services; or

(b) supervises persons who have been convicted or found guilty of a criminal or provincial offence or who have been accused of a criminal or provincial offence.

2 Sexual assault centres.

***Expenditure Restraint Act*, SC 2009, c 2, s 393**

Restraint Measures

Increases to Rates of Pay

Increases to rates of pay

16 Despite any collective agreement, arbitral award or terms and conditions of employment to the contrary, but subject to the other provisions of this Act, the rates of pay for employees are to be increased, or are deemed to have been increased, as the case may be, by the following percentages for any 12-month period that begins during any of the following fiscal years:

(a) the 2006–2007 fiscal year, 2.5%;

(b) the 2007–2008 fiscal year, 2.3%;

(c) the 2008–2009 fiscal year, 1.5%;

(d) the 2009–2010 fiscal year, 1.5%; and

(e) the 2010–2011 fiscal year, 1.5%.

Employees Represented by a Bargaining Agent

Increases to rates of pay — collective agreements or arbitral awards after coming into force

17 (1) The provisions of any collective agreement that is entered into, or arbitral award that is made, after the day on which this Act comes into force may not provide for increases to rates of pay that are greater than those set out in section 16, but they may provide for increases that are lower.

12-month periods

(2) For greater certainty, any collective agreement that is entered into, or any arbitral award that is made, after the day on which this Act comes into force and that provides for increases to rates of pay for any period that begins during the restraint period must do so on the basis of a 12-month period.

Increases to rates of pay — collective agreements and arbitral awards — December 8, 2008 until coming into force

18 The provisions of any collective agreement that is entered into, or any arbitral award that is made, during the period that begins on December 8, 2008 and ends on the day on which this Act comes into force that provide, for any particular period, for increases to rates of pay that are greater than those referred to in section 16 for that particular period are of no effect or are deemed never to have had effect, as the case may be, and are deemed to be provisions that provide for the increases referred to in section 16.

Increases to rates of pay — collective agreements and arbitral awards — before December 8, 2008

19 With respect to a collective agreement that is entered into, or an arbitral award that is made, before December 8, 2008,

(a) section 16 does not apply in respect of any period that began during the 2006–2007 or 2007–2008 fiscal year; and

(b) for any 12-month period that begins during any of the 2008–2009, 2009–2010 and 2010–2011 fiscal years, section 16 applies only in respect of periods that begin on or after December 8, 2008 and any provisions of those agreements or awards that provide, for any particular period, for increases to rates of pay that are greater than those referred to in section 16 for that particular period are of no effect or are deemed never to have had effect, as the case may be, and are deemed to be provisions that provide for the increases referred to in section 16.

Other than 12-month periods — section 18

20 If a collective agreement or arbitral award to which section 18 applies provides for an increase to rates of pay for a period of other than 12 months that begins during any particular fiscal year in the restraint period, that increase is of no effect or is deemed never to have had effect, as the case may be, and is deemed to be an increase for that period of other than 12 months, determined on an annualized basis to the nearest 1/100%, that provides for the increase referred to in section 16 for a period that begins during that particular fiscal year.

Other than 12-month periods — section 19

21 If a collective agreement or arbitral award to which section 19 applies provides for an increase to rates of pay for a period of other than 12 months that begins during any particular fiscal year that begins during the period that begins on December 8, 2008 and ends on March 31, 2011, that increase is of no effect or is deemed never to have had effect, as the case may be, and is deemed to be an increase for that period of other than 12 months, determined on an annualized basis to the nearest 1/100%, that provides for the increase referred to in section 16 for a period that begins during that particular fiscal year.

Lower percentages not affected

22 If a collective agreement or arbitral award to which section 18 or 19 applies provides for an increase to the rates of pay for any particular period that is lower than the increase referred to in section 16 for that period, section 16 does not apply in respect of that increase.

Restructuring prohibited

23 Subject to sections 31 to 34,

(a) no provision of a collective agreement that is entered into, or of an arbitral award that is made, after the day on which this Act comes into force may provide for the restructuring of rates of pay during any period that begins during the restraint period;

(b) any provision of a collective agreement that is entered into, or of an arbitral award that is made, during the period that begins on December 8, 2008 and ends on the day on which this Act comes into force that provides for the restructuring of rates of pay during any period that begins during the restraint period is of no effect or is deemed never to have had effect, as the case may be; and

(c) any provision of a collective agreement that is entered into, or of an arbitral award that is made, before December 8, 2008 that provides for the restructuring of rates of pay during any period that begins during the period that begins on December 8, 2008 and ends on March 31, 2011 is of no effect or is deemed never to have had effect, as the case may be.

No increases to additional remuneration — after coming into force

24 No collective agreement that is entered into, or arbitral award that is made, after the day on which this Act comes into force may provide, for any period that begins during the restraint period, for any increase to the amount or rate of any additional remuneration that applied to the employees

governed by the collective agreement or the arbitral award immediately before the collective agreement, or the arbitral award, as the case may be, becomes effective.

No increases to additional remuneration — December 8, 2008 until coming into force

25 If a collective agreement that is entered into, or arbitral award that is made, at any time during the period that begins on December 8, 2008 and ends on the day on which this Act comes into force contains provisions that provide, for any period that begins during the restraint period, for an increase to the amount or rate of any additional remuneration that applied to the employees governed by the collective agreement or the arbitral award immediately before the collective agreement, or the arbitral award, as the case may be, became effective, those provisions are of no effect or are deemed never to have had effect, as the case may be.

No increases to additional remuneration — before December 8, 2008

26 If a collective agreement that is entered into, or an arbitral award that is made, before December 8, 2008 contains provisions that, for any period that begins in the period that begins on December 8, 2008 and ends on March 31, 2011, provide for an increase to the amount or rate of any additional remuneration that applied to the employees governed by the collective agreement or the arbitral award immediately before the first period that began on or after December 8, 2008, those provisions are of no effect or are deemed never to have had effect, as the case may be.

No new additional remuneration — after coming into force

27 No collective agreement that is entered into, or arbitral award that is made, after the day on which this Act comes into force may provide, for any period that begins during the restraint period, for any additional remuneration that is new in relation to the additional remuneration that applied to the employees governed by the collective agreement or the arbitral award immediately before the collective agreement or the arbitral award, as the case may be, becomes effective.

No new additional remuneration — December 8, 2008 to coming into force

28 If a collective agreement that is entered into, or an arbitral award that is made, at any time during the period that begins on December 8, 2008 and ends on the day on which this Act comes into force contains a provision that provides, for any period that begins during the restraint period, for any additional remuneration to the employees governed by the collective agreement or the arbitral award that is new in relation to the additional remuneration that applied to the employees governed by the collective agreement or the arbitral award, as the case may be, immediately before it became effective, that provision is of no effect or is deemed never to have had effect, as the case may be.

No new additional remuneration — before December 8, 2008

29 If a collective agreement that is entered into, or an arbitral award that is made, before December 8, 2008 contains a provision that provides, for any period that begins in the period that begins on December 8, 2008 and ends on March 31, 2011, for any additional remuneration to the employees governed by the collective agreement or the arbitral award that is new in relation to the additional remuneration that applied to the employees governed by the collective agreement or arbitral award,

as the case may be, immediately before the first period that began on or after December 8, 2008, that provision is of no effect or is deemed never to have had effect, as the case may be.

Canada Border Services Agency

30 Sections 24 to 26 do not apply in respect of pay notes applicable only to employees in the Canada Border Services Agency who were transferred to the Agency on its creation, but the rates of those pay notes may not be increased during any period that begins in any of the fiscal years referred to in section 16 by a percentage that is higher than the percentage set out in that section for that fiscal year.

Border Services Group

31 The following rules apply in respect of collective agreements that govern employees in the Border Services Group whose employer is Her Majesty as represented by the Treasury Board:

(a) paragraph 23(a) does not prevent any collective agreement that is entered into after the day on which this Act comes into force from restructuring, as a result of a classification conversion, the rates of pay during the 2007–2008 or 2009–2010 fiscal year, and the increases set out in section 16 apply in respect of the restructured rates of pay;

(b) if a collective agreement is entered into during the period that begins on December 8, 2008 and ends on the day on which this Act comes into force and, as a result of a classification conversion, it contains provisions for the restructuring of rates of pay during the 2007–2008 or 2009–2010 fiscal year, paragraph 23(b) does not apply in respect of those provisions, and the increases set out in section 16 apply in respect of the restructured rates of pay; and

(c) if a collective agreement is entered into before December 8, 2008 and, as a result of a classification conversion, it contains provisions for the restructuring of rates of pay during the 2009–2010 fiscal year, paragraph 23(c) does not apply in respect of those provisions, and the increase set out in section 16 applies in respect of the restructured rates of pay.

Groups subject to national rates of pay

32 The following rules apply in respect of collective agreements that govern employees in the Operational Services Group whose employer is Her Majesty as represented by the Treasury Board and employees in the General Labour and Trades Group and the General Services Group whose employer is Her Majesty as represented by the Parks Canada Agency or Her Majesty as represented by the Canadian Food Inspection Agency:

(a) paragraph 23(a) does not prevent any collective agreement that is entered into after the day on which this Act comes into force from restructuring the rates of pay during the 2009–2010 fiscal year in order to create national rates of pay, and the increase set out in section 16 applies in respect of the restructured rates of pay;

(b) if a collective agreement is entered into during the period that begins on December 8, 2008 and ends on the day on which this Act comes into force and, in order to create national rates of pay, it contains provisions for the restructuring of rates of pay during the 2009–2010 fiscal

year, paragraph 23(b) does not apply in respect of those provisions, and the increase set out in section 16 applies in respect of the restructured rates of pay; and

(c) if a collective agreement is entered into before December 8, 2008 and, in order to create national rates of pay, it contains provisions for the restructuring of rates of pay during the 2009–2010 fiscal year, paragraph 23(c) does not apply in respect of those provisions, and the increase set out in section 16 applies in respect of the restructured rates of pay.

Ships' Officers Group

33 The following rules apply in respect of any arbitral award that is made before December 8, 2008 and that governs employees in the Ships' Officers Group whose employer is Her Majesty as represented by the Treasury Board:

(a) paragraph 23(c) does not apply in respect of the provisions of any arbitral award that provide for the restructuring of rates of pay during the 2010–2011 fiscal year, and the increase set out in section 16 applies in respect of the restructured rates of pay; and

(b) section 29 does not apply in respect of the provisions of any arbitral award that provide for the payment, during the 2010–2011 fiscal year, of a sum in lieu of vacation leave factors.

Law Group

34 (1) The following rules apply in respect of any collective agreement or arbitral award that governs employees in the Law Group whose employer is Her Majesty as represented by the Treasury Board, and in respect of any period that begins during the restraint period:

(a) in the case of a collective agreement entered into — or an arbitral award made — after the day on which this Act comes into force,

(i) it may not have retroactive effect in respect of a day that is earlier than May 10, 2006,

(ii) any increase to rates of pay that it provides for in respect of any period that begins during the 2006–2007 fiscal year must be based on the rates of pay set out in Schedule 2,

(iii) it must provide, for all employees in the Law Group, for the same performance pay plans that were in effect on May 9, 2006 for any employees in the Law Group and, in relation to any particular position level, those plans must be at the same amounts or rates that were in effect for that position level on that date, but those plans may not have retroactive effect,

(iv) it may provide for any additional remuneration — other than a performance bonus — that applied to any position level in the Law Group on May 9, 2006, but the amount or rate of that additional remuneration for a particular position level may not be greater than the highest amount or rate that applied to employees of that position level on that date, and

(v) it may not provide for additional remuneration if that additional remuneration applied to no employee in the Law Group on May 9, 2006; and

(b) in the case of a collective agreement entered into — or an arbitral award made — on or before the day on which this Act comes into force,

(i) if any of its provisions has retroactive effect in respect of a day that is earlier than May 10, 2006, that retroactive effect is deemed never to have had effect, the provision is deemed to have had retroactive effect as of May 10, 2006 and the first day of every other period that is related to that provision is deemed to be moved forward by the number of days that is equal to the number of days between the first day the provision was expressed to have retroactive effect and May 10, 2006,

(ii) if the increase provided to rates of pay for any period that begins during the 2006–2007 fiscal year is based on rates of pay that are greater than those set out in Schedule 2, those greater rates of pay are of no effect or are deemed never to have had effect, as the case may be, and the increase is deemed to be based on the rates of pay set out in Schedule 2,

(iii) if subparagraph (ii) applies, its provision that provides for the rates of pay for any other period that begins on or before March 31, 2011 is of no effect or is deemed never to have had effect, as the case may be, and the rates of pay in that provision are deemed to be the rates of pay that applied immediately before the beginning of that period as a result of this Act,

(iv) if it provides for performance pay plans and those plans are not the same as those that were in effect on May 9, 2006 for any employees in the Law Group or the amounts or rates provided for in those plans in relation to any particular position level are not the same as those of the performance pay plans that were in effect on that date — or the plans were expressed to be retroactive — the provisions that provide for those plans are of no effect or are deemed never to have had effect, as the case may be, and are deemed to be provisions that provide, for all employees in the Law Group, as of the day that the agreement was entered into or the award was made, for the same performance pay plans that were in effect on May 9, 2006 for any employees in the Law Group at the same amounts or rates, in relation to any particular position level, that were in effect on that date,

(v) if it does not provide for performance pay plans, it is deemed to provide, for all employees in the Law Group, as of the day that the agreement was entered into or the award was made, for the same performance pay plans that were in effect on May 9, 2006 for any employees in the Law Group at the same amounts or rates, in relation to any particular position level, that were in effect on that date,

(vi) if it provides for any additional remuneration — other than a performance bonus — that applied to any position level in the Law Group on May 9, 2006, and the amount or rate of that additional remuneration for a particular position level is greater than the highest amount or rate that applied to any employees of that position level on that date, the provision that provides for that payment is deemed to be of no effect or is deemed never to have had effect, as the case may be, and is deemed to provide for the highest amount or rate, as the case may be, that applied in respect of any of those employees on that date, and

(vii) if it provides for any additional remuneration, and that additional remuneration applied to no employee in the Law Group on May 9, 2006, the provision that provides for that payment is of no effect or is deemed never to have had effect, as the case may be.

Other provisions apply

(2) For greater certainty, the provisions of this Act that are not inconsistent with subsection (1) apply to collective agreements and arbitral awards that govern employees in the Law Group.

Non-represented and Excluded Employees

Definitions

35 (1) The following definitions apply in sections 36 to 54.

employee means an employee who is not represented by a bargaining agent or who is excluded from a bargaining unit. (*employé*)

terms and conditions of employment means terms and conditions of employment that apply to employees. (*condition d'emploi*)

When terms and conditions of employment are considered to be established

(2) For the purposes of sections 36 to 54, terms and conditions of employment are considered to be established if they are established by an employer acting alone or agreed to by an employer and employees.

Increases to rates of pay — terms and conditions established after coming into force

36 (1) Terms and conditions of employment established after the day on which this Act comes into force may not provide for increases to rates of pay that are greater than those set out in section 16, but they may provide for increases that are lower.

12-month periods

(2) For greater certainty, terms and conditions of employment established after the day on which this Act comes into force that provide for increases to rates of pay for any period that begins during the restraint period must do so on the basis of a 12-month period.

Increases to rates of pay — terms and conditions of employment — December 8, 2008 until coming into force

37 The provisions of any terms and conditions of employment established during the period that begins on December 8, 2008 and ends on the day on which this Act comes into force that provide, for any particular period, for an increase to rates of pay that are greater than those referred to in section 16 for that particular period are of no effect or are deemed never to have had effect, as the case may be, and are deemed to be provisions that provide for the increases referred to in section 16.

Increases to rates of pay — terms and conditions of employment — before December 8, 2008

38 With respect to any terms and conditions of employment established before December 8, 2008 that provide for increases to rates of pay

(a) section 16 does not apply in respect of any period that began during the 2006–2007 or 2007–2008 fiscal year; and

(b) for any 12-month period that begins during any of the 2008–2009, 2009–2010 and 2010–2011 fiscal years, section 16 applies only in respect of periods that begin on or after December 8, 2008 and any provisions of those terms and conditions of employment that provide, for any particular period, for increases to rates of pay that are greater than those referred to in section 16 for that particular period are of no effect or are deemed never to have had effect, as the case may be, and are deemed to be provisions that provide for the increases referred to in section 16.

Other than 12-month periods — section 37

39 If any terms and conditions of employment to which section 37 applies provide for an increase to rates of pay for a period of other than 12 months that begins during any particular fiscal year in the restraint period, that increase is of no effect or is deemed never to have had effect, as the case may be, and the increase is deemed to be an increase for that period of other than 12 months, determined on an annualized basis to the nearest 1/100%, that provides for the increase referred to in section 16 for a period that begins during that particular fiscal year.

Other than 12-month periods — section 38

40 If any terms and conditions of employment to which section 38 applies provide for an increase to rates of pay for a period of other than 12 months that begins during any particular fiscal year that begins during the period that begins on December 8, 2008 and ends on March 31, 2011, that increase is of no effect or is deemed never to have had effect, as the case may be, and is deemed to be an increase for that period of other than 12 months, determined on an annualized basis to the nearest 1/100%, that provides for the increases referred to in section 16 in respect of a period that begins during that particular fiscal year.

Lower percentages not affected

41 If any terms and conditions of employment to which section 37 or 38 apply provide for an increase to the rates of pay for any particular period that is lower than the increase referred to in section 16 for that period, section 16 does not apply in respect of that increase.

Section 16 does not create authority to increase

42 If any terms and conditions of employment established before, on or after the day on which this Act comes into force do not provide for an increase to the rates of pay for any particular period that begins during the restraint period, section 16 is not to be construed as authorizing any increase to those rates of pay.

Restructuring prohibited

43 Subject to sections 51 to 54,

(a) no provision of terms and conditions of employment established after the day on which this Act comes into force may provide for the restructuring of rates of pay during any period that begins during the restraint period;

(b) any provision of terms and conditions of employment established during the period that begins on December 8, 2008 and ends on the day on which this Act comes into force that provides for the restructuring of rates of pay during any period that begins during the restraint period is of no effect or is deemed never to have had effect, as the case may be; and

(c) any provision of terms and conditions of employment established before December 8, 2008 that provides for the restructuring of rates of pay during any period that begins during the period that begins on December 8, 2008 and ends on March 31, 2011 is of no effect or is deemed never to have had effect, as the case may be.

No increases to additional remuneration — after coming into force

44 No terms and conditions of employment established after the day on which this Act comes into force may provide, for any period that begins during the restraint period, for any increase to the amount or rate of any additional remuneration that applied to the employees governed by those terms and conditions of employment immediately before those terms and conditions of employment become effective.

No increases to additional remuneration — December 8, 2008 until coming into force

45 If any terms and conditions of employment established at any time during the period that begins on December 8, 2008 and ends on the day on which this Act comes into force contain provisions that provide, for any period that begins during the restraint period, for an increase to the amount or rate of any additional remuneration that applied to the employees governed by those terms and conditions of employment immediately before those provisions became effective, those provisions are of no effect or are deemed never to have had effect, as the case may be.

No increases to additional remuneration — before December 8, 2008

46 If any terms and conditions of employment established before December 8, 2008 contain provisions that, for any period that begins in the period that begins on December 8, 2008 and ends on March 31, 2011, provide for an increase to the amount or rate of any additional remuneration that applied to the employees governed by those terms and conditions of employment immediately before the first period that began on or after December, 8, 2008, those provisions are of no effect or are deemed never to have had effect, as the case may be.

No new additional remuneration — after coming into force

47 No terms and conditions of employment established after the day on which this Act comes into force may provide, for any period that begins during the restraint period, for any additional remuneration that is new in relation to the additional remuneration that applied to the employees governed by those terms and conditions of employment immediately before the terms and conditions of employment become effective.

No new additional remuneration — December 8, 2008 until coming into force

48 If any terms and conditions of employment established at any time during the period that begins on December 8, 2008 and ends on the day on which this Act comes into force contain, in relation to any employees, a provision that provides, for any period that begins during the restraint period,

for any additional remuneration that is new in relation to the additional remuneration that applied to the employees governed by those terms and conditions of employment immediately before the effective date of the provisions, that provision is of no effect or is deemed never to have had effect, as the case may be.

No new additional remuneration — before December 8, 2008

49 If any terms and conditions of employment established before December 8, 2008 contain, in relation to any employees, a provision that provides, for any period that begins in the period that begins on December 8, 2008 and ends on March 31, 2011, for any additional remuneration that is new in relation to the additional remuneration that applied to the employees governed by those terms and conditions of employment immediately before the first period that began on or after December 8, 2008, that provision is of no effect or is deemed never to have had effect, as the case may be.

Canada Border Services Agency

50 Sections 44 to 46 do not apply in respect of pay notes applicable only to employees in the Canada Border Services Agency who were transferred to the Agency on its creation, but the rates of those pay notes may not be increased during any period that begins in any of the fiscal years referred to in section 16 by a percentage that is higher than the percentage set out in that section for that fiscal year.

Border Services Group

51 The following rules apply in respect of terms and conditions of employment governing employees in the Border Services Group whose employer is Her Majesty as represented by the Treasury Board:

(a) if the restructuring permitted by paragraph 31(a) occurs, paragraph 43(a) does not prevent terms and conditions of employment established after the day on which this Act comes into force from restructuring, as a result of a classification conversion, the rates of pay during the 2007–2008 or 2009–2010 fiscal year, and the increases set out in section 16 apply in respect of the restructured rates of pay;

(b) if any terms and conditions of employment were established during the period that begins on December 8, 2008 and ends on the day on which this Act comes into force and, as a result of a classification conversion, they contain provisions for the restructuring of rates of pay during the 2007–2008 or 2009–2010 fiscal year and the restructuring permitted by paragraph 31(b) occurs, paragraph 43(b) does not apply in respect of those provisions, and the increases set out in section 16 apply in respect of the restructured rates of pay; and

(c) if any terms and conditions of employment were established before December 8, 2008 and, as a result of a classification conversion, they contain provisions for the restructuring of rates of pay during the 2009–2010 fiscal year and the restructuring permitted by paragraph 31(c) occurs, paragraph 43(c) does not apply in respect of those provisions, and the increase set out in section 16 applies in respect of the restructured rates of pay.

Groups subject to national rates of pay

52 The following rules apply in respect of terms and conditions of employment governing employees in the Operational Services Group whose employer is Her Majesty as represented by the Treasury Board and employees in the General Labour and Trades Group and the General Services Group whose employer is Her Majesty as represented by the Parks Canada Agency or Her Majesty as represented by the Canadian Food Inspection Agency:

(a) if the restructuring permitted by paragraph 32(a) occurs, paragraph 43(a) does not prevent terms and conditions of employment established after the day on which this Act comes into force from restructuring rates of pay during the 2009–2010 fiscal year in order to create national rates of pay, and the increase set out in section 16 applies in respect of the restructured rates of pay;

(b) if any terms and conditions of employment were established during the period that begins on December 8, 2008 and ends on the day on which this Act comes into force and, in order to create national rates of pay, they contain provisions for the restructuring of rates of pay during the 2009–2010 fiscal year and the restructuring permitted by paragraph 32(b) occurs, paragraph 43(b) does not apply in respect of those provisions, and the increase set out in section 16 applies in respect of the restructured rates of pay; and

(c) if any terms and conditions of employment were established before December 8, 2008 and, in order to create national rates of pay, they contains provisions for the restructuring of rates of pay during the 2009–2010 fiscal year and the restructuring permitted by paragraph 32(c) occurs, paragraph 43(c) does not apply in respect of those provisions, and the increase set out in section 16 applies in respect of the restructured rates of pay.

Ships' Officers Group

53 The following rules apply in respect of terms and conditions of employment established before December 8, 2008 that govern employees in the Ships' Officers Group whose employer is Her Majesty as represented by the Treasury Board:

(a) paragraph 43(c) does not apply in respect of the provisions of those terms and conditions of employment that provide for the restructuring of rates of pay during the 2010–2011 fiscal year, and the increase set out in section 16 applies in respect of the restructured rates of pay; and

(b) section 49 does not apply in respect of the provisions of those terms and conditions of employment that provide for the payment, during the 2010–2011 fiscal year, of a sum in lieu of vacation leave factors.

Law Group

54 (1) The following rules apply in respect of terms and conditions of employment governing employees in the Law Group whose employer is Her Majesty as represented by the Treasury Board, and in respect of any period that begins during the restraint period:

(a) in the case where the terms and conditions of employment are established after the day on which this Act comes into force,

(i) the provisions of those terms and conditions of employment that provide for increases to rates of pay may not have retroactive effect in respect of a day that is earlier than May 10, 2006,

(ii) any increase to rates of pay that the terms and conditions of employment provide for in respect of any period that begins during the 2006–2007 fiscal year must be based on the rates of pay set out in Schedule 2,

(iii) the provisions of those terms and conditions of employment must provide, for all employees of the Law Group, for the same performance pay plans that were in effect on May 9, 2006 for any employees in the Law Group and, in relation to any particular position level, those plans must be at the same amounts or rates that were in effect for that position level on that date but those plans may not have retroactive effect, and

(iv) the provisions of those terms and conditions of employment may provide for any additional remuneration — other than a performance bonus — that applied to any position level in the Law Group on May 9, 2006, but the amount or rate of that additional remuneration for a particular position level may not be greater than the highest amount or rate that applied to employees of that position level on that date, and

(v) those terms and conditions of employment may not provide for additional remuneration if that additional remuneration applied to no employee in the Law Group on May 9, 2006; and

(b) in the case where the terms and conditions of employment were established on or before the day on which this Act comes into force,

(i) if any of their provisions have retroactive effect in respect of a day that is earlier than May 10, 2006, that retroactive effect is deemed never to have had effect, the provision is deemed to have had retroactive effect as of May 10, 2006 and the first day of every other period referred to in that provision is deemed to be moved forward by the number of days that is equal to the number of days between the first day the provision was expressed to have retroactive effect and May 10, 2006,

(ii) if the increase provided to rates of pay for any period that begins during the 2006–2007 fiscal year is based on rates of pay that are greater than those set out in Schedule 2, those greater rates of pay are of no effect or are deemed never to have had effect, as the case may be, and the increase is deemed to be based on the rates of pay set out in Schedule 2,

(iii) if subparagraph (ii) applies, the provisions of the terms and conditions of employment that provide for rates of pay for every other period that begins on or before March 31, 2011 are of no effect or are deemed never to have had effect, as the case may be, and the rates of pay in those provisions are deemed to be the rates of pay that applied immediately before the beginning of that period as a result of this Act,

(iv) if those terms and conditions of employment provide for performance pay plans and those plans are not the same as those that were in effect on May 9, 2006 for any employees in the Law Group or the amounts or rates provided for in those plans in relation to any particular position level are not the same as those of the performance pay plans that were in effect on that date — or the plans were expressed to be retroactive — the provisions that

provide for those plans are of no effect or are deemed never to have had effect, as the case may be, and are deemed to be provisions that provide, for all employees in the Law Group, as of the day that the terms and conditions of employment were established, for the same performance pay plans that were in effect on May 9, 2006 for any employees in the Law Group at the same amounts or rates, in relation to any particular position level, that were in effect on that date,

(v) if those terms and conditions of employment do not provide for performance pay plans, they are deemed to provide, for all employees in the Law Group, as of the day that they were established, for the same performance pay plans that were in effect on May 9, 2006 for any employees in the Law Group at the same amounts or rates, in relation to any particular position level, that were in effect on that date,

(vi) if those terms and conditions of employment provide for any additional remuneration — other than a performance bonus — that applied to any position level in the Law Group on May 9, 2006, and the amount or rate of that additional remuneration for a particular position level is greater than the highest amount or rate that applied to any employees of that position level on that date, the provisions that provide for that payment are deemed to be of no effect or are deemed never to have had effect, as the case may be, and are deemed to provide for the highest amount or rate, as the case may be, that applied in respect of any of those employees on that date, and

(vii) if those terms and conditions of employment provide for any additional remuneration, and that additional remuneration applied to no employee in the Law Group on May 9, 2006, the provision that provides for that payment is of no effect or is deemed never to have had effect, as the case may be.

Other provisions apply

(2) For greater certainty, the provisions of this Act that are not inconsistent with subsection (1) apply to terms and conditions of employment governing employees in the Law Group.

Members of Parliament

Increase

55 (1) Despite subsections 55.1(2), 62.1(2), 62.2(2) and 62.3(2) of the *Parliament of Canada Act* and subsections 4.1(2), (4) and (6) of the *Salaries Act*, the increase in respect of allowances and salaries to be paid to members of the Senate and the House of Commons for the 2009–2010 fiscal year is to be 1.5%.

No increase

(2) Despite the provisions referred to in subsection (1), there are to be no increases in respect of allowances and salaries to be paid to members of the Senate and the House of Commons for the 2010–2011, 2011–2012 and 2012–2013 fiscal years.

Transition — 2013–2014 fiscal year

(3) In calculating the allowances and salaries to be paid to members of the Senate and the House of Commons for the 2013–2014 fiscal year, the indexing mentioned in the provisions referred to in subsection (1) is to be applied to the allowances and salaries payable to the members for the 2009–2010 fiscal year.

General

Inconsistent provisions

56 Any provision of any collective agreement that is entered into — or of any arbitral award that is made, or of any terms and conditions of employment that are established — after the day on which this Act comes into force that is inconsistent with this Act is of no effect.

Compensating for restraint measures prohibited

57 No provision of any collective agreement that is entered into — or of any arbitral award that is made, or of any terms and conditions of employment that are established — after the day on which this Act comes into force may provide for compensation for amounts that employees did not receive as a result of the restraint measures in this Act.

Provisions compensating for restraint measures of no effect

58 If a provision of a collective agreement that is entered into — or of an arbitral award that is made, or of terms and conditions of employment that are established — on or before the day on which this Act comes into force provides for compensation for amounts that employees did not receive as a result of the restraint measures in this Act, that provision is of no effect or is deemed never to have had effect, as the case may be.

No changes to performance pay plans — new collective agreements, etc.

59 No provision of any collective agreement that is entered into — or of any arbitral award that is made, or of any terms and conditions of employment that are established — after the day on which this Act comes into force may, for any period that begins during the restraint period, change the performance pay plans, including the amounts or rates, that apply to any employees governed by the agreement, award or terms and conditions of employment.

No changes to performance pay plans — existing collective agreements, etc.

60 If a provision of a collective agreement that is entered into — or of an arbitral award that is made, or of terms and conditions of employment that are established — during the period that begins on December 8, 2008 and ends on the day on which this Act comes into force changes, for any period that begins during the restraint period, the performance pay plans, including the amounts or rates, that apply to any employees governed by the agreement, award or terms and conditions of employment, the change is of no effect or is deemed never to have had effect, as the case may be.

No changes to performance pay plans — existing collective agreements, etc.

61 If a provision of a collective agreement that is entered into — or of an arbitral award that is made, or of terms and conditions of employment that are established — before December 8, 2008 changes, for any period that begins in the period that begins on December 8, 2008 and ends on March 31, 2011, the performance pay plans, including the amounts or rates, that apply to any employees governed by the agreement, award or terms and conditions of employment, the change is of no effect or is deemed never to have had effect, as the case may be.

Royal Canadian Mounted Police

62 Despite sections 44 to 49, the Treasury Board may change the amount or rate of any allowance, or make any new allowance, applicable to members of the Royal Canadian Mounted Police if the Treasury Board is of the opinion that the change or the new allowance, as the case may be, is critical to support transformation initiatives relating to the Royal Canadian Mounted Police.

Protecting a Sustainable Public Sector for Future Generations Act, 2019, SO 2019, c 12 – Bill 124

Interpretation

2 In this Act,

"compensation" means anything paid or provided, directly or indirectly, to or for the benefit of an employee, and includes salary, benefits, perquisites and all forms of non-discretionary and discretionary payments; ("rémunération")

Application to employers

5 (1) This Act applies to the following employers, unless a Minister's regulation specifies otherwise:

5. Every licensee under the *Long-Term Care Homes Act, 2007*, other than a licensee that carries on its activities for the purpose of gain or profit to its members or shareholders.

Exceptions

(2) This Act does not apply to the following employers:

1. A municipality.

Reopening Ontario (A Flexible Response to COVID-19) Act, 2020, SO 2020, c 17

Definitions

1 In this Act,

"continued section 7.0.2 order" means an order continued under section 2 that was made under section 7.0.2 of the *Emergency Management and Civil Protection Act*; ("décret pris en vertu de l'article 7.0.2 et maintenu")

"COVID-19 declared emergency" means the emergency declared pursuant to Order in Council 518/2020 (Ontario Regulation 50/20) on March 17, 2020 pursuant to section 7.0.1 of the *Emergency Management and Civil Protection Act*. ("situation d'urgence déclarée en raison de la COVID-19")

"occupier" has the same meaning as in the *Trespass to Property Act*; ("occupant")

"premises" has the same meaning as in the *Trespass to Property Act*. ("lieux") 2020, c. 17, s. 1; 2020, c. 23, Sched. 6, s. 1.

ORDERS

Orders continued

2 (1) The orders made under section 7.0.2 or 7.1 of the *Emergency Management and Civil Protection Act* that have not been revoked as of the day this subsection comes into force are continued as valid and effective orders under this Act and cease to be orders under the *Emergency Management and Civil Protection Act*.

Exception

(2) Subsection (1) does not apply to the order filed as Ontario Regulation 106/20 (Order Made Under the Act — Extensions and Renewals of Orders).

Clarification

(3) For greater certainty, an order that is in force is continued under subsection (1) even if, on the day that subsection comes into force, the order does not apply to any area of the Province.

Time limit on application of orders

3 (1) An order continued under section 2 ceases to apply 30 days after it is continued under section 2, subject to extension under subsection (2).

Extension of orders

(2) The Lieutenant Governor in Council may by order, before it ceases to apply, extend the effective period of an order for periods of no more than 30 days.

Power to amend orders

4 (1) The Lieutenant Governor in Council may, by order,

(a) subject to subsections (2) and (5), amend a continued section 7.0.2 order in a way that would have been authorized under section 7.0.2 of the *Emergency Management and Civil*

Protection Act if the COVID-19 declared emergency were still in effect and references in that section to the emergency were references to the COVID-19 pandemic and its effects;

(b) amend an order continued under section 2 to address transitional matters relating to the termination of the COVID-19 declared emergency, the enactment of this Act or the continuation of orders under section 2.

Limitation on amendments

(2) An amendment may be made under clause (1) (a) only if,

(a) the amendment relates to one or more of the subject matters listed in subsection (3); or

(b) the amendment requires persons to act in compliance with any advice, recommendation or instruction of a public health official.

Same

(3) The subject matters referred to in clause (2) (a) are the following:

1. Closing or regulating any place, whether public or private, including any business, office, school, hospital or other establishment or institution.

2. Providing for rules or practices that relate to workplaces or the management of workplaces, or authorizing the person responsible for a workplace to identify staffing priorities or to develop, modify and implement redeployment plans or rules or practices that relate to the workplace or the management of the workplace, including credentialing processes in a health care facility.

3. Prohibiting or regulating gatherings or organized public events.

Definition of "credentialing process"

(4) In paragraph 2 of subsection (3),

"credentialing process" means the activities, processes, procedures and proceedings for appointing and reappointing health care staff and determining the nature and scope of privileges assigned to them.

Orders that may not be amended

(5) Amendments may not be made under clause (1) (a) to the following orders:

1. Ontario Regulation 75/20 (Drinking Water Systems and Sewage Works).

2. Ontario Regulation 76/20 (Electronic Service).

3. Ontario Regulation 80/20 (Electricity Price for RPP Consumers).

4. Ontario Regulation 114/20 (Enforcement of Orders).

5. Ontario Regulation 120/20 (Order Under Subsection 7.0.2 (4) of the Act — Access to COVID-19 Status Information by Specified Persons).

6. Ontario Regulation 129/20 (Signatures in Wills and Powers of Attorney).

7. Ontario Regulation 132/20 (Use of Force and Firearms in Policing Services).

8. Ontario Regulation 141/20 (Temporary Health or Residential Facilities).
9. Ontario Regulation 190/20 (Access to Personal Health Information by Means of the Electronic Health Record).
10. Ontario Regulation 192/20 (Certain Persons Enabled to Issue Medical Certificates of Death).
11. Ontario Regulation 210/20 (Management of Long-Term Care Homes in Outbreak).
12. Ontario Regulation 240/20 (Management of Retirement Homes in Outbreak).
13. Ontario Regulation 241/20 (Special Rules Re Temporary Pandemic Pay).
14. Ontario Regulation 345/20 (Patios).

Amendments may change requirements, extend application

(6) For greater certainty, an amendment made under clause (1) (a) may do the following, subject to subsection (2):

1. Impose more onerous or different requirements, including in different parts of the Province.
2. Extend the application of the order being amended, including the geographic scope of the order and the persons it applies to.

Amendments may be retroactive

(7) An amendment, if it so provides, may be retroactive to a date specified in the amending order that is on or after the day subsection (1) came into force.

Regulations to define "public health official"

(8) The Lieutenant Governor in Council may make regulations defining "public health official" for the purposes of clause (2) (b).

Power to revoke orders

5 The Lieutenant Governor in Council may by order revoke an order continued under section 2.

Delegation of powers

6 The Lieutenant Governor in Council may by order delegate to a minister of the Crown any of the powers of the Lieutenant Governor in Council under section 3, 4 or 5.

Provisions applying with respect to orders

7 (1) Subsections 7.2 (3) to (8) of the *Emergency Management and Civil Protection Act* continue to apply, with necessary modifications, with respect to orders continued under section 2, including any amendments to such orders made under this Act.

Same

(2) Subsections 7.0.2 (6) to (9) of the *Emergency Management and Civil Protection Act* continue to apply, with necessary modifications and the modifications specified in subsection (3), with

respect to continued section 7.0.2 orders, including any amendments to such orders made under this Act.

Modifications

(3) The modifications referred to in subsection (2) are the following:

1. The reference, in paragraph 1 of subsection 7.0.2 (7) of the *Emergency Management and Civil Protection Act*, to the emergency is deemed to be a reference to the COVID-19 pandemic and its effects.
2. The reference, in paragraph 2 of subsection 7.0.2 (7) of the *Emergency Management and Civil Protection Act*, to when the declared emergency is terminated is deemed to be a reference to when the order in relation to which that paragraph applies is revoked or ceases to apply.

Expiry of power to amend, extend orders

8 (1) The following powers cease to apply on the first anniversary of the day orders are continued under section 2:

1. The power under subsection 3 (2) to extend orders.
2. The power under section 4 to amend orders.

Extension by Assembly resolution

(2) The Assembly, on the recommendation of the Premier, may by resolution extend the expiry date mentioned in subsection (1) for additional periods of no more than one year.

Same

(3) If there is a resolution before the Assembly to extend the expiry date, the powers listed in subsection (1) shall continue until the resolution is voted on.

Effect of orders after expiry of power to amend, extend

(4) An order extended under subsection 3 (2) continues in effect until the date to which it was extended, even if that date is after the time the powers listed in subsection (1) cease to apply, unless it is revoked before that date.

ENFORCEMENT

Proceedings to restrain contravention of order

9 Despite any other remedy or any penalty, the contravention by any person of a continued section 7.0.2 order may be restrained by order of a judge of the Superior Court of Justice upon application without notice by the Crown in right of Ontario or a member of the Executive Council and the judge may make the order and it may be enforced in the same manner as any other order or judgment of the Superior Court of Justice.

Temporary closure by police, etc.

9.1 (1) A police officer, special constable or First Nations Constable may order that premises be temporarily closed if the police officer, special constable or First Nations Constable has reasonable grounds to believe that an organized public event or other gathering is occurring at the premises and that the number of people in attendance exceeds the number permitted under a continued section 7.0.2 order. 2020, c. 23, Sched. 6, s. 2.

Compliance with order

(2) Every individual who is on the premises shall comply with the order to temporarily close the premises by promptly vacating the premises after being informed of the order. 2020, c. 23, Sched. 6, s. 2.

Same

(3) No individual shall re-enter the premises on the same day that the premises were temporarily closed under subsection (1) unless a police officer, special constable or First Nations Constable authorizes the re-entry. 2020, c. 23, Sched. 6, s. 2.

Exception for residents

(4) Subsections (2) and (3) do not apply to individuals residing in the premises. 2020, c. 23, Sched. 6, s. 2.

Offences

10 (1) Every person who fails to comply with subsection 9.1 (2) or (3) or with a continued section 7.0.2 order or who interferes with or obstructs any person in the exercise of a power or the performance of a duty conferred by such an order is guilty of an offence and is liable on conviction,

(a) in the case of an individual, subject to clause (b), to a fine of not more than $100,000 and for a term of imprisonment of not more than one year;

(b) in the case of an individual who is a director or officer of a corporation, to a fine of not more than $500,000 and for a term of imprisonment of not more than one year; and

(c) in the case of a corporation, to a fine of not more than $10,000,000. 2020, c. 17, s. 10 (1); 2020, c. 23, Sched. 6, s. 3.

Separate offence

(2) A person is guilty of a separate offence on each day that an offence under subsection (1) occurs or continues. 2020, c. 17, s. 10 (2).

Increased penalty

(3) Despite the maximum fines set out in subsection (1), the court that convicts a person of an offence may increase a fine imposed on the person by an amount equal to the financial benefit that was acquired by or that accrued to the person as a result of the commission of the offence. 2020, c. 17, s. 10 (3).

Exception

(4) No person shall be charged with an offence under subsection (1) for failing to comply with or interference or obstruction in respect of an order that has been amended retroactive to a date that is specified in the amendment, if the failure to comply, interference or obstruction is in respect of conduct to which the retroactive amendment applies and the conduct occurred before the retroactive amendment was made but after the retroactive date specified in the amendment. 2020, c. 17, s. 10 (4).

Offence for occupier of premises

10.1 (1) A person is guilty of an offence if the person hosts or organizes a public event or other gathering at residential premises or other prescribed premises and the number of people in attendance exceeds the number permitted under a continued section 7.0.2 order. 2020, c. 23, Sched. 6, s. 4.

Presumption that owner, etc. is hosting or organizing

(2) If the owner or occupier of premises at which a public event or other gathering is held is present at the event or gathering, the owner or occupier is presumed, in the absence of evidence to the contrary, to be hosting or organizing the event or gathering. 2020, c. 23, Sched. 6, s. 4.

Penalties

(3) A person who is convicted of an offence under subsection (1) is liable,

(a) in the case of an individual, subject to clause (b), to a fine of not less than $10,000 and not more than $100,000 and for a term of imprisonment of not more than one year;

(b) in the case of an individual who is a director or officer of a corporation, to a fine of not less than $10,000 and not more than $500,000 and for a term of imprisonment of not more than one year; and

(c) in the case of a corporation, to a fine of not less than $10,000 and not more than $10,000,000. 2020, c. 23, Sched. 6, s. 4.

Applicable provisions

(4) Subsections 10 (2) to (4) apply, with necessary modifications, with respect to offences under subsection (1). 2020, c. 23, Sched. 6, s. 4.

Regulations

(5) The Lieutenant Governor in Council may make regulations prescribing premises for the purposes of subsection (1). 2020, c. 23, Sched. 6, s. 4.

REPORTING

Reports to public

11 The Premier, or a Minister to whom the Premier delegates the responsibility, shall regularly report to the public with respect to the orders continued under section 2 that continue to apply.

Reports to Assembly committee at 30-day intervals

12 At least once every 30 days, the Premier, or a Minister to whom the Premier delegates the responsibility, shall appear before, and report to, a standing or select committee designated by the Assembly concerning,

(a) orders that were extended during the reporting period; and

(b) the rationale for those extensions.

Report to Assembly after one year

13 (1) Within 120 days after the first anniversary of the day orders are continued under section 2, the Premier shall table a report in the Assembly concerning,

(a) orders that were amended under this Act;

(b) orders that were extended under this Act; and

(c) the rationale for those amendments and extensions, including how any applicable conditions and limitations on the making of the amendments were satisfied.

Report, if extension under s. 8

(2) If the expiry date mentioned in subsection 8 (1) is extended under section 8, the Premier shall, within 120 days after the end of each extension period, table an additional report in the Assembly concerning,

(a) the rationale for recommending the extension;

(b) orders that were amended during the extension period;

(c) orders that were extended during the extension period; and

(d) the rationale for those amendments and extensions, including how any applicable conditions and limitations on the making of the amendments were satisfied.

GENERAL

Protection from action

14 Section 11 of the *Emergency Management and Civil Protection Act* applies, with necessary modifications, with respect to orders continued, amended, extended or revoked under this Act.

Action not an expropriation

15 (1) Section 13.1 of the *Emergency Management and Civil Protection Act* applies, with necessary modifications and the modification specified in subsection (2), with respect to this Act and orders continued, amended, extended or revoked under this Act.

Modification

(2) The modification referred to in subsection (1) is the following:

1. The reference, in subsection 13.1 (2) of the *Emergency Management and Civil Protection Act*, to the emergency is deemed to be a reference to the COVID-19 pandemic and its effects.

Crown bound

16 This Act binds the Crown.

Termination of COVID-19 declared emergency

17 Unless it has been terminated before this section comes into force, the COVID-19 declared emergency is terminated and Ontario Regulation 50/20 (Declaration of Emergency) is revoked.

18 Omitted (provides for coming into force of provisions of this Act).

19 Omitted (enacts short title of this Act).

***Supporting Retention in Public Services Act, 2022*, SO 2022, c 11, Sch 7**

Interpretation

1 In this Act,

"prescribed" means prescribed by the regulations; ("prescrit")

"regulations" means regulations made under this Act. ("règlements")

Funding

2 (1) For the purpose of supporting the provision of public services, a Minister may provide funding for employers to enhance the compensation paid to employees of the employer.

Eligibility

(2) Eligibility for funding under this Act shall be determined in accordance with compensation enhancement programs set out in the regulations.

Compensation enhancement programs

3 (1) A compensation enhancement program may provide for temporary or permanent compensation enhancements and may include different eligibility rules for different classes of employee.

Direct or indirect funding

(2) A compensation enhancement program may provide for funding to be provided to an employer directly or indirectly through a third party.

Use of funding

4 (1) Funding received by an employer under this Act shall be used to enhance the compensation paid to employees of the employer in accordance with the terms of the compensation enhancement program under which the funding is provided.

Same, third parties

(2) Funding received by a third party under this Act shall be provided to an employer in accordance with the terms of the compensation enhancement program under which the funding is provided.

Rules re: labour matters

5 (1) Despite any other Act and despite any regulation, order, policy, arrangement or agreement, including a collective agreement, the following rules apply with respect to prescribed compensation enhancement programs:

1. An agreement between an employer and a trade union or a bargaining agent regarding the payment of compensation enhancements is not required for the employer to make payments under the compensation enhancement program to eligible employees.
2. No employer, tribunal, arbitrator, arbitration board, officer or court may expand eligibility for or require the payment of a compensation enhancement under the compensation enhancement program to an employee who is not eligible under the terms of the program.

Complaints

(2) No complaint alleging a contravention of the *Labour Relations Act, 1995* or the *Crown Employees Collective Bargaining Act, 1993* shall be made in respect of the payment of compensation under a prescribed compensation enhancement program.

***Pay Equity Act* — permanent compensation enhancement programs**

6 (1) This section applies if,

(a) funding is provided under a prescribed compensation enhancement program that provides for a permanent compensation enhancement for employees;

(b) the employer of the employees is an employer to which the *Pay Equity Act* applies; and

(c) a pay equity gap exists in connection with job classes or positions of the employer's employees.

Same

(2) If funding provided under the compensation enhancement program results in an increase in compensation, within the meaning of the *Pay Equity Act*, to an employee's job class or position, the increase is deemed to be made for the purposes of achieving pay equity in respect of the employee's job class or position, maintaining pay equity in respect of the employee's job class or position, or both, under that Act.

Same

(3) If an increase in compensation described in subsection (2) exceeds the amount required to achieve pay equity in respect of the employee's job class or position, to maintain pay equity in respect of the employee's job class or position, or both, subsection (2) does not apply in respect of the excess amount.

Protecting a Sustainable Public Sector for Future Generations Act, 2019

7 (1) This section applies with respect to employees of employers to which the *Protecting a Sustainable Public Sector for Future Generations Act, 2019* applies.

Same

(2) Despite the *Protecting a Sustainable Public Sector for Future Generations Act, 2019*, the amounts received by an employee under a prescribed compensation enhancement program are deemed not to be an increase to a salary rate, an increase to an existing compensation entitlement or a new compensation entitlement for the purposes of that Act.

No cause of action re: enactment of Act, etc.

8 (1) No cause of action arises against the Crown or any of the Crown's current or former ministers, agents, appointees or employees,

(a) as a direct or indirect result of the enactment or amendment of any provision of this Act;

(b) as a direct or indirect result of the making, amending or revoking of any provision of a regulation or of a compensation enhancement program incorporated by reference in a regulation; or

(c) as a direct or indirect result of anything done or not done in order to comply with this Act or the regulations.

Proceedings barred

(2) No proceeding, including but not limited to any proceeding in contract, restitution, unjust enrichment, tort, misfeasance, bad faith, trust, fiduciary obligation or otherwise, that is directly or indirectly based on or related to anything referred to in subsection (1) may be brought or maintained against a person referred to in that subsection.

Application

(3) Without limiting the generality of subsection (2), that subsection applies to an action or other proceeding claiming any remedy or relief, including specific performance, injunction, declaratory relief or any form of damages or any other remedy or relief.

No deemed employment relationship

9 Nothing in this Act changes the status of an employer of employees and the application of this Act does not create an employment relationship between the Crown and employees of employers or a deemed employment relationship between them for the purposes of this or any other Act or any law.

Act binds Crown

10 This Act binds the Crown.

Regulations

11 (1) The Lieutenant Governor in Council may make regulations for carrying out the purposes and provisions of this Act.

Compensation enhancement programs

(2) The Lieutenant Governor in Council may make regulations prescribing compensation enhancement programs, including their eligibility requirements and their terms.

Same

(3) A regulation may set out the eligibility requirements and terms of a compensation enhancement program or may incorporate them by reference from a document as the document may be amended from time to time.

Temporary or permanent

(4) A regulation shall specify whether the program provides for a temporary compensation enhancement or a permanent compensation enhancement.

12 Omitted (provides for coming into force of provisions of this Act).

13 Omitted (enacts short title of this Act).

O Reg 241/20: Special Rules re Temporary Pandemic Pay

Whereas an emergency was declared pursuant to Order in Council 518/2020 (Ontario Regulation 50/20) on March 17, 2020 at 7:30 a.m. Toronto time pursuant to section 7.0.1 of the *Emergency Management and Civil Protection Act* (the "Act") and has been extended pursuant to section 7.0.7 of the Act;

And Whereas the criteria set out in subsection 7.0.2 (2) of the Act have been satisfied;

And Whereas on April 25, 2020, the Government of Ontario announced that in recognition of the dedication, long hours and increased risk of working to contain the COVID-19 outbreak, the Government of Ontario is providing frontline staff with temporary pandemic pay;

And Whereas the Government of Ontario is funding certain employers to provide eligible employees with temporary pandemic pay;

Now Therefore, this Order is made pursuant to subsection 7.0.2 (4) of the Act, in particular paragraphs 8, 12 and 14 of that subsection, the terms of which are set out in Schedule 1;

And Further, this Order applies generally throughout Ontario;

And Further, this Order is retroactive to April 24, 2020.

SCHEDULE 1

Interpretation

1. In this Order,

"eligible employee" means an employee who is entitled to receive temporary pandemic pay in accordance with the document entitled "Eligible workplaces and workers for pandemic pay" dated May 29, 2020 and available at https://www.ontario.ca/page/eligible-workplaces-and-workers-pandemic-pay; ("employé admissible")

"temporary pandemic pay" means the hourly wages and lump sum payments that eligible employees are entitled to receive in accordance with the document entitled "Eligible workplaces and workers for pandemic pay" dated May 29, 2020 and available at https://www.ontario.ca/page/eligible-workplaces-and-workers-pandemic-pay. ("prime temporaire liée à la pandémie")

Application

2. This Order applies to the following, province-wide:

1. Eligible employees.
2. Employers of eligible employees and employers of persons redeployed to perform work as eligible employees.
3. Trade unions and bargaining agents that represent eligible employees.

Payment of temporary pandemic pay to eligible employees

3. Despite any other statute, regulation, order, policy, arrangement or agreement, including a collective agreement, the following rules apply with respect to temporary pandemic pay:

1. An agreement between an employer and a trade union or a bargaining agent regarding the payment of temporary pandemic pay is not required for the employer to make payments of temporary pandemic pay to eligible employees.
2. No employer, tribunal, arbitrator, arbitration board, officer or court may expand eligibility for temporary pandemic pay or require the payment of temporary pandemic pay to employees who are not eligible employees.

Complaints

4. No complaint alleging a contravention of the Labour Relations Act, 1995 or the Crown Employees Collective Bargaining Act, 1993 shall be made in respect of the payment of temporary pandemic pay.

***Pay Equity Act*, RSO 1990, cP7**

Preamble

Whereas it is desirable that affirmative action be taken to redress gender discrimination in the compensation of employees employed in female job classes in Ontario;

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Purpose
4 (1) The purpose of this Act is to redress systemic gender discrimination in compensation for work performed by employees in female job classes.

Identification of systemic gender discrimination
(2) Systemic gender discrimination in compensation shall be identified by undertaking comparisons between each female job class in an establishment and the male job classes in the establishment in terms of compensation and in terms of the value of the work performed. R.S.O. 1990, c. P.7, s. 4.

Employment Equity Act SC 1995, c 44

Purpose of Act

2 The purpose of this Act is to achieve equality in the workplace so that no person shall be denied employment opportunities or benefits for reasons unrelated to ability and, in the fulfilment of that goal, to correct the conditions of disadvantage in employment experienced by women, Aboriginal peoples, persons with disabilities and members of visible minorities by giving effect to the principle that employment equity means more than treating persons in the same way but also requires special measures and the accommodation of differences.

Pay Equity Act, SC 2018, c27, s416

Purpose

2 The purpose of this Act is to achieve pay equity through proactive means by redressing the systemic gender-based discrimination in the compensation practices and systems of employers that is experienced by employees who occupy positions in predominantly female job classes so that they receive equal compensation for work of equal value, while taking into account the diverse needs of employers, and then to maintain pay equity through proactive means.

Pay Equity Act, SQ 1996, c43

Purpose and Scope

1. The purpose of this Act is to redress differences in compensation due to the systemic gender discrimination suffered by persons who occupy positions in predominantly female job classes.

Differences in compensation are assessed within the enterprise, except if there are no predominantly male job classes in the enterprise.

***Pay Equity Act*, RSPEI 1988, cP2**

2. Object

(1) The object of this Act is to achieve pay equity by redressing systemic gender discrimination in wages paid for work performed by employees in female-dominated classes in the public sector.

Identification of discrimination

(2) Systemic gender discrimination in wages shall be identified by undertaking comparisons between female-dominated classes and male-dominated classes in terms of relative wages and the relative value of the work performed.

Discriminatory practice

(3) For the purpose of this Act it is a discriminatory practice for an employer to establish differences in wages between employees in male-dominated classes and employees in female-dominated classes who are performing work of equal or comparable value.

Criteria

(4) In determining if a class is a female-dominated class or a male-dominated class regard shall be had to the historical incumbency of the class, gender stereotypes of fields of work and such other criteria as may be prescribed in the regulations. 1988, c.48, s.2; 1995, c.28, s.2

ONTARIO NURSES' ASSOCIATION VICKI MCKENNA AND BEVERLY MATHERS

Applicants

-and-

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AS REPRESENTED BY THE ATTORNEY GENERAL OF ONTARIO et al.

Respondents

Court File No.: CV-20-00636529-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
TORONTO

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