

ONTARIO NURSES' ASSOCIATION

Submission to the Standing Committee on Justice Policy

Bill 109, Employment and Labour Statute Law Amendment Act, 2015

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Queen's Park



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INTRODUCTION

The Ontario Nurses' Association (ONA) is the union for Registered Nurses as well as Allied Health Professionals in Ontario and has represented members in the health sector since our formation in 1973.

ONA currently represents 60,000 front-line registered nurses (RNs), nurse practitioners (NPs), registered practical nurses (RPNs) and allied health professionals and more than 14,000 nursing student affiliates across Ontario, providing front-line care in hospitals, long-term care facilities, public health, the home and community, clinics and industry.

The majority of the workplaces in which ONA has bargaining rights are covered by the provisions of the *Public Sector Labour Relations Transition Act* (PSLRTA). For this reason, our submission on the omnibus Bill 109 is focused on the proposed amendments to PSLRTA contained in Schedule 2.

Health care in Ontario is undergoing a sustained period of restructuring. Of that, there is no question. As a result, the health care services historically provided in institutional settings are being moved into new locations in the community and elsewhere. This transformation has a number of implications for access to services by our patients and for the transfer of the work of ONA members across sectors.

PSLRTA is the legislation that establishes the labour relations framework governing successor rights arising out of restructuring in the public health care sector. PSLRTA was initially established in 1997 when it applied to hospital mergers. It was amended in 2006 to apply to "integrations" in health care.

Three of the four purpose statements in section 1 under PSLRTA reference the goals for labour relations: to facilitate the establishment of effective and rationalized bargaining unit structures in restructured broader public sector organizations; to facilitate collective bargaining between employers and trade unions that are **freely-designated representatives of the employees** following the restructuring in the broader public sector; and to foster prompt resolution of workplace disputes arising from restructuring. We believe it is clear from the above statements that key to the purpose of PSLRTA is to ensure that trade unions are freely-designated representatives of the employees following the restructuring. It is our submission that the proposed amendments under Schedule 2 of Bill 109 are absolutely contrary to the notion of unions being 'freely-designated representatives of employees' through a democratic workplace process during restructuring.

ONA respectfully requests that the Standing Committee does not vote to proceed with the proposed changes to PSLRTA contained in Schedule 2 of Bill 109 but rather, we ask the Committee to strike out the entire Schedule 2 from Bill 109.

It is our contention that workplace democracy must be allowed to play out rather than be abrogated through an arbitrary designation. We do not believe the Minister intended to interfere in the existing workplace democratic processes that allow worker's choice in who (which union) represents them when mergers and integrations occur.

Bill 109 - Summary of Schedule 2

Schedule 2 proposes to amend Section 23 of PSLRTA to eliminate the requirement of a vote in a restructured bargaining unit if at least the **prescribed percentage** of employees are represented by a single bargaining agent. The **prescribed percentage** shall be more than 60 per cent.

ONA Opposes any Percentage Threshold

ONA takes the position that there should not be a percentage threshold that would preclude a vote of affected employees during restructuring. ONA does not support the amendments proposed in sections 11.1 or 11.2 in Schedule 2 of Bill 109. Our reasons follow.

1. Democratic Right to Choose Bargaining Agent

It is ONA's strongly held conviction that affected employees have a democratic right to choose the bargaining agent that will best represent their interests in the restructured employer.

The current provisions of PSLRTA give effect to democratic rights by conducting run off votes of all unions with existing members until the successful union demonstrates that they are the choice of more than 50 per cent of the members.

In the existing scenario, affected employees make a conscious choice in the decision of their original bargaining agent and have the same right to make a choice of their bargaining agent in their newly restructured successor employer.

2. No Reason to Eliminate Democratic Rights

The government's media release on Bill 109 indicated that Bill 109 is designed to "help reduce the potential for disruption and delay for workers." However, it is clear to ONA and our 60,000 members in the health sector that eliminating the right of employees to make a choice on a bargaining agent is not consistent with the actual experience under the current provisions.

In reality, votes, when they occur, do not lead to disruption and delay. In most instances, the process goes smoothly, campaigns are quick, and votes happen expeditiously once the transition date is established. These campaigns occur over a very short timeframe; typically seven to fourteen days maximum. Immediately after the campaign, the vote takes place.

ONA does not know where the government has been obtaining their information but massive disruption and delay is simply untrue based on our experience in the health sector.

The experience of ONA and other major health sector unions indicates that any disruption and delay as a result of votes is extremely rare. Even if there were some disruption, it is no justification for eliminating worker choice in their bargaining representative. Furthermore, the elections actually give union members an opportunity to engage in the democratic processes in the workplace. It also makes unions more responsive to the needs of their members. Having the opportunity to vote on the new bargaining agent is an effective mechanism to assist affected workers in accepting the workplace changes that are otherwise being imposed on them.

3. Introducing an Arbitrary Cut-off Percentage Resulting in No Mandatory Vote Could Result in Gerrymandering Bargaining Units and Expensive Litigation

Currently, all unions with representational rights within the pre-existing bargaining units automatically get on the ballot subject to run off votes where necessary. Ballot/voting issues have not resulted in litigation.

If an arbitrary cut off percentage is introduced as proposed, unions and employers may take differing positions on the composition of the new bargaining unit in order to achieve or avoid the arbitrary cut-off percentage for a vote. Particularly when the percentages are close to the cut off, expensive litigation could be pursued to challenge inclusion or exclusion of particular positions or individuals on the voting list in order to bring the percentage above or below the cut-off. Not only would this litigation be expensive, it would result in disruption and delay in getting a final result, which are the very consequences the legislative amendment was purported to avoid.

4. Parties Already Make Reasonable Decisions Regarding Votes

The current provisions of PSLRTA allow unions to agree on who the bargaining agent should be for a restructured bargaining unit. ONA and other health sector unions have all been involved in mergers and/or integrations where they have voluntarily relinquished their bargaining rights without a vote. This decision, however, must be left to the bargaining agent in consultation with its members and dependent on the circumstances of each case.

Introducing a threshold of 60 per cent, means that hundreds of workers could have the decision about voting for a bargaining agent stripped away from them. This would, in many cases, result in discontent with the imposed bargaining agent and unrest in the workplace. Obviously there is no value in such a scenario when the employer is in the midst of restructuring to provide services to patients that are delivered by the affected employees.

5. Examples of Cases Where a Vote Shows Workplace Democracy in Action

The common thread in examples where a union with a smaller percentage of members has been nonetheless successful in the vote, relates to an alienated membership, looking for better servicing and making a democratic decision reflecting their union of choice. The proposed amendments eliminate any choice for employees.

In the case of a vote during the restructuring of Community Care Access Centres (CCACs) from forty-three down to fourteen, ONA was successful at the Central CCAC even though ONA represented just slightly less than 40 per cent of the total employees. Under the proposed amendments, ONA would not even have been on the ballot.

In an upcoming vote, ONA and OPSEU are involved in a merger of two hospitals in Kingston in 2016. The parties have agreed to hold a vote and have agreed on the scope clause. ONA is the craft union representing RNs in one hospital. OPSEU represents the RNs in another hospital. Of the more than 200 RNs combined, ONA represents approximately 39 per cent of the RN workforce, while OPSEU represents approximately 61 per cent of the affected RNs. In this example, if the proposed percentage threshold were introduced, ONA would not be on the ballot for the vote. This result would deny the ONA-represented RNs the choice to choose their craft bargaining agent during the merger of the two hospitals.

6. Transition of Work out of Large Institutions to Smaller Workplaces

The negative impact of structural change is particularly acute for union members who are forced to transfer to a new employer to follow the services they used to provide in a hospital setting. The introduction of a threshold of more than 60 per cent means that these workers could be totally disenfranchised in deciding, not only their workplace, but their union. This doubles the impact on their entitlement to have a say in their workplace and will leave them feeling powerless.

While obvious, we should add that all of the above is taking place in the context of delivering healthcare services to patients. Employees that are feeling powerless will not be particularly productive in their restructured workplace. Government decisions related to labour relations are actively counter to government decisions that initiated the health restructuring.

Given that the Ministry of Health and Long-Term Care is about to initiate another round of restructuring in the home care sector, it makes sense to ensure that employees who already cite the epic stress resulting from patient overload and constant workplace change are able to make a simple choice regarding the union that will represent their best interests in extremely trying circumstances.

7. Constitutionality of Bill 109

In the *Mounted Police* case, the Supreme Court found that section 2(d) of the Charter guarantees a meaningful process of collective bargaining, which includes a process that provides employees with a degree of choice (and independence) sufficient to enable them to determine their collective interests and meaningfully pursue them. A summary of the case is attached to our submission.

The Court noted that the hallmarks of employee choice include the ability to form and to join new associations, to change representatives, to set and change collective workplace goals, and to dissolve existing associations. Accountability to the members of the association is an important element of choice.

ONA is of the view that the proposed amendments to PSLRTA would not stand charter scrutiny. By depriving union members of the union of their choice on the basis that they fell below an arbitrary minimum percentage of a newly integrated bargaining unit is an unnecessary infringement of their charter right to the union of their choice.

CONCLUSION

The proposed changes in Schedule 2 under PSLRTA are totally unnecessary. There is no evidence of problems under the current provisions. Schedule 2 is seeking a solution to a problem that does not exist. The result is the unintended consequence of undermining workplace democracy. Having a vote without any arbitrary cut off is consistent with workplace democracy and with Charter rights. It is crystal clear to ONA that the Standing Committee should vote to strike out Schedule 2 and restore the existing workplace democracy where employees are able to make their own decisions about representation as part of the restructuring process.