

**ONTARIO NURSES' ASSOCIATION**

**SUBMISSION**

**ON**

***Bill 47, Making Ontario Open for Business Act, 2018***

**TO**

**STANDING COMMITTEE ON FINANCE AND ECONOMIC AFFAIRS**

**Toronto, Ontario**

**Queen's Park  
Committee Room 151**

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**ONTARIO NURSES' ASSOCIATION**

85 Grenville Street, Suite 400  
Toronto, ON M5S 3A2  
Phone: (416) 964-8833  
Fax: (416) 964-8864  
Website: [www.ona.org](http://www.ona.org)

## **Summary of ONA Recommendations on Bill 47**

We submit a summary of our recommendations below to the proposed changes to the *Labour Relations Act, 1995* (the “LRA”) and the *Employment Standards Act, 2000* (the “ESA”) outlined in Bill 47, the *Making Ontario Open for Business Act, 2018*.

ONA’s principal recommendations are:

1. Retain section 6.1, which permits trade unions to apply for an order directing the employer to provide to the trade union a list of employees of the employer. The list must include the names of each employee in the proposed bargaining unit and a phone number and personal email for each employee in the proposed bargaining unit, if the employee has provided that information to the employer.
2. Maintain the card-based certification process for the home care and community services industry in accordance with section 15.2 of the LRA.
3. Retain mediation-arbitration for first collective agreements as set out in section 43.1 of the LRA.
4. Remove section 15.1, which will permit the Ontario Labour Relations Board to review the structure of bargaining units upon application either by an employer or trade union.
5. Retain the current personal emergency leave provisions as set out in section 50 of the ESA. In the alternative, repeal the changes made by Bill 148 and reinstate the pre-Bill 148 personal emergency leave provisions: namely, ten job-protected unpaid leave of absence days.

## I. Introduction

The Ontario Nurses' Association (ONA) is the union representing 65,000 front-line registered nurses, nurse practitioners, registered practical nurses and health-care professionals, as well as 18,000 nursing student affiliates, providing care across the health sector in hospitals, long-term care facilities, public health, the community, including home care, clinics and industry.

ONA is disappointed in the government's decision to repeal many of the provisions put in place to modernize Ontario's outdated labour and employment laws. The provisions enacted by Bill 148 were based on recommendations arising from the Changing Workplace Review, an extensive two-year review of Ontario's labour and employment laws.

In this submission, ONA advocates for the government to abandon its changes to the *Labour Relations Act* and the *Employment Standards Act* and to retain the current provisions affecting the certification process, negotiation of first collective agreements, restructuring bargaining units and personal emergency leave.

## II. LABOUR RELATIONS ACT – Access to Employee Lists During Organizing Campaigns

Bill 148 struck a sensible balance in permitting trade unions to apply for a list of employees and contact information during an organizing campaign, but only after demonstrating that the union had support from at least 20 percent of those employees. This measure was strongly supported by the Changing Workplace Review, which emphasized that employees have the right to be informed so that they can be educated and participate fully in discussions about the desirability of becoming unionized. In making this recommendation, the Changing Workplace Review considered the constitutionally protected freedom of association, including the right to participate in effective and meaningful collective bargaining.

The Changing Workplace Review compared the need for the union to know the members of the voting constituency with the need of candidates for public office knowing the names on the voters list. They described this need to know as vital to the democratic process. In the context of an organizing campaign, this is particularly true since the employer will always have the ability to communicate with its employees prior to a vote.

By removing this measure, the government is hindering employees' ability to access information that is required to make an informed decision. Organizing campaigns will continue to be shrouded in secret discussions rather than open conversations about the desirability of joining a union. This is in contrast to other contexts, such as in votes under the *Public Sector Labour Relations Transition Act* ("PSLRTA") in which unions are provided with the names and contact information of affected employees participating in the vote. Sometimes those open conversations result in employees deciding to join a union, and at other times, employees decide to remain non-unionized. At all times, the decision is informed.

ONA urges the government to reconsider its decision to eliminate access to employee lists. Democracy thrives with frank, open discussions and it is exactly that goal which underlies section 6.1 of the LRA. There is simply no good policy reason to deny trade unions access to lists of employees when they have demonstrated the 20 percent threshold of support.

#### **ONA Recommendation 1**

Retain section 6.1, which permits trade unions to apply for an order directing the employer to provide to the trade union a list of employees of the employer. The list must include the names of each employee in the proposed bargaining unit and a phone number and personal email for each employee in the proposed bargaining unit, if the employee has provided that information to the employer.

### **III. LABOUR RELATIONS ACT – Card-Based Certification for Home Care**

ONA is similarly concerned that access to meaningful collective bargaining will be restricted due to the proposal to remove card-based certification for the home care industry. There are a number of unique considerations when it comes to home care, including the dispersion of predominantly female employees, who typically work alone, throughout a large geographic region. In one region in the North, for example, it takes 17 hours to drive across the region covered by the home care provider. As another example, ParaMed Oshawa covers a region from Lake Ontario in the south, to Kawartha Lakes and Haliburton. In addition, the Long Term Care Homes Public Inquiry heard evidence this summer about the difficulties in recruiting and retaining qualified nurses to work in home care and about the frequent turnover of staff. These factors, when combined, impose almost insurmountable barriers on the employees' ability to access their right to associate and participate in meaningful collective bargaining.

Since the passage of section 15.2 of the LRA, ONA has certified one home care group of approximately 29 Registered Nurses and Registered Practical Nurses, ParaMed Muskoka, through the card-based certification process. If a vote had been held, the OLRB likely would have held a half-hour vote, given their typical formula for calculating the resources to be spent on a vote. It is unlikely that many employees would have been able to make it out to the vote location, and the outcome of the certification drive would have been determined by the small fraction of employees who were able to vote. In contrast, card-based certification ensures greater participation in the decision-making process.

Furthermore, under section 15.2(16), the Board still retains the power to order a representation vote, even if more than fifty-five percent of the employees in the bargaining unit are members of the trade union on the date the application is made to certify. The Board has the expertise to know when a vote is appropriate.

ONA urges the government to maintain card-based certification for home care, which is intended to alleviate barriers to access to collective bargaining that many other industries simply do not experience.

#### **ONA Recommendation 2**

Retain the card-based certification process for the home care and community services industry in accordance with section 15.2 of the LRA.

#### **IV. LABOUR RELATIONS ACT – Mediation-Arbitration for First Collective Agreements**

Bill 47 repeals section 43.1 of the LRA which provides for mediation-arbitration for first collective agreements. Pursuant to the Bill 148 changes to the LRA, the OLRB could order mediation-arbitration for first collective agreements upon application by either the union or the employer. Reaching a first collective agreement is of critical importance in the realization of the right to organize. All workers are, by law, guaranteed the right to associate for the purposes of meaningful collective bargaining, but in practice, this right is often limited as a result of barriers to establishing a first collective agreement.

ONA notes that mediation-arbitration for first collective agreements was supported by both unions and employers alike during the consultation phase of Bill 148, precisely because it encouraged negotiation of collective agreements and prevented labour unrest in the form of strikes and lockouts. By reverting to the pre-Bill 148 provisions, which limits first collective agreement arbitration to very limited circumstances, ONA is concerned that employees' access to effective and meaningful collective bargaining will be hampered and that unnecessary labour disruption may occur.

### **ONA Recommendation 3**

Retain mediation-arbitration for first collective agreements as set out in section 43.1 of the LRA.

## **V. LABOUR RELATIONS ACT – Review of Bargaining Unit Structure**

ONA joins with the Ontario Federation of Labour (OFL) in opposing the provisions of Bill 47 that will give to the OLRB the power to review established bargaining unit structures. Previously, ONA had submitted that the Board should have the power to consolidate newly-certified bargaining units with other existing bargaining units of a single employer where those units were represented by the same union. The ability to consolidate such units was intended to promote effective collective bargaining processes and to prevent the unwarranted proliferation of bargaining units. ONA believed that more effective, stable units would be the result.

Section 15.1 of Bill 47 will result in the opposite: it will create instability and chaos. By permitting the Board to review bargaining unit structures at any time, simply upon the application of an employer or another trade union, stable bargaining units may be plunged into chaos at any time for no reason other than the whim of a party that may have its own interests at heart.

Normally such restructuring of bargaining units occurs after an event that makes the units no longer appropriate, such as events covered by PSLRTA or the successor provisions in the LRA. Even at such times, employees, trade unions and employers go through a period of uncertainty from the representation vote and campaign, and during the merging and renegotiation of collective agreements following the vote. There is an extensive regime under PSLRTA to manage this period of uncertainty. No such regime has been proposed under section 15.1.

Bill 47 also removes the factors that the Board is to consider in determining whether to reconfigure bargaining units. Currently, section 15.1(6) of the LRA directs the Board to consider whether consolidation would contribute to the development of an effective collective bargaining relationship and the development of collective bargaining in the industry. Bill 47 does not import those same considerations into the revised powers of the Board. Instead, it gives the Board more power to restructure or reconfigure bargaining units, with less guidance on when it would be appropriate to do so.

#### **ONA Recommendation 4**

Remove section 15.1, which will permit the Ontario Labour Relations Board to review the structure of bargaining units upon application either by an employer or trade union. Retain the current language in section 15.1.

#### **VI. EMPLOYMENT STANDARDS ACT – Personal Emergency Leave (PEL)**

Since 2001, Ontario has provided all employees in the province up to ten days of job-protected unpaid personal emergency leave, covering a range of matters, including personal illness/injury, death, or illness, injury, medical emergency or urgent matter concerning family members. As noted in the Changing Workplace Review, personal emergency leave is important to all employees.

“Indeed the health of others may depend on employees who are ill remaining away from the workplace. The prevalence of families where both parents work, of single parent families and an aging population increase the need to recognize a minimum entitlement to time off work to deal with family illness and urgent matters related to families. The granting of bereavement leave in the case of a death in the family is a manifestation of respect, of sympathy and of ordinary human decency.” (p. 228)

The Review also strongly indicated its view that the minimum acceptable standard for death of an immediate family members was 3 days. (p. 236) Bill 148 introduced two progressive elements: the first two days of personal emergency leave were to be paid, and medical certificates were not required to substantiate the absence.

In contrast, Bill 47 introduces regressive provisions, turning back the clock on the Bill 148 changes but also entirely taking apart the established regime of ten days for personal emergency leave. By dividing personal emergency leave into three distinct categories and reducing the total number of days, the rights of employees to unpaid time off work has been greatly reduced.

Previously, employees had some flexibility on when they needed to take time off, so long as it met one of the enumerated reasons for leave. If, for example, an employee experienced the deaths of two family members in a year, they were entitled to use those ten personal emergency leave days as bereavement leave. Now, they are only entitled to two days. If those days are used for the first death, they will no longer have any entitlement to bereavement leave for the second death.

Employees will only have the right to three unpaid sick day, three days for family responsibility days, and two days for bereavement leave. The government will be forcing employees who are ill or dealing with difficult family situations to choose financial stability in the form of their job over attending to their personal health or the needs of their loved ones. An employee may have to attend work while sick or while distracted with worry about their family or while experiencing grief from the loss of a loved one, rather than taking the time needed to address their needs.

While Bill 47 does not affect the majority of ONA members, it certainly causes ONA concern that such a major restructuring has been done with almost no consultation whatsoever. There is no evidence that businesses in Ontario were struggling to operate within the confines of the previous provisions.

ONA urges the government to retain the current provisions relating to PEL, but in the alternative, we strongly advocate for the return to the prior scheme of ten unpaid days of leave to be used as needed. It should not matter to the employer what the reason for the absence is, so long as it falls within the parameters of the legislation. As noted by the Changing Workplace Review, “the breaking down of the right to be absent into separate categories of personal illness and family emergency after having a combined entitlement since 2001, would be a retrograde step that would negatively impact employees and is contrary to the interests and needs of the modern family.” (pp. 240-241)

### **ONA Recommendation 5**

Retain the current personal emergency leave provisions as set out in section 50 of the ESA. In the alternative, repeal the changes made by Bill 148 and reinstate the pre-Bill 148 personal emergency leave provisions: namely, ten job-protected unpaid leave of absence days for personal illness, injury or medical emergency, the death, illness, injury, medical emergency or urgent matter concerning an individual described in section 50(2) of the Act.

### **VII. Conclusion**

In our submission, ONA requests that the government abandon its changes to the *Labour Relations Act* and the *Employment Standards Act*. We urge the Standing Committee to retain the current provisions affecting the certification process, negotiation of first collective agreements, restructuring bargaining units, and personal emergency leave.

We thank the Standing Committee for the opportunity to bring our concerns to your attention.