

# **Ontario Nurses' Association**

## **Submission on Bill 148 to the Standing Committee on Finance and Economic Affairs**

**November 2, 2017**



**Ontario Nurses' Association**

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## **SUMMARY OF ONA'S RECOMMENDATIONS**

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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 148, the *Fair Workplaces, Better Jobs Act*.

ONA's principal recommendations are:

1. Create automatic access to first contract arbitration. Namely, amend paragraph 4 of subsection 43.1(5) of the *LRA* to reflect the following:

In the case of an order under s. 43.1(2)(a) or a dismissal under subsection 2(b), a party may make a second application under subsection (1) and the Board shall direct the settlement of a first collective agreement by mediation-arbitration if the Board is satisfied that, since the Board made its original decision under subsection (2), the applicant has taken all reasonable steps to engage in good faith collective bargaining with the assistance of a mediator.

2. Amend subsection 69.1(1) of the *LRA* to reflect that it extends successor rights to both the building services industry as well as home care and community services industry. Amend s. 69.2 to remove the limitation to service providers who "directly or indirectly receive public funds" and broaden its application to other services or sectors which may require this protection.
3. Amend subsection 15.1(1) of the *LRA* to remove the three-month limitation in paragraph 1 and allow an application for consolidation of bargaining units to be made at the time of certification or anytime thereafter. We also recommend removing paragraph 2 of subsection 15.1(1).

## **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 and almost 16,000 nursing student affiliates across Ontario, providing care across the health sector in hospitals, long-term care facilities, public health, the community, clinics and industry.

ONA commends the government on its efforts to modernize Ontario's outdated labour and employment laws by engaging in the Changing Workplaces Review, and now with the introduction of Bill 148. The *Fair Workplaces, Better Jobs Act* is a step in the right direction but there is more work to be done. In this submission, ONA advocates for amendments to the *Fair Workplaces, Better Jobs Act* that will address some shortcomings in the proposed legislation as drafted.

## **LABOUR RELATIONS ACT**

### **First Contract Arbitration**

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. However, in practice, this right is often limited as a result of barriers to establishing a first collective agreement. We applaud the provisions of Bill 148, which provide for automatic first contract mediation-arbitration where a union has been remedially certified. However, in all other first contract situations, the Ontario Labour Relations Board (OLRB) has the option to dismiss the request or order the parties to engage in further mediation. ONA submits that lengthy delays contribute to worker frustration and a demoralization of the workforce, which has just overcome many barriers to achieve certification in the face of the employer's resistance. Working conditions and the work environment worsen as time goes on and this undermines the employees' right to access meaningful collective bargaining. Bill 148 should therefore be amended to provide automatic access to first contract arbitration in all situations.

#### Recommendation:

ONA agrees with the Ontario Federation of Labour (OFL) recommendation to amend paragraph 4 of subsection 43.1(5) of the *LRA* to reflect the following:

In the case of an order under s. 43.1(2)(a) or a dismissal under subsection 2(b), a party may make a second application under subsection (1) and the Board shall direct the settlement of a first collective agreement by mediation-arbitration if the Board is satisfied that, since the Board made its original decision under subsection (2), the applicant has taken all reasonable steps to engage in good faith collective bargaining with the assistance of a mediator.

### **Successor Rights**

As Bill 148 recognizes, the successor rights provisions of the current *LRA* do not apply to all employers, specifically, those who sub-contract services. This means unionized contract workers often lose both their collective agreements and their bargaining rights if the service contract covering their worksite changes hands. This is true even if the new employer hires the same employees to perform the same work at the same worksite. Bill 148 as drafted extends successor rights to only the building services industry. The bill also allows for regulations to potentially extend successor rights to publicly funded service providers. ONA applauds these extensions to successor rights, however, there is no reason that successor rights should not be expanded to other contracted services. Specifically, the Changing Workplaces Review clearly recommended that home care services funded by the government be included in the new successor rights

provisions. This recommendation was ignored and there is no justification for this. Home care is a growing and important area of publicly-funded health care.

As noted by the Changing Workplaces Review, presently, approximately 30 per cent of the sector is unionized and employment in this sector remains precarious. The extension of card-check certification to this sector is a step in the right direction but the failure to extend successor rights provisions to the sector is a glaring gap in the new proposed legislation. Further, we see no reason why the regulations allowing the extension should be limited to publicly funded service providers. All workers deserve the protections of successor rights provisions. The Changing Workplaces Review did not recommend such a limitation and we submit that this limitation should be removed.

Recommendation:

We recommend subsection 69.1(1) of the *LRA* be amended to reflect that it applies to both the building services industry as well as home care and community services industry.

We further recommend that s. 69.2 be amended to remove the limitation to service providers who “directly or indirectly receive public funds” and be broad in its application to other services or sectors which may require this protection.

**Consolidation of Bargaining Units**

Bill 148 allows for the OLRB to consolidate newly certified bargaining units with other existing bargaining units of a single employer where those units are all represented by the same union. ONA agrees with this and believe it is a step in the right direction in terms of addressing collective bargaining relationships where excessive fragmentation has taken place. However, we see no reason why the legislation should limit the ability to consolidate such bargaining units at certification or within three months thereafter. The Board has the power to amend existing collective agreements as necessary under subsection 15.1(5)(e). The time limitation in ss. 15.1(1) is needlessly restrictive and makes it impossible to rectify the proliferation of bargaining units and fragmentation in the health-care sector that has already occurred and is detrimental to collective bargaining in the industry. We submit that Bill 148 should allow such an application to consolidate at any time.

Recommendation:

ONA agrees with the OFL recommendation to amend subsection 15.1(1) of the *LRA*. Specifically, ONA recommends that subsection 15.1(1) be amended to remove the three-month limitation in paragraph 1 and allow an application to be made at the time of certification or anytime thereafter. We also recommend removing paragraph 2 of subsection 15.1(1).

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