

# **Ontario Nurses' Association**

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

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**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).
4. Repeal both of the sets of provisions allowing contracting out of the *ESA*. Specifically: subsections 21.4(3), 21.5 (3), 21.6(4), 42.1(7), (8), (9) and 42.2 (7), (8), and (9) of the *Act*.
5. Establish a separate leave for survivors of domestic and/or sexual violence under the *ESA*. Provide up to 10 days of paid job-protected leave and up to 60 days of unpaid job-protected leave.

## **INTRODUCTION**

The Ontario Nurses' Association (ONA) is the union representing 64,000 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).

**EMPLOYMENT STANDARDS ACT**

**Prohibit Contracting Out of the *Employment Standards Act***

A fundamental principle of the *ESA* is that no employer or employee or agent of an employee may contract out of its basic provisions. This includes trade unions, as agents of employees. Bill 148 sets a dangerous precedent in two separate areas, allowing a collective agreement to violate the proposed minimum standards. ONA firmly believes that no party, including unions, should be able to contract out of the basic provisions of the *ESA*. The principle of mandatory

compliance with the minimum floor of standards provided by the *ESA* is fundamental to ensuring workers can access these basic protections.

Bill 148 introduces several important protections for workers on scheduling practices. We applaud the government for the introduction of these protections and for recognizing that unpredictable and uncertain work schedules contribute greatly to making work precarious and insecure. Under the legislation however, unionized workers may not be able to access the basic rights relating to the notice of cancellation, the refusal of work and being on call. The bill states that if there is a provision in the collective agreement that violates these new minimum standards, the collective agreement will prevail. We submit that this provision should be repealed.

Similarly, the amendments for equal pay for equal work allow collective agreements that are in effect on April 1, 2018 to remain non-compliant with the new equal pay standards for the duration of the collective agreement. Although this is a transitional provision, new collective agreements of varying terms can and will be signed up to March 31, 2018. Vulnerable workers should not be forced to wait years before they have access to the minimum standard of equal pay for equal work.

These provisions would give unionized workers lesser protection than non-unionized workers and may, as a result, run afoul of the right to freedom of association protected by the *Charter*. Effectively, Bill 148 is penalizing workers who choose to be represented by a union and have secured a collective agreement.

Recommendation:

Both of the sets of provisions allowing contracting out of the *ESA* should be repealed. Specifically:

- Repeal subsections 21.4(3), 21.5 (3) and 21.6(4) of the *ESA*.
- Repeal subsections 42.1(7), (8), (9) and 42.2 (7), (8), and (9) of the *ESA*.

**Domestic and/or Sexual Violence**

For women and men who have experienced domestic and/or sexual violence, a stable environment is critical. Survivors of domestic and/or sexual violence should not be forced to choose between having financial stability in the form of their job and their personal safety. Bill 148 takes a step in the right direction by creating a new entitlement to personal emergency leave days for workers who have experienced domestic and/or sexual violence. However, this is grossly insufficient.

This provision shortens the leave entitlement of survivors of domestic and/or sexual violence and restricts their ability to use the emergency leave days for illness or bereavement. Instead, Bill 148 should create a separate leave for survivors of domestic and/or sexual violence. Financial stability and economic independence are critical factors for survivors of such violence and ONA submits that to effectively address this issue, there should be a designated leave of 10 paid days, followed by 60 days of job-protected unpaid leave.

We agree with the OFL's submission that the creation of this leave alone will not be sufficient to help survivors of domestic and/or sexual violence, but it is an important first step to the creation of a full system of social services which should be enhanced.

Recommendation:

Establish a separate leave under the *ESA* for survivors of domestic and/or sexual violence, which provides up to 10 days of paid job-protected leave and up to 60 days of unpaid job-protected leave.

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