Bill 47: one giant leap backwards for the people of Ontario

A submission of the Ontario Public Service Employees Union (OPSEU) to the Standing Committee on Finance and Economic Affairs on Bill 47, the *Making Ontario Open for Business Act*.

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Ontario Public Service Employees Union, 100 Lesmill Road, Toronto, Ontario M3B 3P8
www.opseu.org

Summary of OPSEU recommendations

1) Keep the planned $15/hour increase to the minimum wage set for January 1, 2019, and continue to adjust for cost-of-living increases on a go-forward basis.
2) Maintain the current Personal Emergency Leave structure.
3) Maintain the amendments to section 42.1 of the ESA contained in Bill 148 that ensure equal pay for equal work. These amendments are essential in eliminating precarious work and generating more stable, full-time jobs.
4) Maintain the current scheduling process, as outlined in Bill 148.
5) Maintain the current language around employee classification, and focus on protecting workers.
6) The current provisions around employee lists should remain intact. Instead of removing the union's ability to receive employee lists, Bill 47 could simply clarify the intended use for such lists.
7) Card check certification should not be rolled back; it should be expanded to all sectors.
8) The OLRB should maintain its current regulatory powers to certify a union as the bargaining agent automatically where employers have committed unfair labour practices.
9) Implement an automatic and mandatory first contract arbitration model, as a straightforward and effective mechanism to resolve first contract disputes. Automatic access to arbitration would facilitate more effective negotiations, and permit newly organized workers to achieve a first collective agreement in a timely and efficient manner.
10) Maintain the current language around bargaining unit structure, to ensure that consolidation is not forced on workers when it may not be in their best interest.
11) Expand successor rights protections to industries beyond building services, where contract flipping is prevalent, such as home care.
12) Maintain the current fines to encourage compliance with Ontario's employment standards.
13) Withdraw this deeply flawed and short-sighted legislation immediately, and consult widely with members of the college and the trades community.
14) Reassess the direction of Bill 47, and its entire outdated framework for policy analysis.

About the Ontario Public Service Employees Union

The Ontario Public Service Employees Union represents 155,000 workers in the Ontario Public Service, the Broader Public Service, and the Colleges sector. Our members work in the public sector both provincially and municipally, for private contractors performing work for public entities, for the Ontario College of Trades, the College of Applied Arts and Technology, in public agencies like the Liquor Control Board of Ontario and the Municipal Property Assessment Corporation, in hospitals and at other health care providers, at universities and school boards, and in a wide range of social services.

Introduction

The *Employment Standards Act (ESA)*, and the *Ontario Labour Relations Act (OLRA)* not only provide the basic standards for Ontario's workplaces, they're also part of a much larger story; the story of how our society values workers.

Our economy is growing, and our province has more wealth than ever before. But the benefits are not being shared equitably with the workers who generate this wealth and value, and who've built the very foundation of our caring society. Ontarians are proud of the social fabric that we have stitched together: a society based on pooled wealth and risk, and taking care of one another.

But, for the past quarter century, workers have been at war. As the cost of living rises, wages have stagnated, and the dynamic of work has changed. Life is getting harder for working people, while an elite few reap the spoils. Precarious work is not just symptomatic of this shift, it is deeply tied to the devaluation of labour – breeding societal instability and inequality. We are caught in a vicious race to the bottom, and for a quarter century, successive governments have stood on the wrong side of the aisle.

Wealth inequality has risen dramatically. While corporations continue to generate tremendous profits, workers have lost ground. There's more wealth sitting at the top, while workers lose the purchasing power that drives the engine of the economy. This is a recipe for disaster. It goes against a core value for many Ontarians: that if you work hard, you should be rewarded.

We have an unspoken social contract; that workers should be able to raise their families in the cities and towns in which we live, and they should benefit from the economy they have built. We shouldn't have 'working poor,' and no society should expect those working full-time to go without basic necessities, social inclusion and engagement and the ability to raise children, because they simply can't afford them. No government should allow full-time workers to make less than a living wage.

After extensive consultations, and important dialogue between labour and government, Bill 148 turned the tide for workers. While we know that the dynamic of work has changed, there was finally some

recognition that workers have lost too much, and that legislation must reflect our modern reality. Bill 148 didn't go far enough, but at least it was a step in the right direction.

But the rollbacks of Bill 47 are dragging us backward, into a darker time for workers. The government is showing how little they value working people, and they've proven just how out of touch they are with modern reality.

The government has spoken of the need to "modernize" government, but what they mean is corporatize; to push for lower wages, fewer standards, and less protection for workers, all in the name of bigger profits for business. They mean hiving off and privatizing public services, and gradually chipping away at the social safety net we've built.

Bill 148 was a small step in the struggle for working Ontarians to achieve fairness and decency. Bill 47 is a slap in the face; a full-out assault on workers. The regressive changes presented in Bill 47, the *Making Ontario Open for Business Act, 2018* will undoubtedly make life more difficult for workers in Ontario.

OPSEU's proposal highlights key concerns and recommendations on each of Bill 47's major proposed changes to the ESA and OLRA. OPSEU strongly recommends that the government reassess the direction of Bill 47 and its entire outdated framework for policy analysis.

Employment Standards Act

Rollback of the $15 Minimum Wage

***Recommendation #1**: Keep the planned $15/hour increase to the minimum wage set for January 1, 2019, and continue to adjust for cost-of-living increases on a go-forward basis.*

The government's rhetoric regarding the supposed downsides of the increased minimum wage is based on flawed, and in many cases, misrepresented data. The reality is that the minimum wage has not kept up with the cost of living.[1] This was well-researched, and was a major contributing factor in the decision to increase the minimum wage prior to January 2018. Workers in minimum wage positions were taking a pay cut every year as their wages remained stagnant, and even the proposed increase to $15 per hour would not have gone far enough for those working at minimum wage to achieve a living wage, especially in urban centres.[2]

It's incomprehensible that the government would attack this basic wage achievement. If Bill 47 is passed, the minimum wage will be frozen at $14 dollars per hour, with no possible increase for almost

[1] Kaylie Tiessen, *Raising the Bar: Revisiting the benchmark question for Ontario's minimum wage*. (Canadian Centre for Policy Alternatives, 2014), 5.
[2] Ontario Living Wage Network, "Living Wage by Region." <http://www.ontariolivingwage.ca/>

three years.[3] As is already the case, the cost of living in Ontario will have far surpassed any minimum wage increases by that point.[4] Notably, Statistics Canada data shows that those on the lower end of the income spectrum spend a higher proportion of their earnings than those in higher tax brackets.[5] Increasing the minimum wage also boosts their purchasing power; it gives workers the ability to access the basic necessities of life, and it stimulates economic growth in a way that across-the-board tax cuts simply cannot.

While some special interest groups have argued that increasing the minimum wage would "kill jobs," this runs contrary to labour statistics and is patently untrue. Overall, the net number of full-time positions has increased since Bill 148 was introduced. 2018 evidence from Statistics Canada demonstrated that an increased minimum wage did not lead to job loss. Overall, unemployment has fallen and the fears stoked regarding Bill 148 were baseless.[6]

Personal Emergency Leave

***Recommendation #2**: Maintain the current Personal Emergency Leave structure.*

OPSEU is deeply concerned by the proposed changes to paid Personal Emergency Leave (PEL). By separating the types of leave available and decreasing the total number of days available, Bill 47 would dramatically reduce the flexibility workers need. A worker who does not use their days of leave dedicated to particular events such as personal sick leave, family responsibility or bereavement will be forced to forfeit days that could have been used for another emergency under the PEL system. For example, if a child is injured or falls ill, their working parent will only be entitled to three unpaid days to care for them, even if four days are needed. As it currently stands, a parent is entitled to 10 flexible days to be used as needed. Bill 47 is a step backward, and an undue strain on working Ontarians.

The proposed legislation also brings back the option for employers to demand medical notes. Research has shown that this type of requirement puts undue pressure on an already-overburdened health care system.[7] Workers who ought to be at home resting, may now be forced to get a sick note, creating further backlog and wait times for those who truly require medical attention. This is an unnecessary

[3] Bill 47, *Making Ontario Open for Business Act, 2018*, sch. 1, cl. 6 sub. 1-8
[4] Bank of Canada, "Indicators of Capacity and Inflation Pressures for Canada. Retrieved from https://www.bankofcanada.ca/rates/indicators/capacity-and-inflation-pressures/
[5] Canada. Statistics Canada. *Household spending by household income quintile, Canada, regions and provinces*. Table 11-10-0223-01. https://www150.statcan.gc.ca/t1/tbl1/en/cv.action?pid=1110022301
[6] Canada. Statistics Canada. *Labour force characteristics by province, age group and sex, seasonally adjusted (Quebec, Ontario, Manitoba, Saskatchewan, Alberta, and British Columbia).* Table 14-10-0287-03. https://www150.statcan.gc.ca/n1/daily-quotidien/181102/t005a-eng.htm
*While the number of part-time jobs did decrease in the month after the minimum wage increase, this is symptomatic of holiday hiring trends rather than the wage increase.
[7] C. Michael Mitchell, John C. Murray. *The Changing Workplaces Review: An Agenda for Workplace Rights* (2017), 245.

waste of valuable health care resources, and an undue strain on workers, who must pay out-of-pocket for sick notes, which are not covered under OHIP.

The absence of paid sick days, means that more workers will go to work sick and contribute to the dangerous spread of influenza, which is putting undue strain on the health care system and risking lives.

Equal Pay for Equal Work

***Recommendation #3**: Maintain the amendments to section 42.1 of the ESA contained in Bill 148 that ensure equal pay for equal work. These amendments are essential in eliminating precarious work and generating more stable, full-time jobs.*

Discrimination based on employment status is never acceptable. Under no circumstances should employers be allowed to utilize part-time, casual contract and temporary workers as a cheaper form of labour, paying them less than full-timers to do the same work. Ontario's employment law should recognize this unequivocally.

The amendments to section 42.1 of the *ESA* contained in Bill 148 did so, by eliminating the ability for employers to discriminate based on employment status. Effectively, these amendments removed a long-standing loophole in the ESA that permitted employers to exploit part-time, casual and temporary employees as cheaper, supplemental workers.

Bill 148 has positively affected thousands of working Ontarians who have seen their real take home wages increase. These same workers are about to get knocked down by the provisions in Bill 47.

When employers are required to pay all of their workers equal wages for performing substantially the same work, it creates a disincentive for employers to rely on part-time, casual and temporary workers to cut costs. It is a powerful tool for fighting precarious work, but it is equally a sign of a truly progressive society. This provision in Bill 148 was at least partially responsible for the rise in full-time work that we have seen since the implementation of the legislation.

While the Ontario Human Rights Code prevents pay discrimination based on characteristics such as gender, race, ethnicity and sexual orientation, the data clearly shows that pay discrimination based on employment status reinforces existing inequalities.

We know those inequalities exist; that work performed by women is undervalued, and that female-dominated jobs tend to be low-pay, precarious and offer little or no benefits or workplace protections. Women - and in particular, racialized women - are over-represented among part-time workers. In fact, there are twice as many women in part-time jobs than men. This means that women are unduly affected by pay discrimination, job insecurity, fewer benefits and protections, and the corresponding stress, anxiety and depression.

Table 1: 2017 Full-time vs. Part-Time Employment by Sex, Canada[8]

	Full-Time Employment	%	Part-Time Employment	%
Males	7684.9	56	713.5	31
Females	5953.5	44	1606.2	69
Total:	13638.4	100	2319.7	100

Years of privatization and economic austerity have also meant that women's paid employment is undermined. Too often, work that was formerly paid public sector work is now unpaid work performed in private. A disproportionate amount of unpaid caregiving responsibilities are taken up by women. This means women spend more of their time caring for their sick family members, children, and extended family members.

For 25 years, government decisions have exacerbated this problem rather than resolving it. Public services and good public sector jobs have been under attack. This has disproportionately affected women who work in public sector professions traditionally considered caring professions, like health care and social services. Most public sector employees are women and that is reflected in OPSEU's membership, which is 70 per cent women.

A quarter century of deep public sector cuts and privatization have led to the offloading, contracting-out and devaluation of work done predominantly by women, and that has reinforced precarity, degraded working conditions and uncertain futures for hundreds of thousands of women in this province.

Scheduling Rights

Recommendation #4*: Maintain the current scheduling process, as outlined in Bill 148.*

The changes to the scheduling process proposed in Bill 47 are unnecessary. Employers should have to justify any changes they make to an employee's schedule, and there is no purpose in removing that requirement.

Furthermore, if an employee's request for a schedule change is reasonable, it should be accommodated. If it cannot be accommodated, an appropriate reason should be provided, regardless. Bill 47 would give employers too much discretionary power.

Worker Classification

[8] Canada. Statistics Canada. *Labour force characteristics by sex and detailed age group, annual.* Table 14-10-0018-01. https://www150.statcan.gc.ca/t1/tbl1/en/cv.action?pid=1410001801

***Recommendation #5**: Maintain the current language around employee classification, and focus on protecting workers.*

Much of the rise in precarious work over the last few decades can be traced to the breakdown of the standard employment contract. Research has shown that workers who are misclassified as independent contractors often work for the same employer for many years, going from contract to contract.

This is a strategy used by employers so that they are not required to provide benefits to workers, such as vacation pay, public holiday pay, severance, overtime, termination pay and premiums for Employment Insurance and CPP. The long-term effects of this type of employment relationship have been documented by Poverty and Employment Precarity in Southern Ontario (PEPSO), and include negative effects on mental health, family life, and community engagement.[9]

The current employee classification language in the ESA provides important protection for workers who face an increasingly precarious labour market. The proposed changes in Bill 47 would be another step backwards, by placing the onus on the worker to prove they should be classified as an employee rather than an independent contractor. This is difficult to prove and increases the likelihood that an employer will exploit this legislation and misclassify employees as independent contractors.

Ontario Labour Relations Act

Employee Lists

***Recommendation #6**: The current provisions around employee lists should remain intact. Instead of removing the union's ability to receive employee lists, Bill 47 could simply clarify their intended use.*

After a successful application to the Ontario Labour Relations Board (OLRB) - based on 20 per cent employee support - it is crucial that unions gain access to employee lists with proper contact information for all affected workers. This is an important tool in organizing drives, ensuring that all workers in the proposed bargaining unit receive the information to which they are entitled, and upon which they will make an informed choice.

The government's proposal to remove this requirement will not only make organizing drives more difficult, it is a direct attack on organized labour. It puts the interest of employers above workers and increases the risk of employer intimidation for workers trying to unionize.

[9] PEPSO, *The Precarity Penality: The impact of employment precarity on individuals, households and communities – and what we do about it* (PEPSO, 2015).

Additionally, the requirement to destroy any employee lists received this way after Bill 47 takes effect lacks clarity on enforcement.[10]

Employee list provisions should remain intact. Drawing on our submission during the committee stage of Bill 148, we also propose changes to the following sections of Bill 47:

1. Revise section 6.1 (10)2 which requires the list of employees disclosed in an application for an employee list to "not be disclosed to anyone other than the appropriate officials of the trade union."

    - The use of the term "official" lacks specificity. Our concern is that this terminology will be used to restrict staff and/or volunteers of the union from accessing these lists.
    - By using the modifier "appropriate," we are concerned by the possibility of disagreement or litigation regarding the person(s) who may be deemed "appropriate" officials. If an employer claimed that a union staff member was not "appropriate" this would significantly undermine organizing attempts. The language should be altered to ensure that the list "should be kept confidential and must not be disclosed except to those persons reasonably involved on the union's behalf in the campaign to establish bargaining rights." Any restrictions placed on "officials" or "appropriate officials" should be removed entirely. There is no significant jurisprudence to suggest that unions have used employee information improperly when provided with it during an organizing or vote campaign.

2. Amend section 6.1(9)(b) to include address information.

    - Employers are more likely to have a personal mailing address on file than a personal email. The ability to mail out campaign literature is less intrusive than telephone calls, and is a common method of communicating with members.

3. Remove section 6.1(10) entirely.

    - As mentioned above, the destruction of the list is unnecessary, and the requirement for it to be destroyed "in such a way that it cannot be reconstructed or retrieved" is likely to be difficult to accomplish and monitor.
    - The requirement that the list be used only in connection with a campaign to establish bargaining rights is protection enough.

4. Remove section 6.1(12) entirely.
    - In order to get the employee list, a union must describe the proposed bargaining unit in its application. Subsection 12 handcuffs the union once it has made a successful application, because it must outline the exact bargaining unit for which it has requested the list. This leaves no room for changes to the boundaries of the proposed bargaining unit, if the union's

[10] Bill 47, the *Making Ontario Open for Business Act, 2018*, sch. 2, cl. 1.

understanding of the appropriate boundaries should change. By placing such severe restrictions on the bargaining unit at the early stages of a union's application for contact lists, Bill 47 unnecessarily limits the union's choices moving forward. A union must be able to make changes to the unit it proposes once it has received the information contained on the list.

Card Check Certification

Recommendation #7*: Card check certification should not be rolled back; it should be expanded to all sectors.*

It is well established that card check certification results in much higher rates of unionization than secret ballot votes, especially when used with a first contract arbitration model.[11] As noted in OPSEU's submission to the Changing Workplaces Review, card check certification minimizes employers' ability to undermine unionization through intimidation tactics, and it helps to preserve workers' right to freedom of association under the Charter of Rights and Freedoms.

Bill 47 would destroy the progress achieved in expanding card check certification for building services, home care, community services and temporary help agencies. This rollback would make it more difficult for those most in need of a union, to join a union. It is a shameful attack on vulnerable workers, especially considering that the implementation of card check certification in Bill 148 did not go far enough.

We know that unionization gives workers a voice, and raises the standards of their working conditions. The most important tool to combat unstable work conditions is the expansion and strengthening of collective bargaining rights for all workers, regardless of employment length.[12]

Remedial Certification

Recommendation #8*: The OLRB should maintain its current regulatory powers to certify a union as the bargaining agent automatically where employers have committed unfair labour practices.*

When an employer is found to have committed an unfair labour practice in Ontario, the OLRB has the power to certify a union as the bargaining agent automatically. This creates a disincentive for employers to attempt to undermine organizing drives by using intimidation tactics, because it carries real consequences.

[11] Bradley R. Wienberg, "A Quantitative Assessment of the Effect of First Contract Arbitration on Bargaining Relationships," *Industrial Relations,* 54, no. 3 (2015); 449 – 477.
[12] Sophie Webb. "Deal with the Devil: an analysis of the feminization of labour, the rise of the precariat and the effects of contract work on Canadians." *CFLR/CLI Research*. October 2018.

The proposed changes outlined in Bill 47 would see the power of the OLRB scaled back significantly. If passed, the OLRB would be able to certify a union automatically as remediation only if it felt a new vote would be insufficient. This move will only serve to embolden employers and increase unfair labour practices.

First Contract Arbitration

Recommendation #9*: Implement an automatic and mandatory first contract arbitration model, as a straightforward and effective mechanism to resolve first contract disputes. Automatic access to arbitration would facilitate more effective negotiations, and permit newly organized workers to achieve a first collective agreement in a timely and efficient manner.*

The current language around first contract arbitration in the OLRA provides a process that allows employees and employers to reach a first contract, while reducing the risk of labour disruption in the form of a strike or lockout.

All first collective agreement negotiations should have automatic access to first contract arbitration if either party requests it, regardless of the legislation governing the collective bargaining process.

Turning back the clock, to a time when first contract arbitration language was only available in certain cases, as determined by the Board, will undoubtedly increase the likelihood of labour disruptions. Restricting the use of first contract arbitration to times when contract negotiations have broken down due to the uncompromising positions of one or both parties, is neither efficient nor effective at resolving conflicts in a timely fashion.

Review of Bargaining Unit Structure

Recommendation #10*: Maintain the current language around bargaining unit structure, to ensure that consolidation is not forced on workers when it may not be in their best interest.*

Currently, a union – or a union and an employer together – can apply to the OLRB to merge or restructure bargaining units represented by the same union in one workplace.

Bill 47 repeals that process, and proposes that immense discretionary power be handed over to the Board. Under the new process, a union or employer can apply to the board to have bargaining units reviewed, but the Board is given the power to consolidate bargaining units as it sees fit.

This provides employers with an uncomfortable amount of power to request bargaining units be consolidated in order to get rid of unions they find too effective. This is dangerous language that could be used for union-busting purposes rather than a way for workers to consolidate their power.

Successor Rights

Recommendation #11*: Expand successor rights protections to industries beyond building services, where contract flipping is prevalent, such as home care*.

Quite rightly, Bill 148 introduced new rules to combat contract-flipping in the building services sector.

While we appreciate the government's willingness to maintain most of this provision, we are concerned with the proposed repeal of Section 69.2 of the OLRA - the ability to expand successor rights to other sectors.

Employees should not suffer adversely when service contracts change hands. It is widely known that contract flipping is used to cut costs by undermining workers' wages, benefits and protections. Successor rights ensure that workers maintain the wages, benefits and protections they've achieved – making contract flipping less appealing and ensuring services are delivered more smoothly.

Penalties for Violating LRA

Recommendation #12*: Maintain the current fines to encourage compliance with Ontario's employment standards.*

Currently, the OLRB has the authority to penalize individuals and organizations who violate the OLRA.

However, Bill 47 proposes that the penalties for violating the OLRA be reduced from $5,000 to $2,000 for individuals, and from $100,000 to $25,000 for organizations. As mentioned above, limiting the regulatory powers of the OLRB will only serve to increase OLRA violations.

Ontario College of Trades

Recommendation #13*: Withdraw this deeply flawed and short-sighted legislation immediately, and consult widely with members of the college and the trades community.*

OPSEU is concerned by the measures found in Bill 47 that affect apprenticeship training and skills accreditation in this province and which threaten the continued existence of the Ontario College of Trades.

Firstly, these proposed changes should not have been introduced through an omnibus bill. While in Opposition, the Progressive Conservatives caucus consistently railed against omnibus bills. There is no reason that the dismantling of the Ontario College of Trades should be railroaded through in this

manner. The measures the government has proposed dealing with apprenticeships and the Ontario College of Trades merit a separate bill, so that they can be fully discussed, debated and scrutinized.

These legislative changes are not only bad for apprentices, they are potentially disastrous for Ontarians. This government is putting public safety at risk, loosening training standards and potentially driving down the wages of skilled tradespeople by going after the Ontario College of Trades.

These proposed changes will only serve the interests of wealthy developers who wish to employ low-wage, poorly skilled workers. The costs generated by substandard skills training will undoubtedly be offloaded to workers' compensation and the health care system.

Conclusion

OPSEU strongly recommends that the government reassess the direction of Bill 47, and its entire outdated framework for policy analysis.

After a quarter century of workers' struggle, Bill 148 was a step in the right direction; it was recognition that workers have lost too much, and that workplace standards ought to be updated to reflect our modern reality. These changes to the *Employment Standards Act* and the *Ontario Labour Relations Act* have improved the lives of many working Ontarians and the families they work to support. By rolling back these important gains, the government has shown how little it values workers – the very people who generate the wealth and value in this province.