

Bill 77 – Fairness for Employees Act

A SUBMISSION TO THE STANDING COMMITTEE ON REGULATION AND PRIVATE BILLS

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The Wellesley Institute is a non-partisan research and policy institute. Our focus is research and pragmatic policy solutions on issues of population health and health disparities. We appreciate the opportunity to present to the committee on *Bill 77 – Fairness for Employees Act*, and to discuss its potential to improve Ontarians' health outcomes.

Our work at the Wellesley Institute is largely focused on the social determinants of health, which are sometimes called “the causes of the causes” of ill health. It is well established that our health is dependent on factors such as housing, income security, racism, gender, and immigrant status. People with lower socio-economic status have worse health, and the distribution of socio-economic status is not random. For example, racialized Ontarians, including Aboriginal peoples, and single parent families headed by women are more likely to be poor and marginalized.

A recent report from Statistics Canada provides a stark example of the impact of these factors of health. The difference in life expectancy at age 25 between the highest and lowest income groups was 7.1 years for men and 4.9 years for women.¹ While these differences are striking, an equally important finding is that life expectancy increases with each and every step in the income scale. This report found the gaps even greater in health-related quality of life. Once again there was an improvement in health at every step in the income scale. As this research shows, the health impacts of inequality are not limited to low-income individuals and families. This is supported by international research that shows that inequality has an impact on our health and wellbeing.² In more equal countries people are healthier, live longer, and commit fewer crimes. These relationships hold among all income groups. Even for the highest income segment of the population, everyone is safer, healthier and live longer when in more equal societies.

Increased Income Inequality

Increasing income inequality in Canada has been widely documented and the labour market is an important contributor to this growth. Statistics Canada data shows that *inflation-adjusted* earnings of the bottom 20 percent of workers fell by 21 percent between 1980 and

2005, while the earnings of the top 20 percent increased by 16 percent.³ Recent research on the Ontario labour market shows a shift to an hourglass shape with an occupational distribution concentrated at the high and low ends, and a disappearing middle.⁴ Recent academic research supports these results, showing a reduction in mid level occupations and increased wage inequality across occupations. Wages at the top of the occupational distribution increased relative to those in the middle, wages in the middle grew relative to those at the bottom, and wages at the bottom declined in absolute and relative terms.⁵ Increasing numbers of workers and an increasing share of the total labour force are at the bottom of that hourglass and endure low incomes and increased insecurity.

Impact of Unionization on Inequality

Unionizing is an important pathway out of poverty and to reduced inequality. The history of Ontario's manufacturing and mining sectors includes employees unionizing to improve poorly paid and dangerous jobs.⁶ Over time, unionized employees in these industries were able to increase wages and benefits, fairness at work, and safety on the job. The data shows that unionized workplaces provide higher wages than non-unionized workplaces. However, the impact of unions on inequality does not stop there. Higher levels of unionization also have a spillover effect, increasing wages in non-union workplaces. Finally, unionized workplaces also reduce inequality because they raise the pay of lower paid employees as compared to higher paid employees.⁷ Increased inequality and decreased levels of unionization have been correlated in many countries.⁸

Impact of Labour Relations Legislation on Health

The World Health Organization Commission on the Social Determinants of Health developed a model to describe the impact of labour relations regimes on health.⁹ This model mapped relationships between workers' bargaining power, social programs and policies, and health outcomes.¹⁰ The link between employment/labour relations and health is described by the authors:

Where social safety nets are adequate workers can exit the labour market if they need to and avoid turning to hazardous work or adverse working environments...The key to understanding employment relations and the impact they have on the health of workers is to realize the importance of the bargaining power that workers have; a leverage which allows them to push for a stronger welfare state and better working conditions.¹⁰

While the pathways and causation are complex, there is evidence that the relative power of labour institutions and welfare state is linked to population health.¹¹

A key link between unionization and health is the availability of health-related benefits. Access to medically necessary prescription drugs, as well as dental and other health services, along with sick leave provisions, improve individual, family, and population health. Unionized employees are much more likely to have health benefits than non-unionized employees.¹²

Labour Relations Act Needs to Be Modernized

The *Labour Relations Act* was written in and for an era of large workplaces (like those of the mining and manufacturing industries) where most employees worked full time, commonly spent their entire working lives with the same employer. Workplaces have changed. Today, employees are more likely to work in the service sector, in smaller workplaces, and have shorter job tenure. Employees may be geographically disparate in a number of different locations, they may not report to the traditional workplace on a regular basis like one would

in an office or a factory. Often working two or three jobs, employees are less likely to know each other and may not be proficient in a common language.

In the current, outdated legislation, the basic building block of a union is a single workplace with a single geographic location. That is a building block that better describes General Motors than it does Wal-Mart or McDonald's, making it much harder for this generation of employees to exercise their rights. These changes in the labour market, along with government policies and decisions that have resulted in a shift in power from employees to employers, mean that union density in the private sector has been falling. As a result, the share of unionized employees in the private sector has dropped, from 19 percent in 1997 to 15 percent in 2010.¹³ In 2009, union density in the goods producing sector was almost twice as high as in the service sector. However, the service sector accounted for a much larger share of total employment — 53 percent of total employees in Ontario as compared with the goods producing sector's 21 percent of Ontario employees.

This generation of employees should have the same opportunity to improve their working lives by joining unions. Employees in low-paid, precarious jobs are more likely to have their legislated rights violated – rights like basic health and safety or to be paid for the work they do. Our 20th century labour legislation, however, makes it much harder for employees in the 21st century to join unions.

Proposed Amendments Support Marginalized Workers and Modernize the Act

The modest proposals to amend in the *Ontario Labour Relations Act* (OLRA) in this bill will level the playing field by extending existing rights for employees in other industries to marginalized employees in the contract services sector. It also makes modest changes to the rules making it easier for employees to communicate with each other about whether they want to form a union and to ensure that they can do so without employer reprisals. These amendments modernize the Act to take into account changes in both how work is organized and in technology.

1. Successor rights for contract services

Since the 1950s, Ontario legislation has protected the collective bargaining rights of employees when a business is sold or transferred. That protection is not available to those who work in the contract services sector – industries like food services, cleaning, and security. If a unionized business is sold in the manufacturing sector, workers are able to keep their union and their contract. However, if the same business uses contract cleaners and the incumbent contractor is replaced with new contractor, those cleaners are *not* able to keep their union and their contract. The proposed amendments will provide unionized workers in the contract services sector the same rights as workers in other sectors of the economy.

Employees in contract services sector are some of the most marginalized workers and low paid workers in Ontario. They are more likely to be racialized and immigrants.¹⁴ Employees in this sector who unionize have already overcome enormous hurdles. When they achieve a collective agreement that offers even modest improvements in wages and working conditions, it can make a profound difference. The loophole that allows contract service workers to suddenly lose these modest improvements in wages and working conditions to a non-union competitor is a legislative gap that should be corrected. Modernizing the Act to

protect the rights of the growing number of workers employed in the contract services sector will increase fairness and decrease inequality in Ontario.

2. Reinstatement during organizing campaign

A survey of managers at Canadian workplaces where union organizing had recently occurred found 94% used anti-union tactics, and 12% admitted to using what they believed to be illegal, unfair labour practices to discourage employees from unionizing.¹⁵ When employees who are active in an organizing campaign are disciplined, discharged or discriminated against, it can have a chilling effect. Employees in precarious employment, and who face labour market barriers, are particularly vulnerable. Many workers living on the edge cannot afford to lose even one paycheque; and even the threat of discharge or discipline can have a large impact.

Bill 77 would change the Act so that workers are immediately reinstated to their original terms and conditions pending the outcome of a hearing if the union asserts that they are disciplined, discharged, or face changes in their employment conditions because they were exercising their rights under the *Labour Relations Act* during an organizing drive. This will ensure that employers cannot unduly influence the course of an organizing campaign. This change would also better protect part-time employees and would be in keeping with general principles of law that presumes innocence until guilt is proven.

3. Early disclosure of employee lists

An essential step in forming a union is determining who the members of that potential local union would be, and therefore who has a right to vote on whether they want to join a union. Under existing legislation, the employer is required to provide a list of employees two days before the vote. While this provision of the Act might have worked in the past, with large workplaces, large numbers of full-time employees, and many opportunities to interact, it does not reflect the 21st century workplace. Employees are less likely to work full-time, to live and work in the same neighbourhoods, or even speak the same language.

Bill 77 would require employers to provide a list of employees to the union if 20 percent of employees sign union cards. Such disclosure would be governed by existing legislation regarding freedom of information and protection of privacy.

In municipal elections, voters lists are published in advance. Any legitimate candidate may request the relevant voters lists. In Ontario municipal elections, a candidate is not required to demonstrate existing support for her or his candidacy via a threshold of nominators. Any qualified candidate, having filed and received official acceptance of the appropriate nomination papers and fees, may request and receive access to the voters list without a list of nominators.¹⁶ Provincially, if a candidate is running with a registered political party, then 25 signatures from those who live in an electoral district is a sufficient threshold for the release of the appropriate voters list for that riding.¹⁷ Federally, a candidate must be nominated by between 50 and 100 eligible voters to access voters lists. Again, once the appropriate paper work is filed and accepted, candidates receive the relevant voters list so the candidate may engage the appropriate audience.¹⁸

This modernization of the Act, would bring the OLRA voting procedure in line with procedures for provincial and federal elections, and increase access to unionization for employees in non-traditional workplaces.

4. Neutral and off-site voting and telephone/electronic voting

Currently, the Act sets out procedures for representation votes when a trade union applies for certification as a bargaining agent. This Bill amends the Act to allow the Labour Relations Board to direct that votes be held at a neutral site or be conducted electronically or by telephone at the request of the union.

A fair voting process should reflect workers' genuine choices; provide reasonable access to unimpeded voting; ensure that voting facilities are as conveniently located as possible, even among a workforce that may be dispersed geographically; and ensure that ballots are cast in as neutral a fashion as possible. To achieve these goals voting should take place in neutral locations, telephone voting and online voting should be available.

This provision updates the Act to take into account both changes in workplaces and changes in technology. As work schedules and workplaces become more diverse it is more difficult to ensure that all employees who are eligible will be able to vote. This amendment to the Act will also support the voting process being neutral and free of potential employer intimidation.

5. Interest arbitration for a first contract

Existing legislation provides for the settlement of a first contract through a process of arbitration, but the threshold for accessing this route is still too high. Bill 77 would amend the Act, to allow either party to apply for arbitration if, after a set period of time, a collective agreement has not been settled. This is a measure that equally protects employers and employees from bargaining tactics that do not comply with the spirit of good-faith bargaining. It will help to send a message to workers and employers that, once a collective bargaining unit has been certified, both parties are expected to conclude a contract in a timely and efficient manner.

Conclusion

Addressing increased inequality in Ontario is a major public policy challenge. No one policy intervention on its own will be sufficient. Increasing access to unionization for Ontarians is a step in the right direction. The proposed amendments to the *OLRA* are very modest. They will not require increased government expenditures. These amendments do, however, have the potential to support the government's poverty reduction efforts by improving wages and working conditions for some of the most marginalized workers in Ontario. They will have positive impacts on equality and the health of Ontarians, by increasing access to unionization for marginalized workers in contract services, and by increasing fairness and the potential for employees' wishes to be expressed in the process of determining whether a workplace will be unionized.

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- ⁷ Jackson, p. 209
- ⁸ Fortin et al p. 15
- ⁹ Employment Conditions Knowledge Network. (2007) Employment Conditions and Health Inequities Final Report to the WHO Commission on Social Determinants of Health Geneva: WHO, 30-32.
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- ¹² Akyeamong, E. "Unionization and Fringe Benefits Perspectives (August 2002, b3-9)
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- ¹⁶ See: <http://www.toronto.ca/elections/candidates/faq.htm>
- ¹⁷ See: <http://www.elections.on.ca/NR/rdonlyres/32508606-E4AE-4BFC-9FB9-41EA94CECC09/0/CandidateGuideF0405ENG072011.pdf>
- ¹⁸ See: <http://www.elections.ca/content.aspx?section=pol&dir=can/bck&document=index&lang=e>