Bill 47, Making Ontario Open for Business Act

Unifor Submission to the Standing Committee on Finance and Economic Affairs

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1. Modernizing labour laws requires a balanced approach

Making changes to labour laws is always political. Unifor has on many occasions urged that labour law changes should be made on the basis of careful study and review rather than on political whim. For example at the federal level, we objected to "tinkering" with aspects of federal labour laws by the previous Conservative government. Those changes, in the form of Bill C-525 and Bill C-377, were not based on careful study but rather were highly politicized interventions with a distinctly anti-union taint.

Bill 47 is in the same category. It is the product only of a political desire to undo an accomplishment of a previous government. It is not the product of the kind of careful study and review that ought to precede law-making in a highly-politicized area.

Bill 47 rolls back many important parts of the previous government's Bill 148. That Bill followed the very balanced and thorough Changing Workplaces Review process. The CWR process (and the Bill that followed) involved very extensive stakeholder consultations backed by rigorous academic study. The CWR Special Advisors made reccomendations shaped by the need to respond to globalization, technological change, and the shift away from manufacturing employment to a service economy[1]. Unifor applauded the previous government for establishing and supporting the CWR process even if we did not agree with all of its conclusions and recommendations.

Ontario should not now ignore the balanced and thorough advice of the CWR process. No equivalent study has been undertaken by the current Government for undoing the Bill 148 changes. Indeed there were no consultations at all with labour before Bill 47 was introduced.

Viewed against the history of the CWR process and Bill 148, Bill 47 therefore stands to be seen as an example of a politicized pendulum that swings too far in one direction.

On behalf of Unifor's 163,000 members in Ontario we therefore make the following submissions on the Bill 47 changes to the Employment Standards Act, the Labour Relations Act and the Ontario College of Trades and Apprenticeship Act.

2. Bill 148 meant improved standards and more jobs

The government's essential argument behind the introduction of Bill 47, *Making Ontario Open for Business Act*, is at its core completely false. To suggest that long-overdue changes to modernize Ontario's labour laws, and to address the corrosive and economically damaging effects of precarious and low-wage work, are a barrier to economic progress ignores overwhelming economic and social policy evidence. Bill 47 is merely a manipulative and hypocritical move aimed at delivering even stronger profits to businesses that are built around taking advantage of the most vulnerable in our society.

Ontario's experience with Bill 148 over the last ten months adds further evidence to the existing research that demonstrates that higher labour standards do not damage the economy. Rather than leading to massive job losses, as the Ontario Chamber of Commerce and some other business groups had warned, Ontario added nearly 40,000 jobs in the first ten months of 2018[2]—a job creation rate that *outpaced* the Canadian average. Ontario's unemployment rate, at 5.6% currently[3], remains below the Canada-wide average, is the lowest in a generation, and has held steady throughout 2018 as businesses

[1] CWR Final Report, chapter 3, "Changing Pressures and Trends"
[2] https://www150.statcan.gc.ca/n1/daily-quotidien/181102/dq181102a-eng.htm
[3] ibid

adjusted to Bill 148 – all contrary to the fear-mongering forecasts. Moreover, in those industries in which low-wage work is over-represented, such as retail and hospitality, Ontario's employment has grown at the same pace as the national average. [4]

The Bill 47 proposal to cancel the scheduled increase in Ontario's minimum wage to $15 per hour for 1.7 million minimum wage workers is particularly damaging. Despite being one of the most studied topics in all of economics, the minimum wage remains one of the most contentious areas of public policy. This is unfortunate, and the lack of public understanding about what the research indicates continues to inflict harm on low-paid workers and their families.

Professor David Green[5], Director of the Vancouver School of Economics and widely regarded as one of the top labour economists in Canada, undertook a thorough review of the academic literature in 2015 with a view to deepening the public debate around British Columbia's adoption of a $15 minimum wage. Professor Green concluded: 'The large job loss impacts predicted by some opponents of minimum wages misrepresents the existing economic research' and the claim that a $15 minimum wage will lead to 'massive job losses in low-wage sectors of the economy' is 'not credible'[6]. Some of the benefits of a higher minimum wage, Green continued, include reduced turnover rates (and by implication, lower recruitment and training costs) and reductions in both poverty and income inequality.

On the latter point, Ontario's Financial Accountability Office[7] noted that it is not just minimum wage workers who will be affected by Bill 148, but also workers in the wage tiers directly above the existing and proposed minimum wages. On account of the trickle-up effects, workers earning an hourly wage of $15 to $17 would have been expected to see a 7.5 percent pay increase, and those earning $17 to $19 per hour would have expected to see a 3 percent increase. Halting Ontario's minimum wage at $14 will also deprive workers who currently earn less than $20 per hour of a much-needed pay raise.

Bill 47 proposes to freeze wages for minimum wage workers until October 2020, then to link increases to the rate of inflation. Under Bill 47, the minimum wage is not expected to reach $15 for another six years, condemning even more Ontarians to the ranks of the working poor.

The evidence clearly shows that improved standards for workers achieved through Bill 148 meant not only better jobs for Ontarians, but more jobs.

3. Bill 47 changes to the Employment Standards Act

Elsewhere in this submission, we have provided evidence that refutes the claim that economic necessity requires a reversal of the Bill 148 changes to the ESA.

The context of the Bill 148 changes to the Employment Standards Act was the careful study by the CWR Advisors that is described above.

Unifor makes particular reference to the following aspects of Bill 47.

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[4] https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=1410035502
[5] https://economics.ubc.ca/faculty-and-staff/david-green/
[6] https://www.policyalternatives.ca/sites/default/files/uploads/publications/BC%20Office/2015/04/CCPA-BC-Case-for-Incr-Minimum-Wage_0.pdf
[7] https://www.fao-on.org/en/Blog/Publications/minimum_wage

Scheduling changes

Bill 47 would repeal much of Part VII.1 of the ESA. This new part of the ESA was to come into force on January 1, 2019. It contains these important measures which Unifor continues to support:

- Section 21.2 added a simple right of an employee after three months of employment to make a request for changed work hours or location. The only employer obligation (if it did not grant the request) was to provide reasons to the employee for the refusal to grant the change. That modest measure would have enabled employees to have a small measure of additional control over their working lives.
- Section 21.4 added a new "on-call rule" that would require the payment of at least three hours of pay at the employee's regular rate when an employee is on call and is either not called to work or is called to work less than three hours.
- Section 21.5 added a new right to refuse work on a non-scheduled work day on less than 96 hours' notice.
- Section 21.6 added a new right to have 48 hours of notice of a cancelled shift or on call opportunity.

Scheduling measures like this are provided to some employees covered by some collective agreements but many other employees need them. They would provide some degree of certainty and predictability about work hours and shifts. This is very important for employees who juggle multiple jobs or family or education commitments.

Equal Pay Changes

Bill 148 made important changes as of April 1, 2018 that promote wage equality amongst workers doing substantially the same work. All of these measures would be repealed by Bill 47. Unifor urges that these measures be retained. In addition to the promotion of basic fairness, they remove employer incentives to erode stable full-time work in favour of cheaper part-time or precarious work, whether done by its own part-time or temporary employees or by employees of an employment agency.

- A new s. 42(6) amended existing equal pay rules based on sex by allowing employees to request their employer to review their pay rate for compliance with equal pay rule, and required the employer to either adjust the pay rate or respond to the employee with reasons.
- Bill 148 expanded the equal pay concept to prohibit differences in pay for substantially the same work that are attributable only to a "difference in employment status" (new section 42.1). That term is defined in section 1(1) to mean a difference in the number of hours regularly worked or a difference in the term or permanence of their employment including a difference in permanent, temporary, seasonal or casual status.
- The same equal pay concept was also extended to a "difference in assignment employee status" (new section 42.2). A temporary help agency is required to pay its employees not less than the rate paid by its client's own employees for doing substantially the same kind of work if the difference is attributable to the assignment employee status of the assignment employee.

Personal emergency leave

Bill 148 added the well-known provision that two of ten personal emergency leave days would be paid by the employer. Bill 47 removes those paid days of leave and divides this employment standard into three separate employment standards. If the objective is to reduce the opportunities for employees to take personal emergency leaves, Bill 47 will succeed because it creates three separate smaller

employment standards. Employees will have access to a maximum of only three sick days per year, only three days of family responsibility leave per year and only two days for all bereavements per year.

Employees will be less able to take a leave that suits their individual needs and the particular needs of their families.

Bill 47 also revokes the prohibition on employer demands for doctor notes as evidence of entitlement to a personal emergency leave. In the face of available evidence from medical practitioners, this measure is absurd. It will impose unreasonable and unnecessary demands on the health care system in order to obtain evidence that is likely to be unreliable.

Summary

The Employment Standards Act as amended by Bill 148 ought to be left alone. The provisions listed above and others are important aspects of a balanced and modern employment standards law.

4. Bill 47 changes to the Labour Relations Act, 1995

Rules about union organizing

Unifor has always believed that a card-based system of certification applications is fairer to employees than a vote-based system that inevitably becomes a contest between union and employer.

In the CWR process, Unifor and other unions advocated for a return to a card-based certification process. We believe that process to be less vulnerable to employer interference. The CWR Advisors were persuaded that the secret ballot vote process should be retained but only if a set of new measures was implemented in order to address the problem of employer interference[8].

Unifor remains rightly concerned about the preservation of a system that necessarily favours employers (by giving them an opportunity to actively participate in a union opposition campaign) when compared to a system in which employees may more easily make a majority decision about unionization without employer interference.

The Bill 148 amendments reflected the CWR recommendations and rationale. We now rely on that rationale. The set of amendments on which retaining the vote-based system was made dependent included these things:

- Remedial certification as the only remedy for employer misconduct that interferes with employees' ability to freely express their wishes about joining a union, rather than a presumptive remedy of a second representation vote.
- Intensive mediation and easier access to first collective agreement arbitration.
- Union access to employee lists and contact information as a way to make the vote-based process more fair.

Unifor opposes the repeal or amendment of these measures in Bill 47.

Remedial Certification

Bill 148 made certification the only remedy for employer unfair labour practices that destroy the ability of employees to freely express their wishes to join a trade union. That remedy is appropriate and necessary to dissuade employer misconduct. Bill 47 proposes a return to the pre-Bill 148 remedy. That remedy is presumed to be a representation vote, or a second vote, with certification only being available

[8] CWR Final report at p. 322, "A Recommended Package")

where those other remedies would not be sufficient. The CWR Advisors said this in their Final Report at p. 324:

> *In policy terms this choice is clear. If a secret ballot vote is to be maintained as the norm in our labour relations system, then it is proper and correct policy to insist on the integrity of that process by not permitting employer misconduct and interference to undermine it. It is unreasonable to insist on the most democratic and preferred means of determining employee choice, namely the secret ballot vote, while at the same time effectively sanctioning and countenancing employer misconduct, which undermines the integrity of the voting process. A second vote, following employer misconduct, cannot rectify or eliminate the impact of employer misconduct and is an unreliable measure of free and voluntary support of the union. Once everyone knows the well is poisoned, no one will drink the water. Accordingly, if an employer unlawfully interferes with the employees' rights to freedom of association and honest independent choice, that conduct must trigger a meaningful remedy, namely certification without a vote and access to first contract arbitration.*

Transitional rules – remedial certification

Alternatively, Unifor says that the transitional rules associated with the section 11 amendments ought to be amended. Section 3 of Bill 47 (amending s. 11.2 of the *Labour Relations Act, 1995*) as drafted means that any cases not determined by the Board as of the day on which the Bill comes into force will have to be determined by the Board under the amended provision. Unifor submits that it would be more appropriate for the transitional date to be the date on which employer misconduct occurs. In other words, an employer violation that occurred after Bill 148 came into force should be determined according to the Bill 148 rules. If section 11 is to change, those changes should apply to employer violations that occur after the change.

The progress of applications at the Ontario Labour Relations Board depends on many factors. The hearing of allegations of employer misconduct in organizing campaigns takes many months and may take longer than a year. For example, the Board is now hearing a Unifor application for remedial certification arising from an organizing campaign at a London-area employer. The employer actions occurred in February 2018. The hearing will not be completed until December 2018 or January 2019. Under Bill 47 as now drafted, the employer's conduct will now be judged under the revised rules. Employers who are tempted to engage in misconduct during union organizing ought to understand that the law in force on a given day will be the law that applies to their conduct.

Intensive mediation and arbitration of first collective agreements

Unifor opposes the removal of the intensive mediation and first collective agreement arbitration processes that were added by Bill 148. These measures are important in order to ensure that access to collective bargaining is not rendered meaningless because a collective agreement cannot be negotiated.

Employee list for organizing – Section 6.1 of the LRA –

It is a purpose of the LRA to facilitate collective bargaining. That means that access to collective bargaining ought to be real and not illusory. The task of organizing employees in order to make an application for certification relies on the collection of information by those employees and their union. That information may include information about the number of employees in the workplace, their names and contact information, and information about how the employer's business is structured. In some cases, that information is easy to gather and easy to check. In other cases, whether because of employer secrecy or just the large size of a business, that information may be impossible to get. That frustrates the process of union organizing.

In the CWR and Bill 148 processes, Unifor described its efforts to organize large and complex industrial enterprises. We cited the example of businesses with very large operations, with many employees on varied shifts in separated work locations or departments. In those conditions, employees have no ability to know all other employees, or even to count them. That lack of information makes union organizing very difficult. It spawns wasteful and unnecessary disputes in the certification process.

The CWR Special Advisors accepted those arguments in the context of the Supreme Court of Canada's recent statements about the constitutional protections for the collective bargaining system. The Special Advisors endorsed vote-based certification applications but only in the context of a recommended package of reforms that included union access to employee information:[9]

> *In a secret ballot system predicated upon a threshold of support to trigger a vote and where majority support is required in order to be successful, the identification of the voting constituency and the ability to communicate is essential. Otherwise, the result is a flawed democratic process. Those who champion the secret ballot process as the best mechanism for the expression of employee choice should be supportive of an informed electorate.*

The CWR Special Advisors also expressed the view that no privacy interest of employees justified withholding personal information from unions. Employees have already provided their personal information to employers for employment-related reasons.[10]

The Bill 148 employee list application process is a modest measure to help employees to access collective bargaining. It requires employers to provide just names and phone numbers or email addresses if the employer has them. The threshold requirement means that unions need a firm foundation of employee support before applying for a list. That requirement meant that employers are not pestered by ill-founded applications.

Unifor therefore urges that the employee list application process in section 6.1 be retained.

Consolidation of bargaining unit processes

Unifor acknowledges that the CWR Advisors recommended that the Board be given a power to review and consolidate bargaining units where existing bargaining unit structures are no longer appropriate for collective bargaining.

Unifor joins with other unions in its preference for the two Bill 148 consolidation processes which are: (1) a power to consolidate new bargaining units with existing bargaining units of the same employer represented by the same trade union; and (2) a separate consolidation process that relies on the agreement of a union and employer to combine bargaining units.

The proposed "no longer appropriate for collective bargaining" test will disrupt established labour relationships in many workplaces.

5. Ontario College of Trades delivers advanced training, productive and safe workplaces

The Ontario College of Trades was created in 2009 to administer skilled trades apprenticeships. An original intent of the College was to professionalize the trades and remove government involvement in the regulation and administration of the trades in much the same way that teachers, lawyers, doctors, nurses and others have in their own regulatory bodies.

[9] CWR Final Report, page 333.
[10] CWR Final report, page 335.

Bill 47 dismantles the College, which plays an important role in establishing training standards and apprenticeship ratios, as well as determining whether certification in a trade is compulsory, or voluntary. The College is also responsible for maintaining a public registry, which allows the public and employers to identify who is qualified to work as a journeyperson, and to discern whether their qualifications are in good standing. This has important implications for public and occupational safety, as well as for unfair competition by unqualified operators.

Bill 47 proposes a one-size-fits-all approach to the ratios governing the journeyperson to apprentice training relationship in workplaces. The legislation proposes a fixed 1:1 ratio across the board. It reduces, for example, the number of journeypersons an employer must retain to supervise and support each apprentice being trained as an automotive service technician, plumber, sheet metal worker, and electrician. Rather than a fixed ratio, the current system brings labour, contractors and business owners together to review and agree upon ratios for each trade.

Agreed upon ratios impact the quality of training provided to the apprentice; the speed or efficiency of the work performed; the health and safety of the apprentice, their trainer, and co-workers. Ontario now has one of the most advanced training systems; and most productive and safest workforces across all jurisdictions.

Prior to the College's introduction there was no consistent process for decision-making, nor a role for skilled workers to provide direct input, on issues related to the trades. The undoing of the College should not be an avenue to return to these practices. Skilled trades workers know best how to make decisions about their own trades, and must be consulted in a meaningful manner prior to the introduction of any changes to the College, and retain a direct role in decisions that will impact their trade.

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