isarc FAITH COMMUNITIES IN ACTION AGAINST POVERTY

Fair Workplaces, Better Jobs Act, 2017

Submission to the Standing Committee on Finance and Economic Affairs

Ontario Legislature

by

The Interfaith Social Assistance Reform Coalition (ISARC)

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INTRODUCTION

The Interfaith Social Assistance Reform Coalition (ISARC) welcomes this opportunity to appear before you again in the reform of Ontario's Employment Standards Act and the Labour Relations Act through Bill 148 the Fair Workplaces, Better Jobs Act, 2017. We appreciated making an oral deputation in July following First Reading. We hope that the continued interchange of views will warrant the Committee in reversing some of the negative changes made on August 21 and adopting some of the positive proposals being made by advocates for protections of precarious workers, that the Committee was not yet comfortable accepting earlier in the process. Our submissions at this point focus on areas where the language of the Bill is inconsistent with the understood purposes of the Bill or other understandings of public policy.

Our coalition represents Ontario's major faith communities, including the Anglican Diocese of Toronto, the Anglican Diocese of Niagara, the Anglican Provincial Synod of Ontario, the Assembly of Catholic Bishops of Ontario, the Canadian Unitarian Council, Catholic Charities of the Archdiocese of Toronto, Dicle Islamic Society, the Canadian Council of Imams, the Council of Canadian Hindus, the Eastern Synod of the Evangelical Lutheran Church in Canada, the Western Ontario District of the Pentecostal Assemblies of Canada, the Islamic Humanitarian Service, Mennonite Central Committee Ontario, North American Muslim Foundation, the Presbyterian Church in Canada, the Redemptorists in Canada, the Society of St. Vincent de Paul, the Toronto Board of Rabbis, and the United Church of Canada.

Scheduling

The August clause by clause amendments resulted in the entitlement to refuse "call ins" with less than 96 hours notice and the entitlement to cancellation pay for cancellation with less than 48 hours being subject to exceptions. There is no exception for the right to 3 hours pay for reporting to work or for on call pay.

In principle employers seek exceptions to reporting pay because they may not be able to provide work due to circumstances beyond their control. The reason for the exemption does not apply to cancellation pay and in any event, if the Bill does not contain exemption for reporting pay, why should it apply for cancellation pay?

There is no justification for making lawful, the right of the Employer to impose on an employee the duty to take an extra shift. It may conflict with the employee's obligation to another employer or to the public like jury duty or some other provision of the Act like absolute entitlement to personal emergency leave. MPP Colle in Committee explained that clause (c) was needed to deal with employee shortages. Such shortages are not beyond the control of the employer. They could secure more employees by raising their rates of pay, or by paying overtime or some other premium. Why should market forces be distorted by a regulation?

We understand the public safety exemption.

We can accept a compromise that combines clauses (a) and (c) as long as it states emergency or other reasons as prescribed which are beyond the control of the Employer. Such language will also create some protections against a wide open approach to "emergencies". Without this proviso, a new government can prescribe exceptions wide enough to eviscerate the entitlement.

Equal Pay

The Government motions 11.1 and 13 adopted in August provide a fixed definition of seniority. That definition is the narrowest and is not universally used in collective agreements, even for part-time workers, let alone for temporary full-time workers. It will lead to inconsistency in treatment of seniority for different purposes and maybe even to labour relations conflict as employers try to get this

new statutory definition to apply to seniority for all purposes in collective agreements.

Given that the equal pay provisions of the Bill are deferred for collective agreements with inferior provisions, it is inconsistent to make the Bill apply to negate superior collective agreement provisions. We ask you to remedy this element during renewed clause by clause debate by removing the definition or at least by specifying that it only applies to workplaces with no other definition of seniority.

The defeat of the NDP motions 12 and 13 leaves it open for Employers to make sufficient changes to duties to completely undermine the obligation to pay equal wages for substantially the same kind of work. While the Bill uses the same terminology as is already found in Section 42 of the ESA barring prohibitions in pay based upon gender, it will be problematic to rely on it when dealing with equal pay based upon employment status. Firstly the norm in respect of equal pay on gender is now compliance while the norm in relation to employment status is for vast differences. Furthermore while the Section 42 language is sufficient for unionized workers who have the advice and advocacy support of professional union staff, this is obviously not the case for non unionized workers. The latter group will also be reluctant to challenge the employer given their precarious employment status and lack of employment security.

Access of workers to information

If workers are going to be able to take the first step to enforce their rights to the scheduling rights, they need the same information as is found in Subsections 15.1(3.1)-(3.4) – records that the Employer needs to keep and provide to ESA officers. That information needs to be provided to workers in a timely fashion.

As for the enforcement of the equal pay right under Sections 42.1 and 42.2 of Schedule 1, enforcement of that right is dependent on the worker making a request for a review and the Employer truthfully responding to that request. It may well be that there could be some employers who could unwittingly be failing to comply with this entitlement and the request from the worker is all that is required to trigger compliance. The likelihood is that more employers would knowingly be in contravention and expecting that they could get away with it. Many employers would simply not provide the full truth in their response to the

written request, even if the worker is brave enough to make it. More likely workers will not want to jeopardize their job security unless they had firm facts to support their assumption that they are not receiving equal pay. Therefore there needs to be a location where workers can access pay information without having to identify to the Employer that they are doing so. Either that information needs to be posted in the workplace or it needs to be housed in a Branch of the Ministry where workers can access it.

Just cause protection

The Bill creates a right to Just Cause protection from Employer discipline as of the date of certification. The logic seems to be an intention to remove from the employer the opportunity to act in a way that reduces the confidence of workers in the union to protect them before they achieve a collective agreement. This type of mischief doesn't begin with certification, it begins when the employer becomes aware of a union drive. Indeed Employers wishing to evade unionization are more likely to engage in this type of mischief earlier rather than later in the certification process. The protection should begin when the Employer is either notified of a request for the employee list or of the application for certification.

We submit however that the proper statute to insert Just Cause protection from discipline in is in the Employment Standards Act. It is well known that rights under the ESA are not being enforced by active employees as they fear retaliation. Most complaints to the ministry of Labour for violation of rights under the ESA are filed by workers once they cease employment. Moreover the Committee has heard from employers that they would terminate employees before they achieve 5 years of service so as to evade the obligation to provide 3 weeks of annual vacation. Just cause protection is already part of the Canada Labour Code applying to all workers and not just ones who are unionized and that protection should be part of the ESA in Ontario

Temporary Help Agencies

Enforcement of obligations of these employers are very difficult. They have very little physical infrastructure and what they do have is very mobile. They can easily close down, disappear and re-open under a different name. The best way to ensure that workers of such agencies will have their rights respected is to require

that companies that use temporary help agencies be joint and severally liable to ensure that obligations are adhered to.

The Bill in its requirement for equal pay is seeking to remove some of the economic incentive of companies to contract out their labour supply to temporary help agencies. Making clients of temporary help agencies jointly and severally liable will be an additional disincentive for such clients to use these agencies. If the Bill won't be amended in this fashion, then at least clients should be responsible for all workplace injuries of employees of these agencies. One of the most significant types of work for which temporary help agencies are used is for dangerous work that is susceptible to injury. Making clients responsible will both reduce the incentive to use such agencies and will create client pressure on the agencies to improve health and safety practices.

Finally the Bill should be amended to entitle employees of temporary help agencies working for a specific client to employment status with the client if the employee has worked for at least three months and the work being performed by that employee continues.

Contract Flipping - Successor Rights

Bill 148 in Section 7 of Schedule 2 proposes to extend successor rights in the case of contract flipping, but only to the building services industry and allows for regulations to potentially extend successor rights to publicly funded services –

Ontario employers in the public **and private** sectors are bound by successor rights legislation when a business or portion thereof is sold. This, however, is not the case for employers who sub-contract services. The absence of successor rights is the case even if the new contract provider hires the *same* employees to perform the *same* work in the *same* location.

It should not matter whether workers are employed in a publicly or privately funded contracted service – all workers deserve protections against contract flipping just as they have such protection when there is a sale of business. The proposed extension of successor rights for building services applies whether the subcontractor is publicly or privately funded. That approach should be the model for all extensions of successor rights to contracted services. Bill 148 should extend

successor rights to all contracted services in the same way it applies to all transfers of a portion of a business under the current successor rights provision.

In any event successor rights in contract flipping situations should at least exist by statute in the Home Care sector. Contract flipping is integral to how home care operates. The Bill recognizes the vulnerability of Home Care workers and will extend to them the ability to unionize through “card check”. However without contract flipping successor rights such workers will not invest time and effort and psychological wellbeing in a challenge to their employer through a unionization campaign. They know their employer will lose the contract the next time it is up for bid since their compensation improvements will make their employer uncompetitive. If the legislators are serious in wanting to facilitate unionization of home care workers, the Bill must grant such workers successor rights protection.

Employee lists

Section 2 of Schedule 2 recognizes the deficiencies in the timing of access to the voters list and will create such access once workers have shown a significant interest in unionizing to the extent of 20% of the proposed bargaining unit. To make that access meaningful however, the contents of the voters’ list needs to be expanded beyond names, phone numbers, and personal email addresses to also include employees’ mailing addresses, job classification, employment status (i.e., full-time or part-time and permanent or temporary), and an organizational chart that outlines the relationship of the employees in the proposed unit to other employees and the lines of authority between management, supervisors, and subordinate employees. It is important to note that this information is provided by employers in the federal jurisdiction at the time they respond to a union’s application for certification. Employees wishing to engage in organizing campaigns should as much as possible have access to the same information as the Employer possesses who can use that information to try and defeat the organizing campaign

While concern has been raised that providing mailing addresses could open the employee to undue influence from union organizers, this has not been the case under federal jurisdiction nor has this been a problem in public elections where voters lists containing street addresses are automatically available not only to registered candidates but to anyone from the public. In the same way canvassing

is made easier in public elections by listing voters by poll number, so too democratic decision-making for workplace elections needs to allow the canvassers to know where to reach voters based upon their workplace neighbourhoods and communities of interest.

Finally there are no longer concerns about privacy. The Bill already has protections. The federal legislation concluded that there is no issue of privacy nor is that an issue in relation to access to voters lists in public elections. Openess of basic data of the voting constituency is crucial to democratic elections.

Extension of time limits for referral of grievances to arbitration –

Now that the Labour Relations Act is being reviewed, there is an opportunity to correct a defect in the wording of Section 48(16). That section gives arbitrators the power to extend time limits in processing grievances as long as there reasonable grounds to do so and the other party is not substantially prejudiced. This section of the LRA has been interpreted to not empower an extension of time limits for the referral of the grievance to arbitration. This limitation is unreasonable given the public policy that all disputes should be resolved on their merits and not defeated by technical objections. The possibility of prejudice is greatest at the beginning stage of the grievance procedure. By the time of arbitration the other party has had plenty of notice to collect and safeguard their evidence. If the party can make a case that substantial prejudice will still exist then the arbitrator won't extend the time limit.

Moreover some collective agreements integrate arbitration into the grievance procedure provisions. In those cases the arbitrator will have jurisdiction to extend time limits. Thus the stature elevates form over substance and in a way that undermines public policy.

This committee should amend the bill to empower arbitrators to extend time limits even for referral to arbitration. If there is a concern that the Committee is without jurisdiction to insert amendments at this stage on "new" subject matters, that concern can be dissolved given that the Bill already deals with extension of time limits in Section 43.1(22). Thus the Committee should be able to insert the power to extend time limits elsewhere in the legislation.