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ONTARIO FEDERATION OF LABOUR

OFL Submission to the Standing Committee on Finance and Economic Affairs

Bill 177, Stronger, Fairer Ontario Act (Budget Measures), 2017.
December 7, 2017.

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Introduction

The Ontario Federation of Labour (OFL), represents 54 affiliates and one million workers across the province. The OFL champions increased health and safety measures for every worker in the province, and is committed to strengthening the security of workplace pensions and ensuring pension coverage for all workers across the province.

Our submission will discuss in detail two components of Bill 177, *Stronger, Fairer Ontario Act (Budget Measures), 2017.* Schedule 30 and Schedule 33.

The health and safety of workers and the public are paramount. The OFL is pleased to see improvements to the *Occupational Health and Safety Act* outlined in Schedule 30, with the exception of a few provisions, namely the granting of powers to the Deputy Minister to establish written directives for use by inspectors respecting the interpretation, administration and enforcement of the *Act* and its regulations.

Over the past several years, workers have seen unprecedented attacks on their defined benefit workplace pension plans. Under the guise of austerity, employers are increasingly attacking traditional, guaranteed defined benefit pensions – proposing massive benefit cuts or an outright conversion to target benefit or defined contribution plans. The OFL continues to advocate against such measures and as a result, has several recommendations to strengthen Bill 177, *Stronger, Fairer Ontario Act (Budget Measures), 2017.*

Schedule 30

Positive Provisions of Schedule 30

The Ontario Federation of Labour supports many of the provisions and proposed changes outlined in Schedule 30:

- An additional duty on employers to report to the MOL, concerns raised by the JHSC or representatives about structural problems in a building where the employer is a tenant;
- Additional accident and incident reporting requirements can be made by regulation. (currently only construction, mines and mining plants are required to report certain types of incidents. This provides the authority to include other types of employers.);
- Ability to require employers to provide additional details in accident and incident reporting by regulation;
- Fines for individuals will increase from 25 thousand to 100 thousand and for corporations from 500 thousand to 1.5 million dollars;
- The one-year statute of limitation is improved to include one year from the day an inspector becomes aware of an offence.

Concerns with Provisions of Schedule 30

Undermining the Legal Authority of the Ministry of Labour Health and Safety Inspectorate

Schedule 30 of Bill 177, *Stronger, Fairer Ontario Act (Budget Measures), 2017* proposes to make a number of problematic amendments to the *Occupational Health and Safety Act* (OHSA).

The OFL is greatly concerned with the following proposed changes outlined in Schedule 30 of Bill 177 Stronger, Fairer Ontario Act (Budget Measures), 2017:

- Provide authority for the Deputy Minister (DM) of the Ministry of Labour (MOL) to establish written directives for use by inspectors respecting the interpretation, administration and enforcement of the *Act* and its regulations;
- Allowing the authority to be granted to an Assistant Deputy Minister;
- Adding a legal requirement that inspectors comply with the directives.

The OFL feels very strongly that this is a fettering of the inspector's discretion and undermines the enforcement role of inspectors.

Enforcement officers must have the ability to have discretionary powers without being intimidated that they could be prosecuted under the *OHSA* if they do not follow a policy that is not suitable in the circumstances they are dealing with.

Penalties these inspectors could face are a twenty-five thousand dollar fine or one year in jail and this schedule proposes to increase the fine for individuals to one hundred thousand dollars.

Significant penalties for what is essentially a labour relations issue.

All workers in Ontario rely on the inspectorate to protect their health and safety through effective enforcement of the *OHSA*.

The inspectors possess experience, judgment, and expertise that improves workplace health and safety and their autonomy to perform their legislative authority is essential to an even-handed and fair health and safety enforcement system.

We view this as an improper attempt to deal with the Ministry's labour relation challenges in legislation. This power allows a DM to effectively write law, by-passing the Legislature and Cabinet.

In addition, it has been our experience that the WSIB, who also has the power to write policy, has at times done so in a manner that is in contradiction with the *Workplace Safety and Insurance Act.* There is concern that this could happen at the MOL if these powers are granted to a DM.

During the SARS crisis in the spring of 2003 Inspectors were forbidden to deal with the health and safety concerns of health care workers. They were directed to refer inquiries, etc. to their managers. This was bad policy which did put health care workers at risk. The outbreak killed 44 including two nurses and a doctor. Justice Archie Campbell who conducted a public inquiry into the outbreak noted throughout his report, *Spring of Fear*, that the MOL was sidelined during the outbreak.

This was largely a result of deliberate decisions made by senior levels of the MOL.

We are very concerned that this new power for the DM could be used to tell inspectors not to do proactive inspections of accredited employers or relieve employers from other burdens they consider unnecessary. These decisions will be made behind closed doors far from the open and transparent process of the legislature.

The MOL already has the authority and indeed the responsibility to prepare policy and procedures, directives and interpretations. The management of the MOL also has the responsibility to ensure that everyone is following these policies, procedures, etc.

This seems to be the MOL admitting that ADMs are not able to ensure that regional offices are applying MOL policy, procedures and directives consistently across the province; and that regional managers are not able to supervise the inspectors to ensure they are complying with MOL policy, procedures and directives.

It is the responsibility of the MOL as an employer to ensure that all MOL employees from senior management to front line staff have the training and skills to do their job.

If the ministry's management representatives are not competent to perform their duties they should receive additional training. If this does not resolve the issue the MOL has a duty as an employer to conduct progressive discipline to correct the behaviour.

This is not the first time that we have dealt with this issue. The government tried to make similar amendments in 2011. Part of the argument we heard back then was that they needed the changes to deal with a lack of consistency of enforcement.

We responded then and we say again, if the issue is one of a lack of consistency then the MOL needs to do a better job of managing consistency. This is a labour relations issue that should be dealt with through the ministry's labour/management process.

Imagine if senior management at a corporation went to the government to say the senior management team is not able to ensure their middle management and front-line staff are consistent in following the company policies and procedures, so the government should pass a law to make them obey.

There would be calls for the resignations of the senior management up to and including the CEO.

These provisions that provide authority for the Deputy Minister of the Ministry of Labour to establish written directives for use by inspectors respecting the interpretation, administration and enforcement of the *Act* and its regulations; that allow the authority to be granted to an Assistant Deputy Minister and the addition of a legal requirement that inspectors comply with the directives - do not belong in the *Occupational Health and Safety Act* and must be removed.

Schedule 33

Enhancing PBGF coverage

As the OFL has long advocated, the Pension Benefits Guarantee Fund (PBGF) – which is limited to only those members in a single employer pension plan – is an effective alternative to solvency funding in terms of providing benefit security to pension plan members. However, if it is to perform this role, then PBGF coverage must, at an absolute minimum, keep up with inflationary increases. The PBGF was created in 1980, and the $1,000 benefit limit has not changed since that time. While Bill 177 proposes an increase to $1500, it falls far short of the rate of inflation since 1980. At a minimum, PBGF coverage should immediately increase to $3000 per month simply to keep pace with the compounding erosion of incomes due to the inflation experienced over the last three decades. Moreover, the level of PBGF protection should be indexed annually on a go forward basis to keep up with the rate of inflation.

It should also be clear that PBGF coverage limits apply to the losses members suffer in an insolvency. If, for example, a member has a monthly pension of $2000, and it is cut because of an insolvency to $1500, then the $500 reduction should be fully covered because it is well below the coverage limit.

Incorporating a consent mechanism

Bill 177 fails to provide plan beneficiaries with any voice in the decisions that affect them. Ontario has, in the recent past, required member consent for many forms of solvency relief. In fact, among plans applying for solvency funding reform since 2009, the

percentage of plans choosing an option that requires the consent of plan members has increased since the first application window. Consent has typically been deemed if the union – on behalf of its members – approves of the proposed transaction and if no more than one-third of eligible retired members object. It is imperative that any reforms to solvency funding continue to include a consent mechanism, so that the added risk that plan members are exposed to as solvency funding obligations are loosened are assumed by a consensus of the plan members most affected by that trade-off.

In the absence of a consent mechanism, employers who as plan sponsors are perfectly capable of funding their pension plans will choose not to do so, relying on Bill 177's weakened solvency funding requirements. Last year, Canada's largest publicly-traded companies paid out four times more to shareholders than it would have cost to fully fund their defined benefit pension plans. Under Bill 177 and the forthcoming regulations, such employers will be free to continue to deliberately underfund their pension plans while continuing to pay dividends or buy back shares. This is an undesirable outcome and in the context of insolvency, will eventually result in reduced pensions and unnecessarily higher PBGF payouts at insolvency. A plan beneficiary consent mechanism acts as a check and balance on this type of abuse as plan beneficiaries are best situated to comprehend the added risk assumed.

Enhancing transparency

Unfortunately, there has been an increasing and troubling trend towards introducing legislation that allows significant changes to be made through regulations – where there is less public transparency and debate. Important measures, such as the solvency funding ratio, should be enshrined in the legislation to provide workers with greater certainty in terms of their benefit security.

Outlining PfAD requirements

The OFL wishes to reiterate its concern over the use of a Provision for Adverse Deviation (PfAD) as a mechanism to achieve benefit security for Jointly Sponsored Pension Plans (JSPPs) and Multi-Employer Pension Plans (MEPPs). Unfortunately, the reality of PfADs is that if plan sponsors have to fund them, their response will be to take the cost of funding the PfAD out of future benefits. In other words, while the prescribed regulations may compel pension plans to dedicate a portion of their pension contributions to the funding of a PfAD, it will be at the cost of future benefits. This will therefore reduce future retirement incomes. PfADs are an inefficient way to achieve benefit security, because they will compel each and every pension plan to build up reserves that, in most cases, will not be needed. Unnecessary reserves will be "dead money" that can otherwise be used to provide workers with decent retirement incomes. Rather than rely on PfADs, the government should rely primarily on the PBGF and should enhance PBGF coverage to align with current economic realities.

PfADs have no place in the funding requirements for JSPPs, where they will impose additional and unnecessary costs and burdens upon plans that are among the most efficient and effective in the world.

Similarly, imposing PfADs on target benefit MEPPs will unduly restrict the ability of their boards of trustees to manage their plans. The regulations may provide guidance as to the factors that a plan administrator may consider in setting a PfAD – if that is the judgment of the board of trustees. PfAD rules in regard to these plans, however, ought not be so stringent as to restrict the discretion of the trustees in their determination of an appropriate balance between benefit adequacy and benefit security. Ultimately, it is the board of trustees of a MEPP who determines the benefit levels that can be provided based on the current assets and expected contributions. Any regulations that are introduced must provide the board of trustees with sufficient discretion to properly manage the plan and to properly balance the plan membership's interests in benefit adequacy and benefit security. While PfADs may be intended to avoid the risk of future benefit reductions, high and rigid PfAD requirements may undermine benefit adequacy and the viability of MEPP target plans as a way to provide retirement benefits.

Introducing transitional rules

If PfADs are introduced, and if their purpose is to support benefit security, then it is apparent that the introduction of PfADs themselves should not reduce benefits. Yet, in the absence of clear transitional rules, some target benefit plans may well have to reduce benefits as a direct consequence of new PfAD requirements. Obviously, this would be counterproductive – it isn't possible to speak about enhanced security of a benefit that is being reduced. Transitional rules should ensure that the introduction of a PfAD funding does not trigger benefit reductions.

Expediting the certification process

The "target benefit" changes that are enabled by Bill 177 are only for traditional MEPPs – in other words, those where all contributions are set out in one or more collective agreements and the plan can reduce benefits at any time. These MEPPs have always been "target benefit" plans. As a result, the certification process under Bill 177 is really nothing more than a change to the nomenclature. Everything pertinent about the relevant plan is expected to remain the same. The OFL is concerned that by calling it a “conversion” and requiring that notice of this certification process be sent to all members, there will be a lot of confusion amongst members who think that their pension benefits are becoming less secure. The OFL proposes to expedite the process in cases where a MEPP is certified as a "target benefit" plan but there are no material changes to the nature, quantum, or security of benefits being provided under the plan.

Respectfully submitted,

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