

Bill 218, Supporting Ontario's Recovery and Municipal Elections Act, 2020

Standing Committee on Justice Policy



Ontario Federation of Labour | November 2020

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**ONTARIO
FEDERATION OF
LABOUR**

November 4, 2020

Sent electronically

Thushitha Kobikrishna
Clerk of the Committee
Standing Committee on Justice Policy
Procedural Services Branch
99 Wellesley Street West
Room 1405, Whitney Block
Toronto, ON M7A 1A2

Dear Thushitha Kobikrishna,

Thank you for the opportunity to submit our perspective on Bill 218, “*Supporting Ontario’s Recovery and Municipal Elections Act*.” The Ontario Federation of Labour (OFL) represents 54 unions and more than one million workers in the province of Ontario. Affiliated members of our Federation have been and continue to be on the front-lines of Ontario’s response to the COVID-19 pandemic.

While Bill 218 deals with two separate and seemingly unrelated legislative outcomes, and while we are greatly concerned with the proposed changes to the *Municipal Elections Act* as outlined in Schedule 2, and its apparent overreach into Municipal democracy, we will focus our remarks on Schedule 1 of the proposed legislation.

The Ontario Federation of Labour has serious concerns about Bill 218, and as we will outline in our formal submission, strongly urges this government to withdraw Bill 218.

We take this position, after careful review and consideration of the impacts this legislation will have, not only on the families of our seniors currently in care, but especially for those families that have lost a loved one due to COVID-19 and its rampant and continued spread through our long-term-care system.

Sincerely,

PATTY COATES
President

Supporting Ontario's Recovery Act

Schedule 1, called “*Supporting Ontario's Recovery Act*”, has left us puzzled to understand what exactly the schedule has to do with supporting the recovery of Ontario – either at improving the health and wellbeing of Ontarians or in support of their economic recovery. At first glance, this legislation appears to support negligent operators, many for-profit care facilities that failed their residents during this pandemic.

At the root of the schedule, what it proposes to accomplish is to provide further legislative cover, and protection from liability and accountability of organizations and individuals for actions they either undertook or failed to take to protect those in their care from COVID-19. Under this Act, Ontarians would be prohibited from suing organizations for negligence which resulted in exposure or contraction to COVID-19 if the responding organization or individual made a “good faith” effort to follow public health guidelines.

The OFL takes issue with following components of the Bill.

- 1) Bill 218 raises the threshold for actions against defendants from “negligence” to “gross negligence”.
- 2) Bill 218 provides a definition of “good faith efforts” which falls well outside of the normal legal definition of this phrase.
- 3) Bill 218 is also retrospective, which means such liability protection will extend back to March 2020.
- 4) Bill 218 will severely stifle an Ontarian's ability to hold certain long-term care facilities accountable for their actions or failings during the pandemic.

The problems in long term care existed long before the pandemic, this is nothing new, and has been the subject of outcry to successive governments, including your own.

Also not new, are the requirements and duty to care that long-term care facilities have toward their residents. They are required to have pandemic plans. They are required to have infection control protocols. They are required to address staffing and recruiting shortages. They are required to keep residents clean and fed. It is not reasonable that many long-term care facilities failed to address these matters while caring for some of the most vulnerable among us.

Ultimately, responsibility lay at the feet of the Ontario government, who by our estimation failed to address repeated warnings prior to the pandemic about the poor state of long-term care in Ontario, and who failed to act quickly enough to define the public health pandemic protocols specifically designed to address operations in long term-care facilities and retirement homes.

If this Bill passes in its current form, it will absolve both the government and LTC facilities of any responsibility for negligence during the COVID pandemic.

There will be no accountability for the thousands of lives unnecessarily lost, and justice for these families of those that needlessly perished, will remain elusive.

Respectfully, we urge this government to withdraw Bill 218.

How can Government truly support Ontario's recovery?

We note that Section 2 of Schedule 1 of Bill 218 does not apply to the following:

- 1. A cause of action of a worker who is or was employed by a Schedule 1 employer or Schedule 2 employer, or of the worker's survivor, in respect of a personal injury by accident arising out of and in the course of the worker's employment or an occupational disease.*
- 2. A cause of action of a worker who is or was employed by a Schedule 1 employer or Schedule 2 employer, or of the worker's survivor, to which the Workplace Safety and Insurance Board or Schedule 2 employer, as the case may be, is subrogated under section 30 of the Workplace Safety and Insurance Act, 1997.*
- 3. A cause of action of an individual in respect of an actual or potential exposure to or infection with coronavirus (COVID-19) that occurred in the course, or as a result, of employment with a person or in the performance of work for or supply of services to a person.*
- 4. A proceeding arising from a cause of action referred to in paragraph 1, 2 or 3.*

We would be remiss as an organization representing the working people of Ontario, if we did not raise, yet again, our proposed amendments to the *Workplace Safety and Insurance Act*, as we have outlined as required action back in April of 2020, and as we continue to advocate for today.

We are proposing as follows:

- **Expanding Workers Compensation coverage to all workers and volunteers who put themselves in harm's way.**

Unfortunately, many workers who may put themselves at risk by contact with the public do not have workers' compensation protection, either because they work in a non-covered sector of the economy or have been treated as "independent operators". We are proposing that the Ontario government amend Schedules 1 and 2 of the *Workplace Safety and Insurance Act* ("the Act") to include, for purposes of the COVID-19 outbreak, any sectors not currently covered but which have been deemed essential. This could be done by Cabinet in short order. As well, to ensure that all workers who come in contact with the public are protected, WSIB should use the broad language of the s. 2(1) definition of "worker", paragraph 9, to deem all persons who come into contact with the public while performing their work duties during the COVID-19 outbreak to be "workers" for purposes of the WSIA. This would cover Uber drivers and others in the gig economy.

- **Extending protection of the Act to workers who must be isolated or quarantined because of work exposures**

Currently, WSIB will only extend workers' compensation to workers with actual COVID-19 health conditions, but not to workers required to be isolated/quarantined due to work exposures to the virus. We are proposing that WSIB cover these situations as well, using the preventive removal language in s. 2(1) of the Act.

- **Extending protection to workers with health conditions which are likely COVID-19 but not verified by testing**

Some workers are developing COVID19 symptoms but are never tested due to limited testing capacity. Under these circumstances, WSIB should presume that these workers have COVID-19.

- **Streamlining the adjudication of COVID-19 workers' compensation claims and protecting appeal rights**

WSIB is currently adjudicating COVID-19 claims case by case, without using the presumptions available for occupational diseases under the Act. Anthrax and tuberculosis are already in Schedule 3 of the Act and in our view the case to include COVID-19 in the Schedules is even stronger given the urgency of this situation. It is vital that workers who are putting themselves on the line for the rest of us should be confident that they will receive swift compensation.

So, we are proposing to add to Schedule 4 of the Act, an irrebuttable presumption of work-relatedness for health conditions related to Coronavirus/COVID-19, for all workers who come into contact with the public. This category should be broadly interpreted to include not just health care workers and first responders but all other workers who come into contact with the public, such as childcare workers, transit, retail and delivery workers and frontline public sector workers. We are also proposing a rebuttable presumption of work-relatedness in Schedule 3 for workers in sectors deemed essential but who do not come into contact with the public (e.g., cleaners, essential construction workers). Cabinet could make these changes in a few days if it wished to do so. British Columbia and numerous US states have already moved forward with various types of presumptions.

- **Taking into account the impact of COVID-19 on existing injured workers and occupational disease victims, including their access to healthcare and vocational rehabilitation.**

WSIB should pay loss of earnings benefits to injured workers whose health care or vocational rehabilitation programs have been delayed, or who are unable to participate/work due to COVID related risk factors or circumstances, until the COVID-19 outbreak has receded, and these programs can start up again and injured workers can participate again. WSIB should also fully take into account the impact of the current employment market on the realistic job prospects of injured workers and stop deeming them capable of earnings from jobs that basically do not exist for them.

- **Ensuring that injured workers can maintain physical distance and receive necessary support**

Many injured workers and occupational disease victims are already in a physically vulnerable state due to their disabilities. They may need additional supports to get through these difficult times. WSIB should take a broad and generous approach to supporting any special needs that injured workers and occupational disease victims might have as a result of COVID-19. This includes proactive outreach to severely injured workers and occupational cancer victims to help them get any additional supports that they might need.

- **Communication and engagement, especially to protect the most vulnerable workers**

We are proposing that WSIB and Ministry of Labour, Training and Skills Development engage with the worker community and other partners to broadly communicate the supports available to workers affected by COVID-19 exposure at work and to ensure that they can access benefits and services.

Conclusion

In summary, should you wish to truly aid the Ontario's recovery, start by ensuring the workers that are the front-lines of our fight against COVID are protected. Let's hold those employers to account for their failure to keep not only residents but staff across our care systems safe.

Once again, as it pertains directly to Bill 218 as currently written, we strongly urge this government to withdraw Bill 218.

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