



Elementary Teachers' Federation of Ontario (ETFO)

Fédération des enseignantes et des enseignants
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UNDERSTANDING BILL 124

In June 2019, the Ford Conservatives passed Bill 124, also called the [Protecting a Sustainable Public Sector for Future Generations Act, 2019](#). Bill 124 prescribed a limit on compensation increases in the public sector to one per cent or less each year over a three-year “moderation period.”

[Click here](#) to review a detailed analysis of Bill 124 by lawyer Daniel Sheppard of Goldblatt Partners LLP.

Bill 124 prescribed this compensation restriction for almost 800,000 public sector workers across the province. For the education sector - including for ETFO's 83,000 members - the impact of Bill 124 was immediately felt during the 2019 round of collective bargaining.

The Significance of Bill 124 to the 2019 Round of Collective Bargaining

Bill 124 was proclaimed into force just as education sector collective agreements were set to expire on August 31, 2019 – a clear indication that the major targets of the bill were teachers and education workers.

Because of Bill 124, ETFO was prohibited from bargaining at central bargaining tables for more than a one per cent wage increase in each year of our 2019-2022 Teacher/Occasional Teacher and Education Worker Central Agreements.

The Response of ETFO and the Other Unions to Bill 124

Collective bargaining is challenging at the best of times. Negotiating with a government that believes it can change the rules of bargaining whenever it chooses can make it impossible to reach fair settlements. Yet that is exactly what the Ford Conservatives did in 2019 on the bargaining issue of compensation.

Given the extent to which Bill 124 interfered with our members' constitutionally-protected right to free collective bargaining, in November 2019 ETFO joined with a broad coalition of public sector unions, including all education unions and the Ontario Federation of Labour, to launch a [Charter challenge against Bill 124](#).

The Outcome of the Bill 124 Charter Challenge

The Charter challenge against Bill 124 was heard by Justice Markus Koehnen of the Ontario Superior Court of Justice in September 2022.

To establish that our members' rights under the *Canadian Charter of Rights and Freedoms* had been violated, ETFO had to demonstrate two things:

1. that there had been a violation of the right to free and fair collective bargaining; and
2. that the violation could not be “demonstrably justified in a free and democratic society.”

The provincial government argued the need for legislation like Bill 124 by pointing to the provincial deficit.

On November 29, 2022, Justice Koehnen released [his decision](#). While the government tried to argue that implementing Bill 124 was a necessary measure to protect the province's economy, **Justice Koehnen ruled that Bill 124 was, in fact, an unjustified violation of the Charter rights of public sector workers to free and fair collective bargaining.**

The Court did not accept the government's argument about the need for Bill 124 because the province's fiscal position had improved significantly and the Ontario government had engaged in several measures that reduced its revenue. In his decision, Justice Koehnen wrote:

“Ontario has not ... explained why it was necessary to infringe on constitutional rights to impose wage constraint at the same time as it was providing tax cuts or licence plate sticker refunds that were more than 10 times larger than the savings obtained from wage restraint measures...”

Justice Koehnen ruled that the entirety of Bill 124 was void and of no effect, but he declined to comment on a redress (i.e., financial reimbursement) for loss of salary/wages as a result of Bill 124's interference in the collective bargaining process.

Justice Koehnen's decision can be found [here](#).

The Ontario Government's Bill 124 Appeal

On December 29, 2022, the Ontario government filed a [motion to appeal Justice Koehnen's decision](#). The appeal is scheduled before the Ontario Court of Appeal, and will take place June 20-22, 2023, which is an expedited process for an appeals hearing.

Once a decision is issued by the Ontario Court of Appeal, it is possible for the unsuccessful party to seek leave to appeal to the Supreme Court of Canada.

Impact on the Current Round of Bargaining

Issues around wages and purchasing power are front of mind for many ETFO members, particularly in light of current inflationary pressures. Negotiating fair salary/wage increases in the 2022 round of collective bargaining is a [key goal](#) for ETFO.

Bill 124 prevented ETFO from negotiating fair salary/wage increases in the previous (2019) round of bargaining, which has a direct impact on the way salary/wage discussions are approached during the current (2022) round.

In order to protect our members' interests, ETFO must take the Bill 124 issue into consideration in tandem with the current central table negotiations. ETFO believes it is critically important that the issue of a redress for Bill 124 be addressed before finalizing any agreements on salary for our members at ETFO central tables, since we do not know what redress might be awarded by the Court.

FREQUENTLY ASKED QUESTIONS (FAQS)

Q: How is the Bill 124 decision different than the Bill 115 decision?

In the Bill 115 decision, Justice Lederer retained jurisdiction on the issue of remedy. So, while he left the matter of remedy to ETFO and the government to negotiate, Justice Lederer made it clear in his decision that if the parties were unsuccessful in reaching agreement, he would issue a ruling on a Bill 115 remedy.

In contrast, Justice Koehnen declined to comment on a redress for Bill 124's violation of the collective bargaining process and did not retain jurisdiction to award a redress.

Q: I have heard that some public sector workers have already received a redress for Bill 124. Why have they been given a redress and not education workers?

In some cases, public sector collective agreements that were affected by Bill 124 have a mechanism to proceed to binding interest arbitration. In binding interest arbitration, if the parties to a collective agreement can't reach agreement on outstanding issues, they can present those outstanding issues to a neutral, third-party arbitrator. That arbitrator will review each party's positions and make a final decision that will be binding on both parties.

Binding interest arbitration is common in the healthcare sector (e.g., nurses, paramedics, etc.) where union members do not have the legal right to strike, and employers cannot lock out employees or change the terms and conditions of collective agreements, to advance their bargaining goals. In sectors where the right to strike/lock out is restricted, binding interest

arbitration is the method in the agreement or in legislation that can be accessed to resolve bargaining disputes.

When Bill 124 was struck down in November 2022, collective agreements that include binding interest arbitration language allowed unions to request that arbitrators revisit their previous decisions and reconsider what they would have awarded on compensation if Bill 124 had not been enacted in 2019.

An example of this type of reconsideration occurred recently for the [Ontario Nurses' Association](#).

In contrast, education sector workers have a legal right to strike. Education sector collective agreements do not include a mandatory process of binding interest arbitration. Binding interest arbitration can occur in the education sector, but only if all the parties (unions, employers) voluntarily agree to arbitration. Absent that voluntary agreement, binding arbitration is not an option for education worker unions to address the Bill 124 redress issue.

The fact that binding arbitration is not an option for ETFO, and that Justice Koehnen declined to specifically address the issue of financial reimbursement, coupled with the impending appeal of Bill 124, need to be factored into ETFO's decision-making for the current round of central bargaining.