



Submission to the Standing Committee on Justice Policy on Bill 218

Submission of the
**Ontario Division of the Canadian Union of
Public Employees**

November 4, 2020

Thank you for the opportunity to submit our views on Bill 218, “Supporting Ontario’s Recovery and Municipal Elections Act.” The Canadian Union of Public Employees (CUPE) Ontario is the largest Union in the province with more than 280,000 members. You will find CUPE members working in health care, municipalities, school boards, social services, and post-secondary education. CUPE members provide the front-line services that help make Ontario a great place to live.

In 2020, CUPE members have been on the front lines of the fight against COVID-19. They provide care at your hospital and long-term care home. They deliver home care for your elderly parents. They work to keep our schools open. They take care of your youngest children in childcare centres and make life better for adults with developmental disabilities. They are the paramedic first responders to medical emergencies.

CUPE has serious concerns with this proposed legislation. For the reasons we will outline below, we urge your government to withdraw this Bill.

Bill 218 attempts to meld two completely unrelated legislative goals. In the first part, Schedule 1, the Bill protects, from liability, people and organizations for harms they may have caused by exposure to or the contraction of COVID-19. The second part, Schedule 2, repeals a section of the *Municipal Elections Act* which allowed Ontario municipalities to use ranked ballot voting in determining election outcomes. Both aspects of the Bill are highly problematic. We will deal with each in turn.

Supporting Ontario’s Recovery Act

The more alarming elements of Bill 218 occur in Schedule 1. Schedule 1 is called “Supporting Ontario’s Recovery Act”, although, ironically it has nothing to do with supporting the recovery of Ontarians from the health or economic ravages of COVID-19. Instead, it provides a legislative shield to organizations and individuals from liability and accountability for actions they took 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 Act raises the threshold for actions against defendants from “negligence” to “gross negligence”. It also, alarmingly, provides a definition of “good faith efforts” which falls outside of the normal legal definition of this phrase. Under Bill 218, “good faith efforts” do not need to be **reasonable** efforts. The Act expressly waives any test of reasonableness concerning the actions taken by organizations or individuals to protect those in their care from COVID-19. In short, the Act contaminates the definition of “good faith” to the point where it has no real meaning.

The Bill is also retroactive, which means such liability protection will extend backwards from March 2020.

A key area of concern with Bill 218 for CUPE, is its impact on the public's ability to hold certain long-term care facilities accountable for their actions this spring. It is well known that some long-term care facilities failed miserably to protect residents contracting and, in some cases, dying from COVID-19. They did not take appropriate actions to protect seniors. Other long-term care facilities did fine because they took those steps. Currently, there are a number of legal suits against some of the worst offenders. These legal actions will be in jeopardy, not because they necessarily lack merit, but because of extraordinary protection provided by Bill 218.

What constitutes a "good faith" effort that is not necessarily "reasonable" under the circumstances? Long-term care facilities have a duty of care to their residents. They are required to have infection control protocols. They are required to have pandemic plans. They are required to address staffing and recruiting shortages. They are required to keep residents clean and fed. It is not reasonable that many LTC facilities failed to address these matters while caring for some of our most vulnerable citizens. Yet Bill 218 would take that element out of the definition of good faith.

The problems in long-term care existed long before the pandemic. The pandemic simply highlighted the horror so that no one could ignore it.

On receiving the report from the Canadian Armed Forces on conditions in long-term care facilities in May, Premier Ford promised that those bad actors would "be held accountable". However, this legislation does the exact opposite, creating a statutory shield protecting negligent facilities from litigation.

Certainly, responsibility rests also with the Ontario government who failed to address repeated warnings prior to the pandemic about the poor state of long-term care 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. We are disappointed that your government granted itself immunity from actions in 2019, when you passed Bill 100, as the crown also needs to accept liability when it is negligent.

In his press release about Bill 218, Attorney General Doug Downey is quoted as saying the legislation was to protect "hardworking women and men", "people volunteering at the food bank" and "front line health care workers". If the intent of the Bill is to protect individuals, then the legislation should be re-written with its scope narrowed to specifically target individuals.

If this Bill passes in its current form, it will absolve both the government and the LTC facilities of any responsibility for negligence during the COVID-19 pandemic. There will be no accountability for the thousands of lives unnecessarily lost.

Municipal Elections Act

Schedule 2 of Bill 218 is so completely unrelated to Schedule 1, that CUPE Ontario questions why these two schedules are melded together in the same legislation. Schedule 2 amends the *Municipal Elections Act* by revoking the option currently available to Ontario municipalities to use a ranked ballot vote. Ranked Ballots were introduced into the legislation during the last review of the Act in 2017 and were first used in the 2018 election by the City of London. CUPE understands that other municipalities have been considering the use of ranked ballots for the 2022 elections.

We are not certain why your government is proposing to eliminate Ranked Ballot voting. There has been no widespread movement calling for its revocation.

CUPE Ontario has no formal position on the merits or deficiencies in Ranked Ballot Voting. However, we are concerned about this government's tendency to interfere in the operations of municipalities and curtail the authority of duly elected municipalities. If some municipalities wish to explore this option and their constituents are amenable, why legislate against it?

Yesterday, Ontario reached an unenviable milestone. We recorded a new high for daily COVID-19 cases -- over a thousand new cases in one day. Our hospital beds and ICU's are filling up. There are additional outbreaks in long-term care facilities, schools and day care centres. Why spend precious time on election reform, that no one asked for, in the middle of a pandemic, when there are so many more pressing issues before us?

Conclusion

Neither Schedule 1, nor Schedule 2 of Bill 218 merit passage by your government. It is not in the public interest to remove accountability for negligent actions of organizations such as some long-term care facilities. It is antithetical to promises made by this government to hold such bad actors accountable. Schedule 2, frankly, is not merited at this time. There is no widespread call for this sort of municipal election reform.

Accordingly, we submit that your government should refrain from proceeding further with any aspect of Bill 218.