Highlights of the *Ontario English Catholic Teachers Assoc. v. His Majesty,* 2022 ONSC 6658

Summary of key points from the decision:

- Justice Koehnen found that Bill 124 infringes on the applicants' right to freedom of association under s 2(d) of the Charter and is not saved by s. 1 of the Charter.

- He took a broad, purposive approach to s. 2(d) noting that "the purpose of collective bargaining is to empower weaker members of society to meet the more powerful, including the state, on more equal terms."

- He held that when state action prevents or restricts subjects from being discussed as part of the collective bargaining process it interferes with collective bargaining.

- The issue of a 1% limit on wage increases is highly important to the ability of the applicants to engage in effective collective bargaining.

- The 1% wage cap in Bill 124 **substantially interfered with collective bargaining** in a number of ways, including:

    - **imposing a financial impact.**
        - Para 63: [O]ne of the underlying purposes of collective bargaining is to equalize power imbalances between employees on the one hand and employers or the state on the other hand, that purpose is fundamentally undermined when the state intervenes by imposing limits on wage increases. In that latter situation, collective bargaining does not equalize power. Rather, it exacerbates inequality by allowing the state to prevent employees from having a meaningful discussion about the issue. While the Charter may not protect outcomes, it should also not allow the state to predetermine outcomes.
        - The fact that Bill 124 allows for negotiation within the 1% is in fact evidence of substantial interference. Para. 73: "To use a directional analogy, it is not unlike authoritarian state claiming it permits freedom of speech provided the speech remains within the narrow limits the state allows."

    - **preventing unions from trading off salary demands against non-monetary benefits.**
        - Para 86: "The reduction in negotiating power that the Act has brought about prevents employees from having their views heard in the context of a meaningful process of consultation that could lead to an improvement of working conditions."

    - **preventing the collective bargaining process from addressing staff shortages:**

        - Para. 89: Bill 124 has "prevented employers and unions from negotiating solutions to address this crisis even though the government's own study linked the staffing crisis [in LTC homes] to compensation"
        - Para. 101: "The often-traumatic conditions under which employees in the healthcare sector work leads working conditions caused by staffing issues to be a significant priority. These are key collective bargaining issues. Given staff shortages, the collective bargaining power of employees would generally be increased in a way that would enable them to improve wages, ameliorate staff shortages and improve working conditions. The 1% salary cap has taken that power away from employees."

    - **interfering with the usefulness of the right to strike:**
        - Para. 117: "While employees may technically retain the right to strike, it has been rendered financially meaningless..."

    - **interfering with the independence of interest arbitration:**
        - Para. 139: "It is difficult to see how arbitration can be impartial or effective if the government imposes limitations on wages that are lower than what the arbitrators say they would have awarded had the Act not constrained them. In this context the arbitral awards do not reflect the fruits of impartial decision-making but that of state fiat"

    - **interfering with the power balance between employer and employees**
        - Para. 150-151: "The government was using its legislative power to avoid real collective bargaining and to tilt the balance of power in favour of the government... it is difficult to see how there can be an effective collective bargaining system when the employer has been given the trump card of compensation increases lower than the rate of inflation and lower than freely bargained agreements."

- The **consultations** Ontario conducted were not a substitute for collective bargaining.
    - Para. 187: "Legislation was the only possible outcome [of the consultation] because the questions were not designed to reach an agreement on anything."

- This case can be **distinguished from previous expenditure restraint cases**:
    - Bill 124 wage cap was not consistent with the going rate reached in agreements concluded with other bargaining agents
    - Bill 124 wage cap was below inflation
    - There was no financial or economic crisis when Bill 124 was introduced.
    - The fact that the SCC refused leave on the MFL case cannot be taken to mean that the SCC agreed with the Manitoba Court of Appeal's reasoning.

- Justice Koehnen rejected arguments that Bill 124 violated s. 2(b)(expression) or s. 15 (equality rights).

- Bill 124 is **not a reasonable limit that can be justified under s. 1 of the *Charter***
    - Ontario's statement of its objective conflates the means of achieving an objective with the objective itself. The responsible management of Ontario's finances and the protection of sustainable public services is an objective which may be capable of meeting the pressing and substantial need test. The moderation of

public-sector wages strikes me more as a means to achieve responsible financial management than as an objective in itself. (para 257).

- As a result, Justice Koehnen defined the objective of Bill 124 "as the responsible management of Ontario's finances and the protection of sustainable public services."
- Budgetary considerations will not constitute **pressing and substantial objectives** under s. 1, absent a fiscal or economic crisis
  - Para 13: "Ontario was not facing a situation in 2019 that justified an infringement of Charter rights. In addition, unlike other cases that have upheld wage restraint legislation, Bill 124 sets the wage cap at a rate below that which employees were obtaining in free collective bargaining negotiations."
  - Para. 289: "Ontario has not, however, 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 license plate sticker refunds that were more than 10 times larger than the savings obtained from wage restraint measures."
  - Ontario has not demonstrated that the economic conditions in 2019 were of a sufficiently critical nature to warrant infringing on the constitutionally protected right to collective bargaining.

- With respect to **rational connection**, Bill 124 in some cases applies to wages that are in no way connected to Ontario's budget or deficit or in respect of which Ontario already has other contractual protections that control Ontario's contributions. (Using examples from the Electricity sector, University sector and LTC sector).

- It is not **minimally impairing** because Ontario could have tried to voluntarily bargain wage restraint but didn't want to do so for fear of strikes.
  - "Ontario was imposing a statutory limit of 1% on wage increases because it feared that taking that position at the bargaining table would lead employees to exercise their constitutionally protected right to strike. That does not amount to a reasonable limit on the right to collective bargaining that can be demonstrably justified in a free and democratic society. Although inconvenient, the right to strike is a component of a free and democratic society. Strikes bring issues to the public forefront and allow their resolution to be influenced by public opinion."
  - The Act not only substantially interferes with collective bargaining but it materially interferes with the statutory autonomy of universities that has been a cornerstone of university governance for over 100 years.
  - PARA 337: "In the long-term care sector, Ontario has not explained why it could not freeze or limit any increases to the daily patient fee it pays to long-term care homes if that was in fact its concern. I appreciate that many of these alternative measures may have created political difficulties for a government. The fact that it may be more politically convenient to infringe on a Charter right than to refuse additional funding to long-term care homes or universities does not, however, justify the infringement. If political convenience were the test, it would be far too easy to infringe on Charter rights on a regular basis."

  - Ontario has not provided any satisfactory explanation for why it could not limit wage increases during collective bargaining negotiations, the **negative effects of the Act outweigh its benefits.**
    - The government pointed to the fact that public sector wages are alleged higher than private sector wages and that Bill 124 moderates this as a salutary effect of the Bill. This argument was rejected by Justice Koehnen. Para. 345: “[T]he desire to eliminate alleged differences between public and private sector wages is an attempt to reverse the benefits of collective bargaining. In effect, the government is using its desire to undo the benefits of the Charter right to collective bargaining as a justification to infringe on that very right.”

- With respect to **remedy**, Justice Koehnen declared the Act to be unconstitutional and deferred the specific remedy to a later hearing.

- Sections 32 and 34 of the Act purport to preclude any action against the Crown arising out of the Act or any repeal of any provisions of the act. However, Justice Koehnen held that to the extent that ss. 32 and 34 of the Act purport to preclude any remedy for the breach of Charter rights that ensued as a result of the Act, they too are constitutionally invalid.