

Putting Students First Act 2012

Members of the Committee, thank you for the opportunity to make submissions on Bill 115. As you know, the Canadian Civil Liberties Association has been actively protecting the rights of Canadians since 1964. The CCLA has intervened in hundreds of court cases, and has made many submissions to legislatures, legislative committees, and other government bodies on the fundamental rights set out in the *Canadian Charter of Rights and Freedoms* and elsewhere in the Constitution.

I am here as a constitutional lawyer on behalf of the CCLA, because the CCLA believes that Bill 115 is undemocratic and unconstitutional.

Everyone is aware that the economic situation of the Province of Ontario is a matter of concern and that Ontarians need to make sacrifices. Everyone agrees that the government has the responsibility to attempt to stimulate the economy and may also decide to curtail its expenses. Everyone agrees that this creates challenges for the provincial government. But must this also mean undermining democratic values?

Bill 115 has extraordinary provisions. It gives power to the Minister and Cabinet to impose or remove terms of a negotiated collective agreement, to restrict strikes and lock-out even if no strike or lockout is threatened or even on the horizon, and to demand that workers pay back salaries that they are entitled to under bona fide agreements with school boards. It also purports to limit legal remedies and judicial oversight. All this is done in the name of restraint.

The CCLA believes that Bill 115 goes too far. On its face, it violates the *Charter* right to meaningful collective bargaining: the essential terms of agreements are already dictated and all agreements must be similar or identical with respect to these terms or they will be void to the extent that they deviate from those terms. It certainly violates the right to strike to express one's discontent, by giving the power to the Minister to prohibit a strike or lock-out even if the parties are in a legal position to do so. It certainly undermines the democratic process by giving wide-ranging powers to Cabinet or the Minister, with little or no input from the Legislature.

The government argues that Bill 115 is "necessary". But no such necessity has been demonstrated. We question why the Government believes that it is "necessary" to prevent the exercise of the right to strike before any strike or lock-out occurs. We see no reason why it should be considered "necessary" to impose terms on negotiating parties, even before knowing whether they are at an impasse or what outcome they would have negotiated for themselves. We believe that the government is engaging in pre-emptive law making, denying the rights of employees "just in case". That, with respect, is not good enough in a democracy.

In general, we demand evidence of major disturbances or ruinous disruptions prior to enacting back-to-work legislation that infringes collective bargaining rights. There is a good reason why this has been the case in Canada. Engaging unions, and through them, workers, to negotiate terms for their labour is fundamentally democratic. It is rooted in the idea of the dignity of human beings to sell their labour on terms that they accept. Collective bargaining is a constitutional right for this reason, because it

enhances the dignity of workers, and not just because it has been demonstrated to reduce the exploitation of workers. Collective bargaining is not only about the pocket book, it is also about participating in the governance of the workplace. Respect for collective bargaining is a good investment in the capacity of people to self-govern.

This Bill does not respect collective bargaining. The CCLA believes that it is highly vulnerable to constitutional challenge. The government appears to share this view – that’s why the Bill attempts to prevent or hinder constitutional challenges by limiting access to the Courts and tribunals. But if the Bill is passed, a constitutional challenge looks to be inevitable.

The government says that it is acting to support education. But this bill may be teaching students the wrong democratic messages, that is: if you are in a minority government, you should attempt to by-pass the Legislature by giving Cabinet, rather than the Legislature, the right to intervene; if you are worried about negotiated settlements, you should grab power by legislating in advance instead of letting people exercise their rights and only intervening if this creates a real problem; if you are worried about overstepping the law, you should refuse to submit to the courts. The government has called this Bill the “Putting Students First Act”, but a more honest title would be “Putting Democracy Last”.

The Bill should not be passed.