

## **Sweeping labour code changes mostly bypass construction industry**

by Ian Harvey Oct 27, 2017

As the Ontario legislature debates Bill 148 to bring a multitude of changes to employment and labour law, including raising the minimum wage to \$15 an hour, there's little impact on the construction sector, says leading Toronto labour lawyer Martin Z. Rosenbaum.

Bill 148, The Fair Workplaces, Better Jobs Act, 2017, (was in second reading) would make wholesale changes to the Employment Standards Act (ESA) and the Ontario Labour Relations Act (OLRA).

While provisions around temporary workers, emergency leave and minimum wage won't impact the construction sector there were concerns that changes to how union certification proceeds would have an impact.

However, on close reading of the massive bill, Rosenbaum, of Rosenbaum and Ibe, says the wording specifically excludes the construction sector which is defined under Section 126.1 of the OLRA.

"I read the summaries and commentaries and then I read the act several times to get to that," says Rosenbaum who acts for clients during certification and grievance processes.

"But clearly the construction industry is such a unique sector it makes sense to exclude it here. In drafting this someone has gone through this very meticulously to exclude the construction sector."

However, there are some rumblings in the construction sector, some about the lack of consultation prior to the changes being tabled, the balance over the prospect of change and unintended consequences.

However, **Andrew Pariser, vice-president of RESCON**, says he's still concerned that the mass of changes to both the ESA and the OLRA could pose problems down the road.

"While we support many things in this Bill and we are appreciative that changes have been made to exclude the construction sector from some of the changes, since it was first tabled and since we made our submissions last July, there are still issues around change," he says.

"We have a level playing field right now in construction where everyone knows the rules and what's expected of them. It's a balance between the unions, the employers and owners. We're

concerned that any changes may ultimately change the years of jurisprudence and have a series of unintended consequences."

While the opposition at Queen's Park and others are focused on the minimum wage increase, that won't really affect the construction sector where wages are already much higher, he says.

"This is a very sensitive sector," he says. "It doesn't like uncertainty. It likes stability."

He says RESCON and all organizations in the industry support the individual workers' right to choose who represents them and that it's not uncommon for trades to change bargaining agents.

"We just worry it's like renovating an old house because these are old pieces of legislation," he says.

"When you tear into a wall and suddenly you find something you didn't expect and now instead of just a kitchen you've got to renovate the basement."

General changes to the OLRA will speed up the certification process for non-construction businesses, says Pat Dillon of the Provincial Building and Construction Trades Council of Ontario, which represents 150,000 trades workers.

"It will mean getting a list of employees from the employer will be easier and stop the games they sometimes play," he says.

Dillon also noted the restoration of some of the powers of the OLRB will speed things up. These powers were originally brought in by then Ontario Premier Bob Rae of the NDP and then taken out by the subsequent Conservative government of Mike Harris.

"This will clean up the rules to expedite decisions which will probably mean less hours at the Ontario Labour Relations Board for lawyers."

Bill 148 brings card-based union certification for the temporary help agency industry, the building services sector and home care and community services industry, aligning it with the construction industry practice.

It eliminates conditions for remedial union certification, allowing unions to more easily get certified when an employer engages in misconduct that contravenes the OLRA.

And it also makes access to first contract arbitration easier, adding an intensive mediation component to the process.

Rosenbaum says restoring the powers of the OLRB to order automatic certification in the event of a bad faith actions or breach of the rules by an employer during the process will clean things up.

"That hammer was always there but it's something employers should never do anyway," he says.

"I always tell them, contact me before you do anything, it's better to spent \$250 with me now than \$25,000 to deal with it at the OLRB."