

Recent Policy Change Can Reduce the Healthcare Staff Shortage

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This week, there was a major victory for public sector employees, and for all Ontarians whose care is affected by the shortage of healthcare workers!

Bill 124 has been challenged for being unconstitutional 10 times, and in September 2022, all 10 applications were reviewed one after the other over the course of 10 days ([source](#)). On Tuesday, November 29, the Ontario Superior Court of Justice struck down Bill 124 ([source](#)).

Justice Markus Koehnen declared that Bill 24 is unconstitutional because it infringes on employees' constitutional rights to freedom of association and collective bargaining ([source](#)). These rights are guaranteed under section 2(d) of the Canadian Charter of Rights and Freedoms, which is part of Canada's constitution ([source](#)).

Justice Koehnen said that the specific remedy to this issue will be decided at a different hearing in the future ([source](#)).

What is Bill 124?

Bill 124 was introduced in Ontario by the Ford Government in 2019 ([source](#)). This bill limited the compensation given to many public service workers including nurses, nurse practitioners, personal support workers, and other healthcare workers at hospitals, Long-Term Care facilities, and in the community ([source, Section 5](#)).

Although this article is about healthcare workers, to grasp how influential this decision is, it's relevant to mention that this bill also applied to:

- teachers at most public school boards
- employees at every public university and every college of applied arts and technology
- workers at not-for-profit community organizations that received at least \$1 million in funding from the Government in 2018 or later (including shelters and other non-profits that connect people with housing) ([source, Section 5, source](#)).

In total, Bill 124 applied to approximately 780,000 employees in the public sector ([source](#)).

Bill 124 made it so that these employees' compensation could only be increased by a maximum of 1% per year for three years ([source, Section 11\(1\)](#)). The only exception was for employees who could get an individual salary increase based on: their performance, the amount of time they have been employed, and completing more professional or technical

education ([source, Section 12\(2\)](#)). However, these employees couldn't bargain collectively for increases to everyone's compensation within their sector.

The Ford government said that this Bill was a time-limited approach to help eliminate the deficit ([source](#)). The province had argued it was under severe financial strain when it implemented the new law ([source](#)). The judge, Justice Koehnen, disagreed ([source](#)).

“On my view of the evidence, 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,” Justice Koehnen said ([source](#)).

The judge's ruling stated that Bill 124 “is not a reasonable limit on a right that can be demonstrably justified in a free and democratic society under s.1 of the charter” ([source](#)). “As noted, the right to strike is constitutionally protected. Although inconvenient, the right to strike is a component of a free and democratic society,” he stated ([source](#)).

How Will Striking Down Bill 124 Reduce Healthcare Staff Shortages?

Throughout the pandemic, nurses and other healthcare workers' workload has increased, and so has their level of burnout ([source](#)). Since Ontario healthcare workers are not being fairly paid, they are leaving the province and the country. It's also common for healthcare workers to leave the public sector for better pay and working conditions in the private sector ([source](#)).

According to healthcare workers, Bill 124 has been a significant reason behind healthcare staff shortages, including the “mass resignation” of nurses from Ontario's public sector ([source, source, source, source](#)).

“Nurses are leaving in droves, citing overwork, burnout, moral distress and disrespect from the Ford government, which attacked their rights and capped the wages they fairly negotiated,” says Angela Preocanin, Vice-President of the Ontario Nurses' Association (ONA) ([source](#)). The ONA is the union representing more than 68,000 registered nurses and health-care professionals, as well as 18,000 nursing student affiliates ([source](#)).

This statement is supported by the healthcare workers who rallied against Bill 124, including Registered Practical Nurse Tanya Rahim-Juttlah, who said: “Everyone has been cut back. People are leaving in droves. The patients don't have the care they're supposed to have with less of us there ([source](#)). Yesterday, Ontario Health Minister Sylvia Jones denied that Ontario nurses are leaving their jobs and that there is a nursing staffing crisis ([source](#)). The ONA released a statement yesterday that this is factually inaccurate and misleading ([source](#)).

Bill 124 being struck down gives healthcare workers and public sector employees their ability to collectively bargain for not just better wages, but also for highly needed mental health supports ([source](#)).

The idea is that, with the ability to collectively bargain for better wages and working conditions, the healthcare workers who had left will return, resulting in better care for patients. Ideally, this would lead to hospitals being in a much more stable state, including reducing the wait times for care, which have been continuously growing longer and longer ([source](#)).

What's next?

The Ford government stated that their “intention is to appeal” the Supreme Court’s decision ([source](#), [source](#)). Yesterday, Ford stated that he will not be using the notwithstanding clause like he did earlier in November ([source](#)). He invoked that part of the Charter to try and prevent education workers from exercising their rights to freedom of association and collective bargaining in order to keep kids in classrooms ([source](#)). Click [here](#) to read more about that story.

The news about the Bill 124 decision happened on the same day that the Financial Accountability Office (FAO) announced the province underspent approximately \$859 million on health over the past year ([source](#)).

In September, the FAO said Bill 124 would save the province \$9.7 billion in public-sector salaries and wages ([source](#)). But if the law was overturned and repealed, it could cost the province \$8.4 billion over five years, including a potential \$2.1 billion in retroactive payment to the majority of workers already affected by it, the FAO said ([source](#)).

Justice Koehnen said that the provincial government’s tax cuts and licence plate sticker refunds were more than 10 times larger than the savings from Bill 124 ([source](#)).

Final Thoughts

Although not paying healthcare workers has saved the province lots of money, when you consider the impact of a healthcare system in crisis, the cost is too high.

The decision to strike down Bill 124 happened almost a week after the leaders from five of Ontario’s largest healthcare unions issued an appeal to the Ford government saying that its plan to address the healthcare crisis is “failing miserably” ([source](#)).

In the past month, several hospitals across the province have been warning patients about increased wait times and some have been cancelling or reducing non-emergent surgeries due to higher demand related to an increase in flu, RSV and COVID-19 cases ([source](#)).

Click [here](#) to read more about the current strain on the pediatric healthcare system, and click [here](#) to read more about how we got to this low point in terms of healthcare staff shortages.

If you think you may be experiencing symptoms of COVID-19, take the self-assessment at www.ontario.ca/coronavirus. Follow all directions from your medical provider or your local health unit at the following phone numbers:

Health Connect Ontario: 811

Telehealth Ontario: 1-866-797-0000

Toronto Public Health: 416-338-7600

Peel Public Health: 905-799-7700

Durham Region Health Department: 905-668-7711

York Region Public Health: 1-877-464-9675