



Queen's
UNIVERSITY

Centre for Law in the
Contemporary Workplace

Wage Restraint Bills and the Charter: The Road Ahead for Law and Labour Relations

April 14, 2023

Queen's University Smith School of Business

200 Front St. W. #3020, Room #174

Toronto, Ontario

Workshop Organizers:

Prof. Kevin Banks and Prof. Richard Chaykowski

Queen's University

1.00–1.05pm **Welcome Remarks**

Kevin Banks, Associate Dean (Faculty), Associate Professor, Queen's Law; Director, CLCW
Richard Chaykowski, Professor, Queen's Employment Relations

1.05–1.10pm **Introduction – Framing the Issues**

The Ontario Superior Court of Justice recently struck down Ontario's Bill 124 as an infringement of Charter freedom of association that could not be justified as a reasonable limit. The decision, if it stands, will have major repercussions for workers, unions and employers in Ontario's public sector and beyond. This workshop will explore the work law, constitutional law, and industrial relations and labour policy implications of Bill 124.

Speaker: **Kevin Banks**, Associate Dean (Faculty), Associate Professor, Queen's Law, Director, CLCW

Background Resources

Bill 124, Protecting a Sustainable <https://www.ola.org/en/legislative-business/bills/parliament-42/session-1/bill-124>

Public Sector for

Future

Generations Act,

2019

Ontario English <https://www.canlii.org/en/on/onsc/doc/2022/2022onsc6658/2022onsc6658.html>

Catholic Teachers

Assoc. v. His

Majesty, 2022,

2022 ONSC 6658

(CanLII)

1.10–2.35pm

Session 1

The Bill 124 Case and Beyond - Bringing Charter Restraints on Wage Restraints into Focus

The Ontario government has appealed the Ontario Superior Court of Justice Bill 124 decision. Regardless of the outcome, the litigation will clarify:

- (1) when will a wage restraint bill amount to substantial interference with Charter freedom of association such that it infringes it?
- (2) under what conditions and on the basis of what evidence could wage restraint legislation that does infringe the freedom be demonstrably justified as a reasonable limit on it?

This panel will take up these questions, situating the Bill 124 decision in the context of precedents from the Supreme Court of Canada and Courts of Appeal across the country, and consider implications for labour relations in the public sector.

The panel will then turn to a third question. The Ontario government recently invoked the notwithstanding clause (section 33) of the Constitution Act in legislation to impose a wage settlement on public sector education workers. It then rescinded the legislation in the face of public opposition. But it is not the first government to apply the notwithstanding clause to workplace legislation.

This demonstrated willingness to invoke the clause in a collective bargaining context raises the question of whether governments may do so again, particularly if political conditions are different. If so, might affected unions and employees access the courts to seek a declaration of Charter infringement, with a view to influencing public debate on whether the government's use of the notwithstanding clause should continue?

Panel Chair: **Kevin Banks**, Associate Dean (Faculty), Associate Professor, Queen's Law, Director, CLCW

Speakers: **Steven Barrett**, Partner, Goldblatt Partners

Richard Charney, Senior Partner, Norton Rose Fulbright Canada LLP

Perri Ravon, Partner, Juristes Power Law

Susan Ursel, Partner, Ursel Phillips Fellows Hopkinson

2.35–2.55pm

Rest Break

2.55–3:45pm

Session 2

What are the Larger Implications for Public Sector Labour Relations?

One overarching policy issue raised by Charter legal developments and ongoing legislative interventions is whether the model of collective bargaining and regulating strikes in public and essential services is broken. This possibility raises the fundamental questions of:

- (1) Can government policy autonomy be reconciled with respect for free collective bargaining in the public sector?
- (2) Is the existing model of labour relations, with its roots in the private sector model of collective bargaining combined with the right to strike/lockout, sustainable in the emerging environment?

The session will explore these larger industrial relations issues for the future of public sector industrial relations, from the perspectives of industrial relations researchers.

Speakers: **Sara Slinn**, Associate Professor, Osgoode Hall Law School

Bruce Curran, Associate Professor, University of Manitoba

Richard Chaykowski, Professor, Queen's Employment Relations

Rafael Gomez, Professor; Director of the Centre for Industrial Relations and Human Resources, University of Toronto

3.45–4:20pm

Session 3

What are the Larger Implications for Public Policy?

The challenges posed by Charter legal developments and ongoing legislative interventions also raise some fundamental policy questions, first identified at the origins of our public sector labour relations system, but largely avoided since then, including:

- (1) Can the current public sector industrial relations system accommodate government “exceptionalism”?
- (2) What are the stakes for the stakeholders and the public?

The session approaches these issues, from the perspectives of former policy makers, with a view to shedding light on the implications for labour policy.

Speakers: **Anthony Giles**, Adjunct Professor, Queen’s Employment Relations Department and former Assistant Deputy Minister, Government of Canada

Tim Hadwen, former Assistant Deputy Minister, Government of Ontario

4:20–4:30pm

Closing Remarks