CITATION: Ontario Public Service Employees Union et al. v. The Crown in Right of Ontario, 2026 ONSC 1010
COURT FILE NO.: CV-18-00604529-0000
DATE: 20260225

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
	)	
ONTARIO PUBLIC SERVICE EMPLOYEES UNION et al	)	*Andrew Lokan*, *Jodi Martin* and *Shyama Talukdar*, for the Applicants
Applicants	)	
– and –	)	
	)	
THE CROWN IN RIGHT OF ONTARIO	)	*Sean Hanley* and *Sean Kissick*, for the Respondents
Respondents	)	
	)	
	)	**HEARD:** October 21, 2025, with additional written submissions provided December 23, 2025 and January 9, 2026

PARGHI, J.

REASONS FOR JUDGMENT

[1] On October 16, 2017, members of the Ontario Public Service Employees Union/Syndicat des employés de la function publique de l'Ontario ("OPSEU") went on strike. OPSEU is the bargaining agent for support employees and full-time academic staff at Ontario's 24 colleges of applied arts and technology. The strike began after OPSEU and the bargaining agent for the colleges, the College Employer Council (the "Council"), were unable to negotiate a new collective agreement. It would go on to become the longest strike in the colleges' history, affecting hundreds of thousands of students.

[2] Three weeks into the strike, OPSEU and the Council negotiated a resolution of some of the issues between them. During those negotiations, the Government of Ontario, led by Premier Kathleen Wynne, committed to create and fund a joint task force named "Ontario Public Colleges: The Next 50 Years" (the "Task Force"). The Task Force would include representatives from both OPSEU and the Council, and was intended to assist OPSEU and the Council in reaching an agreement. OPSEU and the Council agreed to terms describing the establishment, mandate, and funding of the Task Force, and those terms were captured in a Letter of Understanding between them. Although OPSEU and the Council were able to agree on the Task Force, they were unable

to resolve various other issues between them and did not agree on a new collective agreement. They did not sign the Task Force Letter of Understanding. The strike continued.

[3] On November 19, 2017, the Government proposed back-to-work legislation, which the Legislative Assembly enacted. Under the legislation, an arbitrator was appointed to settle all remaining issues between the Council and OPSEU. The arbitrator conducted an issues arbitration and issued a binding award on December 20, 2017. The award included the (unsigned) Task Force Letter of Understanding and characterized it as a "new Lette[r] of Understanding" that "shall be added to the Collective Agreement".

[4] In January 2018, Cabinet issued Orders in Council establishing the Task Force and funding it. These steps were taken pursuant the *Ministry of Training, Colleges and Universities Act*, R.S.O. 1990, c. M. 19 and the *Legislation Act, 2006*, S.O. 2006, c. 21, Sched. F.

[5] The Task Force met six times in the first half of 2018. It delivered its interim report in May 2018.

[6] In June 2018, there was a provincial election and change of government. The following month, the newly elected government, led by Premier Doug Ford, revoked the Orders in Council and cancelled the Task Force.

[7] The applicants, OPSEU and J.P. Hornick, then the Chair of the OPSEU Bargaining Committee, now bring this *Charter* challenge to the Government's cancellation of the Task Force. They submit that the Task Force was agreed to in collective bargaining between OPSEU and the Council, that the Government induced OPSEU to change its bargaining position based on the Government's commitment to create and fund the Task Force, and that the Government's cancellation of the Task Force before it had completed its work amounted to substantial interference with the applicants' right to collectively bargain, in violation of section 2(d) of the *Charter*. The applicants say the Government's refusal to honour its commitment to the Task Force "tipped the balance of power in favour of" the Council and the Government's own interests and that this "was the antithesis of" the required process of "good faith negotiations and consultations" under section 2(d). They further state that the cancellation of the Task Force cannot be justified under section 1 of the *Charter*. The applicants request declaratory relief, an order that the Task Force be re-established and its funding restored, and damages for breach of the *Charter* rights of OPSEU members.

[8] For the reasons below, I dismiss the application. I find that the existence of the Task Force is not protected under section 2(d), and the Government's June 2018 termination of the Task Force via Order in Council did not substantially interfere with the section 2(d) rights of OPSEU's members.

The Statutory Framework

[9] Ontario has 24 colleges of applied arts and technology, which together deliver approximately 3,000 postsecondary programs across four divisions: applied arts, business, health, and technology. The colleges also deliver Employment Ontario training programs in areas such as apprenticeship, employment services, and literacy and basic skills. In fall 2017, roughly 377,396

students were enrolled as full- or part-time students in Ontario's colleges or participating in Employment Ontario training programs through them.

[10] The colleges are funded by the Ministry of Colleges and Universities (formerly called the Ministry of Applied Education and Skills Development) and established by Regulation 34/03 under the *Ontario Colleges of Applied Arts and Technology Act, 2002*, S.O. 2002, c. 8, Sched. F (the "*OCAATA*"). Under the *OCAATA*, each college is a Crown agent (section 2(4)) and has a board of governors (section 3(1)). The Ministry may issue binding policy directives on how the colleges carry out their objects or conduct their affairs (subsections 4(1) and 4(2)).

[11] The *Colleges Collective Bargaining Act, 2008*, S.O. 2018, c. 15 (the "*CCBA*") governs collective bargaining at the colleges. It defines the bargaining parties, their roles, the bargaining process, and the terms and conditions of employment before and during a strike. It also defines the bargaining units in the college sector. Those bargaining units are province-wide (Schedule 1). The *CCBA* also incorporates by reference sections of the *Labour Relations Act, 1995*, S.O. 1995, c. 1, Sched. A, and gives certain responsibilities to the Ontario Labour Relations Board.

[12] The *OCAATA* establishes the Council – a corporation that has separate legal status apart from the colleges and the Government – and grants the Council exclusive responsibility for collective negotiations on behalf of college employers conducted under the *CCBA* (section 24). The board of directors of the Council consists of the chair and president of each college (section 7.1(9)).

Factual Background

The start of negotiations and their breakdown

[13] On July 4, 2017, OPSEU served the Council with notice to bargain a renewal collective agreement. The collective agreement in force between them at the time was due to expire on September 30, 2017. The main issues that OPSEU sought to negotiate with the Council were academic freedom, college governance, and a reduction in the number of contract faculty.

[14] The Government states that it monitored statements and updates regarding the negotiations from OPSEU and the Council from when the negotiations began in July until the back-to-work legislation was passed in mid-November 2017. During the negotiations, there arose what the Government calls a "protracted bargaining deadlock" between OPSEU and the Council. According to the Government, OPSEU's position was that there would be "no labour peace" unless there was "movement" from the Council on the issues of central importance to OPSEU. The Council took the opposing position that there would be no settlement that included items that fundamentally changed the College system's governance and management structure, such as the establishment of senates or the inclusion of academic freedom language.

[15] OPSEU and the Council participated in a conciliation process led by a Ministry of Labour-appointed conciliator, pursuant to a request by OPSEU under section 17(1)(b) of the *CCBA*. The conciliation effort did not succeed.

[16] On October 15, 2017, bargaining between OPSEU and the Council broke down. A lawful strike started the next day. All instruction across the college system was cancelled.

[17] During the second week of the strike, Deb Matthews, the Minister of Advanced Education and Skills Development (as the Ministry was then called), met with each of the sides, urging them to negotiate a resolution to their dispute. There was no resolution.

The resumption of negotiations and the Task Force Letter of Understanding

[18] Early during the negotiations, Bob Eaton, the Executive Assistant to the President of OPSEU, had the idea that a task force with members from both the Council and OPSEU might be an effective method for addressing some of OPSEU's priority concerns in the bargaining.

[19] In the fall of 2017, Mr. Eaton, together with the President of OPSEU, raised the idea of the Task Force with Marc Rondeau, an Assistant Deputy Minister at the Treasury Board Secretariat who was responsible for labour and compensation. Mr. Rondeau connected them with Greg Orencsak, Deputy Minister of Advanced Education and Skills Development.

[20] OPSEU and the Council resumed negotiations on November 2, 2017. The following day, Ron Elliott, the Administrator of OPSEU's Central Local Services and Collective Bargaining Division, proposed to OPSEU's bargaining team that they support the creation of the Task Force. He said that he had spoken with Don Sinclair, Chief Executive Officer of the Council, who was "fine" with the idea. Mr. Rondeau, Mr. Orencsak, Reg Pearson (the Associate Deputy Minister at the Treasury Board Secretariat), and others began to work with the Council and OPSEU to sort out terms for a Letter of Understanding on the establishment, mandate, and funding of the Task Force.

[21] By November 4, 2017, two versions of the draft Task Force Letter of Understanding were under discussion. One was proposed by the Council and the other by OPSEU. Both versions included language providing that the Task Force would be created and funded by the Government. Both versions were reviewed and vetted by the Government.

[22] Don Sinclair, Chief Executive Officer of the Council, sent the Council's draft of the Task Force Letter of Understanding to Mr. Orencsak and Mr. Rondeau. Mr. Orencsak forwarded that proposal, together with "mark-ups" based on his and Mr. Rondeau's review, to staff at the Premier's Office, the Minister's Chief of Staff, and Associate Deputy Minister Pearson.

[23] The Minister's Chief of Staff and Mr. Pearson voiced concern with the proposal that the Task Force's final report be delivered in May 2018, in advance of the anticipated election. Mr. Orencsak proposed amended language that would provide for an interim report in May 2018 and a final report to follow in the fall. The language he proposed was incorporated almost word-for-word in the provision of the final Task Force Letter of Understanding:

> The government will work together with both Parties to establish the taskforce, including its terms of reference and membership, so that its work can get underway by no later than January 1, 2018. The taskforce would seek input and undertake consultations in all major regions of the province. It will report to the Minister of Advanced Education and Skills Development with interim findings around May 2018 and a final report by the Fall of 2018.

[24] The Premier's Office staff member stated that the timing of the report would be crucial and that, after confirming with the Chief of Staff and Principal Secretary in the Office of the Premier, they were "good to go".

[25] In the meantime, Mr. Eaton provided Mr. Rondeau with OPSEU's draft of the Task Force Letter of Understanding. This version of the Letter of Understanding had signature lines for each of the Council, OPSEU, and the Ministry. Mr. Rondeau in turn sent this draft to Mr. Orencsak and Mr. Pearson. In response, Mr. Orencsak reiterated that the timing of the Task Force would need to align with the timing of any potential election. He also confirmed that the Government wanted to play a facilitative role with the Task Force's work. Mr. Rondeau, Mr. Sinclair, and Mr. Eaton exchanged several emails about OPSEU's draft.

[26] Mr. Rondeau sent a revised draft to Mr. Sinclair, who said he would need to review it with his team because if they were going to sign it, they would "have to be comfortable with the language as well." Mr. Orencsak responded that there was language in the draft "about the role of the ministry and government commitments to consider the recommendations, which we will have to be comfortable with. … I will need to socialize folks on my end to get them on side."

[27] That night, OPSEU tabled a proposal for the Task Force at the bargaining table. The tabled proposal incorporated the points and language that came from the Government.

[28] On November 6, 2017, OPSEU delivered a Comprehensive Offer for Settlement that included the Task Force Letter of Understanding. OPSEU states that in the offer, it agreed to remove contentious language defining college faculty academic freedom, and to remove a provision that would have set faculty complement ratios at 50-50 full time faculty to non-full-time faculty. It submits that it made these "significant" concessions "in reliance on" the commitment that the Government had made to OPSEU to create and fund the Task Force.

The continuation of the strike and back-to-work legislation

[29] Although OPSEU and the Council reached an agreement on the Task Force, they were unable to resolve the remaining issues between them. On November 6, 2017, the Council tabled a final offer and asked that the Ontario Labour Relations Board schedule a final vote on the offer under s. 17(2) of the *CCBA*. That vote took place from November 14-16, 2017. The offer was rejected by a vote of 86% to 14%.

[30] On November 16, OPSEU and Council representatives met with the Premier and Minister Matthews, who urged them to come together to reach a negotiated settlement or agree to binding arbitration. Later, each party separately advised the Ministry that they had been unable to reach an agreement and were in complete deadlock.

[31] On November 17, 2017, the Government introduced back-to-work legislation entitled the *Colleges of Applied Arts and Technology Labour Dispute Resolution Act, 2017*, S.O. 2017, c. 21. The Legislative Assembly quickly enacted the legislation, and it came into force on November 19, 2017. The legislation required that all bargaining disputes between OPSEU and the Council be resolved via binding mediation/arbitration. The strike ended, full-time faculty returned to work, and a mediation-arbitration was scheduled to be held.

[32] On November 21, 2017, while speaking in the Legislature, Minister Matthews cited the Task Force as something the Government had done in an effort to help to find a negotiated resolution to the strike at the bargaining table:

> We let the process play out; we engaged ourselves as we could to try to find a resolution. One of those things is that we're setting up a task force to look at some of the big issues facing the future of our colleges.

[33] OPSEU and the Government construe the Minister's comments differently. OPSEU submits that the comments show that the Government benefitted from committing to set up the Task Force, which in turn demonstrates that it was a promise made under the rubric of the collective agreement. The Government states that the Minister made these comments after the back-to-work legislation had passed and before the mandated arbitration took place. This timing suggests that OPSEU and the Council were no longer in the world of collective bargaining, and that the Government had made a policy decision, entirely outside of the collective agreement, to proceed with the Task Force. OPSEU says that these comments underscore that the Government was choosing, as a matter of policy, to proceed with the Task Force even though OPSEU and the Council had failed to reach a collective agreement.

The mediation-arbitration

[34] The mediation-arbitration mandated under the return-to-work legislation was held from December 14 to 16, 2017. It was conducted by William Kaplan, who, both OPSEU and the Government agree, is an experienced and expert arbitrator. The parties to the mediation-arbitration were OPSEU and the Council. Both of them made submissions. The Government did not participate.

[35] On December 14, 2017, Mr. Orencsak emailed Mr. Eaton, copying several Ministry staff members, about the creation of the Task Force:

> While as we discussed earlier, the gov't will obviously wait for the outcome of the med-arb process to set up the Task Force on colleges, I was wondering if you and anyone you'd like to bring is available next week for a short chat about it. I'd like us to be ready to hit the ground running quickly on this when we have the green light, so I thought we'd benefit from comparing notes informally.

[36] Arbitrator Kaplan issued his award on December 20, 2017. His award contained the terms for a new collective agreement that would be in force from October 1, 2017, to September 30, 2021. The award also described the (unsigned) Task Force Letter of Understanding as the first of several "new Letters of Understanding" that "shall be added to the Collective Agreement". The Task Force Letter of Understanding thus incorporated into the Collective Agreement was in substance the same as the (unsigned) Task Force Letter of Understanding which the Ministry had previously supported. However, the version of the Letter of Understanding in the collective agreement did not have any signature lines.

[37] The text of the Task Force Letter of Understanding in the collective agreement provided:

a. That the parties (OPSEU and the Council) "agree to request the government to establish a Province-wide Task Force, facilitated by the Ministry of Advanced Education and Skills Development";

b. That the Task Force "shall include representation from key stakeholders" including the Ministry and the Council;

c. That the Task Force "will consider and develop recommendations on" various issues including faculty complement and contract work, funding, accessibility and student success, and academic governance;

d. That the Ministry "agrees to accept and endorse this initiative, accepting signatory status as facilitator for the Task Force";

e. That the Ministry, "by accepting and endorsing this agreement, also commits that all recommendations of the Task Force will be considered for funding by cabinet"; and

f. That the "government will work together with" OPSEU and the Council "to establish the Task Force, including its terms of reference and membership, so that its work can get underway by no later than January 1, 2018. The Task Force … will report to the Minister … with interim findings no later than May 18, 2018 and a final report that will be received by the Minister by the Fall of 2018."

The creation and funding of the task force

[38] On January 18, 2018, Cabinet issued Order in Council 106/2018, establishing the Task Force pursuant to its authority to "appoint such advisory committees or other consulting bodies as are considered necessary from time to time" under section 4 of the *Ministry of Training, Colleges and Universities Act*. The Order in Council provided that the Task Force was to be composed of members appointed by the Minister to serve at the pleasure of the Minister. It further provided that the Task Force itself and the appointments to it would end no later than March 31, 2019.

[39] On January 24, 2018, Cabinet issued Order in Council 130/2018, providing for the remuneration of the Task Force's chair and members pursuant to its authority to "determine the remuneration and expenses of persons appointed by a Minister pursuant to an authority to appoint a person to an office" under subsection 76(2) of the *Legislation Act, 2006*. The Order in Council provided that the appointees to the Task Force would be remunerated up to a maximum of $25,500.

[40] The mandate of the Task Force was "to provide the Minister with a report, including a forward-looking plan that supports the publicly assisted college system in the delivery of high-quality career-focused education and training that is accessible to students, responsive to employer needs in a rapidly changing economy and helps students prepare for success in today's highly skilled workforce." There was no obligation on the Minister or Cabinet to accept the recommendations in the Task Force's report. This was consistent with the Letter of Understanding.

[41] The Task Force had 20 members, including a chair, and five representatives each for students, OPSEU, and the colleges. As well, the Task Force included a member from industry, a

member from the francophone community, an economist, and a postsecondary education expert. The Chair of the Task Force was paid a maximum of $1,500 *per diem* and other non-public sector members were paid a maximum of $300 *per diem*. The Ministry also established a secretariat of Ontario public servants to provide administrative, research, and general staff support.

[42] The Task Force met six times from March through May 2018. On April 27, 2018, it delivered an interim report, which included non-binding recommendations and identified potential areas for future work.

The writ period, the election, and the cancellation of the task force

[43] On May 9, 2018, the Government entered the writ period ahead of the general election scheduled for June 7, 2018. The Government then took on its customary "caretaker role" pending the swearing-in of the next government, meaning that only routine, non-controversial, or urgent business was conducted. During the writ period, members of the Task Force were informed that no further working table meetings or consultations with constituent groups would be scheduled. The secretariat continued to do research in support of the Task Force, worked to onboard the vendor who had been hired to conduct jurisdictional research scans, and responded to any administrative matters that arose during the writ period.

[44] On June 7, 2018, the Ontario general election was held, resulting in a change in government.

[45] On June 18, 2018, the Secretary of Cabinet imposed a freeze on discretionary spending and new hiring except for essential services in anticipation of the change in government.

[46] On June 29, 2018, Cabinet issued Order in Council 988/2018, which revoked 44 Orders in Council, including Orders 106/2018 and 130/2018 regarding the Task Force.

[47] On July 13, 2018, the Chair of the OPSEU bargaining committee received a letter advising them of the Order in Council terminating the Task Force.

Analysis

The section 2(d) test

[48] OPSEU and the Government agree that the Government was not a party to any collective agreement between OPSEU and the Council. The issue before me is whether the Government's conduct nonetheless breached section 2(d) of the *Charter*, by having "substantially interfered" with activities that are protected under the guarantee of freedom of association.

[49] The Supreme Court of Canada has observed that the purpose of section 2(d) is "to promote the realization of individual potential through relations with others" (*Dunmore v. Ontario (Attorney General)*, 2001 SCC 94, [2001] 3 S.C.R. 1016, at para. 30).

[50] Since *Health Services and Support – Facilities Subsector Bargaining Association v. British Columbia*, 2007 SCC 27, [2007] 2 S.C.R. 391, the Supreme Court has recognized that, in the labour context, section 2(d) of the *Charter* protects the right to collective bargaining. As McLachlin C.J.

and Lebel J. wrote for the majority in that case, "the constitutional right to collective bargaining concerns the protection of the ability of workers to engage in associational activities, and their capacity to act in common to reach shared goals related to workplace issues and terms of employment" (*Health Services,* at para. 89). The Supreme Court has observed that section 2(d) "protects associational activity for the purpose of securing the individual against state-enforced isolation and empowering individuals to achieve collectively what they could not achieve individually" (*Mounted Police Association of Ontario v. Canada (Attorney General),* 2015 SCC 1, [2015] 1 S.C.R. 3, at para. 62). Summarily, section 2(d) protects three classes of activities: the right to join with others and form associations, the right to join with others in the pursuit of other constitutional rights, and the right to join with others "to meet on more equal terms the power and strength of other groups or entities" (*Mounted Police,* at para. 66).

[51] I am to apply a two-step framework for evaluating alleged infringements of section 2(d). First, I must consider whether the activities in question fall within the range of activities protected by the freedom of association guarantee. Second, I must assess whether the government action has, in purpose or effect, substantially interfered with those activities (*Société des casinos du Quebec inc. v. Association des cadres de la Société des casinos du Quebec*, 2024 SCC 13, at para. 5, citing *Dunmore*, at paras. 13 and 25).

[52] Under the first stage of the analysis, the activities protected under section 2(d) include "the right to form an association with sufficient independence from the employer, to make collective representations to the employer, and to have those representations considered in good faith" (*Société des casinos,* at para. 47, citing *Saskatchewan Federation of Labour,* 2015 SCC 4, [2015] 1 S.C.R. 245, at para. 29; and *Mounted Police,* at para. 81).

[53] The "substantial interference" stage of the analysis asks whether the actions taken by the government "disrupt the balance between employees and employer that s. 2(d) seeks to achieve, so as to substantially interfere with meaningful collective bargaining" (*Mounted Police,* at para. 72, citing *Health Services,* at para. 90). To constitute substantial interference, the intent or effect of the government action must be to "seriously undercut or undermine" the collective bargaining activity of the workers (*Health Services*, at para. 92). However, the right to collective bargaining under section 2(d) "is one that guarantees a process rather than an outcome or access to a particular model of labour relations" (*Mounted Police,* at paras. 67 and 93) or a "specific bargaining method" (*Health Services,* at para. 91).

[54] Determining whether the government has substantially interfered with the process of collective bargaining involves two inquiries, as stated in *Health Services,* at para. 93:

> The first inquiry is into the importance of the matter affected to the process of collective bargaining, and more specifically, to the capacity of the union members to come together and pursue collective goals in concert. The second inquiry is into the manner in which the measure impacts on the collective right to good faith negotiation and consultation.

[55] What is required to achieve "meaningful collective bargaining" free from substantial interference "varies with the industry culture and workplace in question" (*Mounted Police,* at para.

93). It is a "contextual and fact-specific" analysis (*Health Services,* at para. 92, cited in *Ontario Public Services Employees Union v. Ontario (Attorney General),* 2026 ONCA 74, at para. 14).

[56] Substantial interference may take the form of so-called "union-busting" legislation or actions, but also "less dramatic interference with the collective process," such as denying a union access to labour legislation, acting in bad faith, or unilaterally nullifying negotiated terms without meaningful discussion and consultation. "The question in every case is whether the process of voluntary, good faith collective bargaining between employees and the employer has been, or is likely to be, significantly and adversely impacted" (*Health Services*, at para. 92). Further, as part of the substantial interference analysis, consideration must also be given to whether the impugned government action is "responsible for" the inability of union members to exercise their section 2(d) rights (*Société des casinos*, at para. 50).

The parties' positions

[57] OPSEU states that the Government substantially interfered with its collective bargaining activity by inducing OPSEU to change its position during negotiations with the Council. It states that there was a high degree of Government involvement in proposing the Task Force and engaging in "three-way negotiations to establish" it. Moreover, the Government benefitted from what OPSEU calls the Government's "agreement" to create and fund the Task Force, because that "agreement" helped to "bring an end to a politically difficult moment": the longest strike in the history of the colleges. By committing to the Task Force, the Government "provided OPSEU … with a process that would investigate" some of its members' "most pressing concerns" and thus "induce[d]" OPSEU "to make concessions related to its central bargaining priorities of job security and collegial governance." The Task Force was accordingly "an inherent and integral part of the 'bargain' reached" through the collective agreement negotiations and "a key stepping-stone to ending the labour dispute." The Government's subsequent decision to terminate the Task Force therefore amounted to a substantial interference with OPSEU members' rights under section 2(d).

[58] The Government submits that the activity in which OPSEU seeks to engage is not collective bargaining, but rather the participation of its members in the Task Force, and, in turn, in the preparation of the Task Force report to the Minister. As such, the activity in question is not protected by section 2(d). Drawing on the Supreme Court's analysis in *Mounted Police*, the Government states that existence of the Task Force does not engage OPSEU members' right to join with others and form associations, to pursue its constitutional rights (because providing a report to the Minister through the Task Force does not involve the pursuit of constitutional rights), or to meet others on more equal terms (because the Task Force was "ultimately independent of the collective bargaining process," and, in any event, nothing precludes OPSEU from meeting with the Council to address the issues that fall under the Task Force's mandate, or to provide a report to the Minister with recommendations).

[59] In my view, the Government's framing of the activities in issue is rather narrow, because it focuses on the sheer existence of the Task Force and misapprehends OPSEU's position. It is clear from OPSEU's submissions that it considers the Government's role in the negotiations, and subsequent change of position, to have had direct and significant implications for the collective bargaining process between OPSEU and the Council. OPSEU's focus is not only on what it views as a negotiated outcome – the establishment of the Task Force – but on the dynamics of the

collective bargaining itself. It is the purported interference with this broader activity that I assess under section 2(d).

Analysis

Whether the activities in question are protected by section 2(d)

[60] There is no dispute that that collective bargaining is an activity that falls within the protection of section 2(d). As such, the first stage of the test under section 2(d) is met. The remaining issue before me is whether the Government substantially interfered with the collective bargaining process between OPSEU and the Council, in violation of section 2(d).

Whether the government action has substantially interfered with those activities

[61] At the second stage of the test, I must assess whether the Government's conduct has, in purpose or effect, substantially interfered with the OPSEU-Council collective bargaining process. This involves consideration of, first, the importance of the matter affected – the Task Force – to the collective bargaining process, and second, the manner in which the termination of the Task Force affects OPSEU members' collective right to good faith negotiation and consultation.

[62] OPSEU states that the Government induced it to change its bargaining position in reliance on the promise to establish the Task Force, which was "a process that would investigate some of the most pressing concerns for bargaining unit members." The Task Force was accordingly "an inherent and integral part of the 'bargain' reached" through the collective agreement negotiations and "a key stepping-stone to ending the labour dispute." The existence of the Task Force was a "significant contractual term in the collective agreement" and its cancellation without notice "has significantly undermined good faith collective bargaining as it relates to Ontario's colleges" and "significantly compromised" the "ability of parties to rely on any representation or promise made by the Government in the context of collective bargaining in the [c]ollege sector and the broader public sector".

[63] I am unable to agree.

[64] The Task force was not an integral part of the bargain, as OPSEU asserts, because there was no bargain. No agreement was ever reached between OPSEU and the Council. It was a failed negotiation. Despite the Government's extensive involvement, no collective agreement was reached before the deadline. After the deadline, OPSEU commenced a legal strike. Even after OPSEU and the Council returned to the bargaining table during the strike, they could not reach a deal. In response to the bargaining impasse, the Legislative Assembly enacted back-to-work legislation. There was no bargain at any stage.

[65] Nor does the record support OPSEU's claim that by promising the Task Force, the Government induced concessions from OPSEU. There is no evidence of any such inducements. Mr. Eaton himself described Mr. Rondeau's role as one of simply pushing OPSEU and the Council toward an agreement.

[66] Even if there was an inducement by the Government on which OPSEU relied – and I do not find that there was one – nothing came of this inducement, because the negotiations failed and

no agreement was ever reached between OPSEU and the Council. The inducement was of no consequence. It did not, as OPSEU put it, help to bring an end to a politically difficult moment by ending the strike. What ended the strike was the back-to-work legislation. OPSEU and the Council did not reach a collective agreement in response to any inducement, or at all.

[67] It makes no difference that Arbitrator Kaplan included the (unsigned) Task Force Letter of Understanding in the collective agreement in his award, because the Government was not a party to the collective agreement. OPSEU and the Government agree on this point. Indeed, as a matter of law, the Government could not have been a party to the collective agreement. The *CCBA* expressly provides that a collective agreement is entered into by an employer and a union. It defines a "collective agreement" as "a written collective agreement between the Council on behalf of the employers and an employee organization respecting terms and conditions of employment negotiable under [the *CCBA*]" (section 1). It defines "employee organization," in turn, as a trade union within the meaning of the *Labour Relations Act, 1995* (section 1). The *CCBA* does not mention the Government as a party.

[68] Nor can it be argued that the Government became party to the collective agreement by participating as a party to the mediation-arbitration process, and hence became bound by the award, including the incorporation of the Task Force Letter of Understanding into the collective agreement. The *Colleges of Applied Arts and Technology Labour Dispute Resolution Act, 2017* is clear that the "parties" to a mediation-arbitration proceeding dealing with a labour dispute or a new collective agreement are "the Council and the bargaining agent" (section 1). The arbitral award did not identify the Government as a party to the mediation-arbitration and did not indicate the Government as having appeared during the proceeding.

[69] Finally, there is no suggestion that the Government was put on notice that the existence of the Task Force would form a requirement of the collective agreement. Ms. Mellozzi's evidence is that the Ministry was not aware that the Task Force Letter of Understanding was provided to Arbitrator Kaplan. Nor was the Ministry consulted about the Task Force Letter of Understanding by OPSEU and the Council, or by Arbitrator Kaplan. OPSEU does not assert otherwise.

[70] In the result, the existence of the Task Force was not part of the collective agreement. Whatever terms and commitments are purportedly memorialized in the collective agreement, including the Task Force Letter of Understanding, are not terms or commitments that bound the Government. The Government created and funded the Task Force not pursuant to any purported obligation placed on it by the collective agreement, but pursuant to the exercise of its statutory authority under section 4 of the *Ministry of Training, Colleges and Universities Act* and subsection 76(2) of the *Legislation Act, 2006*. It follows that the collective agreement did not legally bind the Government from reversing course and terminating the Task Force.

[71] The Government's evidence is that the Ministry, "on behalf of the public, has an interest in collective bargaining outcomes and monitors the bargaining process." Where there is a strike or lockout, the Government "will monitor the situation, encourage parties to return to the bargaining table, and communicate with" various stakeholders as needed. That is what the Government did here by monitoring OPSEU and Council statements and updates on their negotiations, pressing the Council and OPSEU more than once to try to work out their differences, and working with the Council and OPSEU on the Task Force proposal.

[72] The Government first worked with OPSEU and the Council on the Task Force proposal in an effort to help them reach an agreement so that a strike could be averted. As described above, Mr. Rondeau responded favourably to Mr. Eaton's proposal for a task force in fall 2018 and connected him with Mr. Orencsak. Once OPSEU and the Council returned to the negotiating table, Mr. Rondeau, Mr. Orencsak, and others worked with them to draft and revise the Task Force proposal.

[73] The Government continued these efforts after the strike began, helping to further flesh out the Task Force proposal in an effort to help OPSEU and the Council reach an agreement so that the strike could end. Ms. Mellozzi gives evidence that "[t]he Ministry understood that both parties were favourable to the idea of a task force and indicated willingness to assist in this regard if it would facilitate the parties reaching an agreement." Mr. Eaton's evidence is consistent with this. On cross-examination, he testified that "[t]he Premier and the Deputy Premier Minister had a cabinet management board, made it pretty clear they wanted this thing settled. … [T]he idea was to get a deal. … People were intent and had their shirts rolled up to their elbows trying to get this done." Mr. Rondeau echoes this view: "I shared information [when Task Force proposals were being exchanged], I shared thoughts from my perspective that would help bring the parties to resolution." Ultimately, the Government did not achieve its goal, in the sense that a deal could not be reached, the strike did not end, and back-to-work legislation proved necessary.

[74] After the arbitral award was handed down, Cabinet issued Orders in Council to create and fund the Task Force, and the Government took steps to implement the Task Force – not because the Government was required by the collective agreement to do so, but because it chose to. Notably, the Government took steps that went beyond what the Task Force Letter of Understanding purported to require it to do. For instance, by appointing the Task Force chair and members and providing for their remuneration. In my view, this underscores that the Task Force was not legally required by the collective agreement.

[75] Minister Matthews made her November 21, 2017 comments to the Legislature about the Government's support for the Task Force after the back-to-work legislation was enacted, and before any mandated mediation-arbitration had begun. No collective agreement had been signed, and no collective agreement had yet been imposed by Arbitrator Kaplan. This timing does not suggest that the Government was pursuing the Task Force further to some commitment it made during collective bargaining, let alone under the collective agreement, which did not exist at that point.

[76] I accept OPSEU's submission that public sector bargaining takes place against the backdrop of government funding and policy decisions. It would be naïve to suggest otherwise. I accept that the college sector receives significant Government funding and oversight, and that, as a practical matter, the Government is the ultimate source of funding for whatever terms the Council may agree to in the course of bargaining. I also accept OPSEU's submission, uncontested by the Government, that in these particular negotiations, the Government was actively engaged on the Task Force issue, as described above.

[77] But OPSEU and the Council never negotiated a collective agreement, despite the Government committing to create the Task Force. There was no bargain. The Task Force therefore was not part of any bargain. Its termination therefore did not undermine the bargaining process.

Moreover, while OPSEU submits that it conceded "matters of substantial importance" in exchange for the promise of a Task Force, those matters continued to be issues which OPSEU could negotiate with the Council.

[78] Based on the above analysis, I conclude that there was no substantial interference with OPSEU members' section 2(d) collective bargaining rights. In my view, the record does not establish that the matter affected – the Task Force – was of importance to the process of collective bargaining, i.e. to the "capacity of" OPSEU members "to come together and pursue collective goals in concert" (*Health Services*, at para. 93). Nor does it support the claim that the Government's decision to terminate the Task Force affected OPSEU members' right to good faith negotiation and consultation. The existence of the Task Force was not a "contractual term in the collective agreement," as OPSEU claims. The termination of the Task Force therefore cannot reasonably be said to have harmed good faith collective bargaining, whether between OPSEU and the Council or more broadly.

[79] I therefore do not agree that the Government's role in the negotiations, and subsequent decision to terminate the Task Force, constitute substantial interference with OPSEU's collective bargaining rights under section 2(d).

The case law

[80] My analysis is underscored by my consideration of the case law on the scope of the section 2(d) right in the labour context, and the degree to which government conduct akin to the conduct at issue here has been found to engage and violate the section 2(d) right.

[81] First, I observe that this case does not involve a challenge to back-to-work legislation, unlike many other freedom of association cases this court has considered (see, for example, *Canadian Union of Postal Workers v. Canada*, 2016 ONSC 418; *Canadian Union of Postal Workers v. Canada*, 2024 ONSC 3787, aff'd 2026 ONCA 75; and *OPSEU v. Ontario*, 2024 ONSC 3644, aff'd 2026 ONCA 74, which considered, and upheld, the back-to-work legislation enacted in response to the strike at issue in this proceeding).

[82] More importantly, I do not find that this matter is akin to cases in which courts have found that the Government's involvement in collective negotiation – even where the Government was not a party to the collective agreement – was found to have constituted substantial interference with freedom of association under section 2(d).

[83] There are several such cases. Generally, they involve efforts by the Government to modify existing collective agreements or prospectively modify the terms or scope of future collective agreements. For example, in *OPSEU v. Ontario*, 2016 ONSC 2197 (the "Bill 115 case"), this court found substantial interference with collective bargaining rights under section 2(d) in the context of a provincial-level negotiating process and subsequent legislation that prescribed collective agreement terms on compensation and other issues in the education sector. In *Ontario English Catholic Teachers Association v. Ontario (Attorney General)*, 2024 ONCA 101 ("*OECTA*"), the Court of Appeal for Ontario held that legislation that capped compensation increases for public sector employees constituted substantial interference under section 2(d). Amongst other things, the legislation considered in *OECTA* granted ministers authority to void existing collective agreements

or arbitration awards that were inconsistent with the compensation cap. In *Health Services*, the Supreme Court found that certain provisions of a British Columbia statute constituted significant interference with the right to bargain collectively (at para. 136). These provisions imposed employment terms that purported to override the terms of existing collective agreements on issues such as contracting out, bumping rights, and layoffs, and which purported to mandate certain terms in future collective agreements (*Health Services,* at paras. 10-11, 120-121).

[84] Unlike in *OECTA* and *Health Services,* in the case before me there was no existing collective agreement that the Government sought to unilaterally modify through legislation, nor did the Government seek to pre-emptively require certain provisions in any future collective agreement. To the contrary, the Government's involvement arose after the existing collective agreement had expired and before the next one was in place. Importantly, no future collective agreement was ever agreed to. Rather, one was eventually imposed via arbitration, but the Government neither purported to dictate the terms of that imposed agreement nor was involved at all in the arbitration process.

[85] OPSEU relies significantly on the Bill 115 case, stating that in that case, as it did here, the Government inserted itself into a negotiation process in a way that amounted to a substantial interference with collective bargaining.

[86] I do not agree that the facts of the Bill 115 case are analogous.

[87] The Bill 115 case arose in the context of the anticipated expiry of various collective agreements between school boards and their unionized employees. The Government was faced with the prospect that, if the current agreements were not renewed before their expiry in August 2012, there would be a statutory freeze whereby the agreements would continue to bind the parties. Teachers would move through and be compensated in accordance with an existing salary grid, at what the Government considered significant public cost. In response, the Government established a process for the renegotiation of the collective agreements, with which many labour unions took issue. The Government also enacted Bill 115, the *Putting Students First Act, 2012*, S.O. 2012, c. 11. Bill 115 purported to establish parameters for the process through which the remaining contracts would be negotiated. It required that any agreements entered into before August 31, 2012, be "substantially similar" to a Memorandum of Understanding entered into between the Ontario English Catholic Teachers' Association and the Government and ratified by the applicable school boards (the "OECTA Memorandum"). Any agreements made after August 31, 2012 had to be "substantively identical" to the OECTA Memorandum. If such an agreement were not arrived at by December 31, 2012, it could be imposed on the parties.

[88] Five unions successfully challenged the constitutionality of Bill 115 under section 2(d). The court anchored its finding that the Government had substantially interfered with the union members' section 2(d) rights in both the Government's conduct during the collective bargaining process before Bill 115 was enacted, and the terms of Bill 115 itself. The court found that "[f]rom the beginning, the approach taken by Ontario impinged on free and open bargaining and interfered with the process of collective bargaining" (at para. 169).

[89] The court identified several aspects of government conduct that, together, amounted to a violation of section 2(d). These included that the Government had sought to impose substantive

collective agreement terms of its choosing, under the guise of establishing "parameters" for the negotiations (see, for example, paras. 43, 151, and 169); had unilaterally imposed a negotiating process that was not free and voluntary and not agreed to by the other parties (see, for example, paras. 17, 43, and 135); had abandoned its purported "facilitator" role and in fact "set the issues and limited the discussion" (at para. 43; see also para. 17); and had not provided the unions with the fiscal information that they needed to be able to negotiate meaningfully, with the result that "it was impossible for true collective bargaining to take place" (at para. 169; see also para. 146).

[90] The court also held that the substance of the legislation violated section 2(d) by imposing specific collective agreement terms (see, for example, paras. 168-169). These findings, which are concerned with legislative action of the Government rather than its conduct during collective bargaining, are presumably less central to OPSEU's argument in this case.

[91] OPSEU submits that the Government's conduct during negotiations with the Council, like the Government's conduct with the unions in the time frame leading up to the enactment of Bill 115, substantially interfered with OPSEU's collective bargaining rights under section 2(d).

[92] In my view, the Government's conduct here cannot reasonably be analogized to the government conduct found to have violated section 2(d) in the Bill 115 case. There is no suggestion in this case that the Government established a skewed process in order to have its way in the negotiations, or that it demanded substantive outcomes under the guise of establishing negotiation "parameters". To the contrary, the Government became involved in discussions at the invitation of OPSEU, worked collaboratively with both OPSEU and the Council, and made efforts to help them reach an agreement so that the strike could end. The evidence is that "[t]he Ministry understood that both parties were favourable to the idea of a task force and indicated willingness to assist in this regard if it would facilitate the parties reaching an agreement."

[93] The Bill 115 case is helpful insofar as it assesses the section 2(d) compliance of non-legislative government conduct, by considering the conduct of the Government during the months leading up to the passage of Bill 115, when efforts were being made to renegotiate various collective agreements. However, it does not assist OPSEU in the current case.

[94] Ultimately, OPSEU has not established that the cancellation of the Task Force and its funding constitutes substantial interference with the collective bargaining process in this case.

Conclusion

[95] For the reasons above, I find that there has been no violation of section 2(d) of the *Charter*. I therefore need not consider whether any violation would have been saved by section 1 of the *Charter*.

[96] The application is accordingly dismissed.

[97] OPSEU and the Government have agreed on costs. On the basis of that agreement, OPSEU shall pay the Government its costs of $70,000 inclusive of all fees, disbursements, and HST.

Parghi J.

Released: February 25, 2026

CITATION: Ontario Public Service Employees Union et al. v. The Crown in Right of Ontario, 2026 ONSC 1010
COURT FILE NO.: CV-18-00604529-0000
DATE: 20260225

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

ONTARIO PUBLIC SERVICE EMPLOYEES UNION et al

Applicants

– and –

THE CROWN IN RIGHT OF ONTARIO

Respondents

REASONS FOR JUDGMENT

Parghi J.

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