

Intelligence MEMOS



From: Benjamin Dachis
To: The Hon. Kevin Flynn, Ontario Minister of Labour
Date: June 1st, 2017
Re: **ONTARIO'S LAWS OF UNINTENDED CONSEQUENCES**

The Ontario government [announced a sweeping overhaul](#) of the relationship between workers and employers on May 30. In addition to increasing the minimum wage and increasing entitlements under the *Employment Standards Act*, the province has made changes for unionized workplaces, some that will help workers and some that will hurt them.

The *Labour Relations Act* applies to the approximately 15 percent of the Ontario private sector workforce that is unionized. Canadian provinces have varying laws that apply to unionized workers. Comparing similar workers in [various provinces](#) allows us to see what the effect of changes in law were.

One of the changes that the government proposed was to make it easier for workers to access arbitrators in the first contract they are negotiating after forming a union. Evidence [from Susan Johnson](#) shows that using first contract arbitration reduces the amount of strikes by nearly 50 percent.

The government's proposal on reinstatement rights, however, is more likely to harm workers. The government proposes that the *Labour Relations Act* entitle workers to return to their jobs at any point if they go strike.

Reinstatement rights increase the bargaining power of strikers by protecting the position they had before going on strike. Workers have a greater incentive to hold out for higher wages and are more likely to use the strike option if there is a lesser chance of losing their jobs in response.

When provinces introduced reinstatement rights they increased the likelihood of strikes in their province by approximately two-thirds. Strikes also became about 50 percent longer.

Reinstatement rights have a negative effect on wages: although the legislation guarantees that workers are able to return to their jobs, the consequence of this provision is to reduce wage levels by about 5 percent.

Why might wages fall so much in response to reinstatement rights? Legislation that is especially favourable to employees and increases strike incidence might reduce investment by firms in a jurisdiction with reinstatement rights, thus eventually reducing wages. That's what the [evidence from provinces](#) that introduced reinstatement rights points to in some industries.

Lastly, the government proposed some changes to how employees seek union certification. Currently, they must hold a secret ballot to determine if the majority of voters support forming a union. Otherwise, unions may gain certification without a vote by presenting signed union cards that represent a majority of employees who support forming a union.

The province is proposing to restore card-based certification for only the temporary help agency industry, the building services sector and home care and community services. The province's [independent review](#) did not recommend eliminating secret ballots, subject to improving the voting process. The government hasn't made the case for why these sectors are different and why it feels the independent review was wrong on this.

Ontario isn't alone in needing to rethink whether its proposal for eliminating secret ballots in some circumstances is the right approach. Alberta is proposing eliminating secret ballots when 65 percent of workers sign union cards and Ottawa is eliminating secret ballots altogether for federally regulated employees.

As the government plans to introduce its reforms to the *Labour Relations Act* it should look carefully at whether some of its proposals will have unintended consequences and provide clear justifications, such as cost-benefit analyses, of its proposed reforms.

Benjamin Dachis is Associate Director of Research and co-author of the C.D. Howe Institute study [The Laws of Unintended Consequence: The Effect of Labour Legislation on Wages and Strikes](#).