



Show Me the Money – Bill 124 and Wage Re-Openers

Last year, we [wrote](#) about the Protecting a Sustainable Public Sector for Future Generations Act, 2019, commonly known as Bill 124, and the Ontario Superior Court's [finding](#) that it violated section 2(d) of the *Charter of Rights and Freedoms*. The Government of Ontario appealed the decision but did not seek a stay of the lower court's ruling. Therefore, Bill 124 is currently not in effect. The appeal was heard in June 2023, but no decision has been issued as of the date of publication.

Bill 124 imposed a “moderation period” of three (3) years on public sector employers. For each 12-month period of the moderation period, public sector employees could not receive greater than a one (1) percent increase in their total compensation. In bargaining, employers and unions were bound by this constraint and this was reflected in interest arbitration awards issued during the time Bill 124 was in effect.

Interest arbitration applies in the public sector for employees who do not have the right to strike such as firefighters, hospital workers, long term care workers, and police. Employers and Unions can also voluntarily agree to interest arbitration to avoid a strike. Many of the employers and unions that were impacted by Bill 124 either agreed to or were awarded a “wage re-opener” provision to allow the parties to negotiate further wage increases covering the moderation period if Bill 124 is found to be unconstitutional or amended or repealed. Where the parties are unable to agree, the issue could be referred to the original arbitrator, or to another arbitrator mutually agreed by the parties.

We predicted that there would be a lot of activity around wage re-openers in 2023. We were right. In this article, we provide an overview of the interest arbitration awards that have been released so far. In the first section, we review the wage re-openers. In the second section, we review the awards issued for employers who were in the middle of negotiating their moderation periods when Bill 124 was declared unconstitutional.

Wage Re-Openers

In some cases of wage re-openers, the issue of the additional wage increases was remitted to the parties to determine on their own¹. In others, the wage increases were either already set out in the wage re-opener provision or the principles of replication and comparators guided the board or arbitrator in the determination of the wage increases. For example, in determining what should be awarded for not-for-profit nursing homes, Arbitrator John Stout revisited what was awarded to for-profit homes and used that as a guide². The wage re-opener decisions cover a period of time from 2017 until 2022. The re-opener awards for earlier moderation periods are less generous than later periods consistent with the upward trajectory

¹ [Hawkesbury and District General Hospital v United Steel, Paper And Forestry, Rubber, Manufacturing, Energy, Allied Industrial And Service Workers International Union \(United Steelworkers\)](#)

² [Participating Nursing Homes v Service Employees' International Union Local 1, Canada](#)



of inflation in the later timeframe. The lowest awards are in the long-term care sector and the highest in the energy sector.

a) Long-Term Care, Retirement and Nursing Homes

- **[Canadian Union of Public Employees, Local 1263 v Niagara INA Grafton Gage Village](#)**

Board: Jesin, Kleiner, Garzouzi.

The employer is a long-term care and retirement home. The Board provided the following wage increases:

- Effective October 1, 2019 - 0.5% GWI (in addition to the 1% already awarded)
- Effective October 1, 2020 – 0.5% GWI (in addition to the 1% already awarded)
- Effective October 1, 2021 – 0.5% GWI and a further 2% effective January 1, 2022 (in addition to the 1% already awarded)
- **[Canadian Union of Public Employees and its Local 3236 v Kristus Darzs Latvian Home](#)**

Board: Jesin, Kleiner, Sack

The employer was a not-for-profit, charitable long-term care home. The following wage increases were provided:

- Effective January 1, 2019 - 0.4% GWI (in addition to the 1% already awarded)
- Effective January 1, 2020 – 0.5% GWI (in addition to the 1% already awarded)
- Effective January 1, 2021 – 0.5% GWI (in addition to the 1% already awarded)
- **[Canadian Union of Public Employees and Its Local 3268-00 v Bethany Lodge Manor](#)**

Board: Jesin, Kleiner, Sack

The employer is a long-term care home. The following wage increases were awarded:

- Effective April 1, 2017 - 0.4% GWI (in addition to the 1% already awarded)
- Effective April 1, 2018 – 0.4% GWI (in addition to the 1% already awarded)
- Effective April 1, 2019 – 0.4% GWI (in addition to the 1% already awarded)
- **[Foyer des Pionniers v Canadian Union of Public Employees and Local 1771-00](#)**

Board: Kugler, Kleiner, Garzouzi



The employer is a nursing home. The following wage increases were awarded:

- January 1, 2021 – 0.5% (in addition to the 1% already awarded)
- January 1, 2022 – 2.5% (in addition to the 1% already awarded)
- January 1, 2023 – 2.5% (in addition to the 1% already awarded)
- [**Participating Charitable Nursing Homes v Ontario Nurses' Association**](#)

Sole Arbitrator: John Stout

The employers are charitable not-for-profit nursing homes. The following wage increases were provided:

- Effective July 1, 2021 – 1.75%
- Effective July 1, 2022 – 1.75%
- Effective July 1, 2023 – 1.75%
- [**Participating Nursing Homes v Service Employees' International Union Local 1, Canada**](#)

Sole Mediator/Arbitrator: John Stout

The employers are not-for-profit nursing homes. The following wage increases were provided:

- 2022 – 3%
- 2023 – 3%
- [**Salvation Army Ottawa - Grace Manor v Canadian Union of Public Employees \(Cupe\), Local 4592**](#)

Board: Albertyn, Malette, Garzouzi

The employer operates a non-profit nursing home. The Board ordered the following wage increase:

- September 19, 2021 – 1.5%
- September 18, 2022 – 3%

b) Hospitals

- [**Humber River Hospital v National Organized Workers Union**](#)

Sole Arbitrator: Christopher Albertyn



The parties were in agreement on the wage increases for the first 2 and a half years of the moderation period, but not for the remaining six (6) months. Arbitrator Albertyn determined that the additional increase for the year 2022 was 3.75%. However, since the award covers just over 6 months of the year, and the 3.75% was for an annual increase, an alternative resolution of the wage increment would be 50% of the amount (for half of the year). Therefore, the amount awarded as the increase was 1.875% for June to December 2022.

- [**Ontario Hospital Association v Ontario Nurses' Association**](#)

Board: Stout, Christen, Abbink

The employers are hospitals. An interest arbitration [award](#) was issued in the renewal of the central provisions of collective agreements between the parties. The term of the renewal was April 1, 2020, to June 7, 2021. The award determined the wages and compensation for the first two years of the Bill 124 moderation period, and in this re-opener, it awarded the following retroactive increases:

- Effective April 1, 2020 – an additional 0.75% (total 1.75%)
- Effective April 1, 2021 – an additional 1.0% (total 2.0%)
- [**Ontario Teaching Hospitals \(OTH\) v Professional Association of Residents of Ontario \(PARO\)**](#)

Sole Arbitrator: William Kaplan

This award is related to teaching hospitals and their residents. The following wages were awarded over and above the 1% in each year previously paid:

- July 1, 2020: .75%
- July 1, 2021: 2%
- July 1, 2022: 3.75%
- [**Participating Hospitals v CUPE/OCHU & SEIU \(Bill 124 Reopener\)**](#)

Board: Kaplan, Christen, Herbert

The employers are hospitals. The Board awarded the following across-the-board increases:

- 2022 – 4.75% (or 3.75% of new money)
- 2023 – 3.5% (or 2.5% of new money)
- [**Participating Hospitals v Ontario Nurses Association**](#)

Board: Gedalof, Christen, Abbink



The employers are hospitals. The wage re-opener was limited to the last year of the moderation period (the first two years were addressed in a prior decision). The Board decided that retroactive to April 1, 2022, a 3% wage increase across the board was to be applied – which was an additional 2% on top of the 1% increase that was provided initially.

- [***Participating Hospitals v OPSEU***](#)

Board: Kaplan, Christen, Herbert

The employers are hospitals. In July 2022, the Board issued an award settling the terms of a collective agreement between the parties with a term of April 1, 2022, to March 31, 2025. The Board awarded the following general wage increases:

- April 1, 2022: 3.75%
- April 1, 2023: 2.5%
- April 1, 2024: 2.0%

c) Energy Sector

- [***Independent Electricity System Operator v Society of United Professionals***](#)

Sole Mediator/Arbitrator: Arbitrator John Stout

The employer delivers key services across the electricity sector. The parties had two collective agreements, and both were subject to the wage and compensation restrictions found in Bill 124. This supplemental award provided the following wage increases:

- January 1, 2022: 3% (4% total)
- January 1, 2023: 2.25% (3.25% total)
- January 1, 2024: 1.75% (2.75% and the Cost of Living (COLA) escalator clause applies).

The COLA is activated if the one-year Ontario Consumer Price Index from November 2023 to November 2024 exceeds 2.75%.

- [***OPG v The Society***](#)

Sole Arbitrator: William Kaplan

The employer provides electricity generation in the province of Ontario. In addition to the initial 1% increases provided pursuant to Bill 124, the following increases were provided:

- January 1, 2022 – 3%
- January 1, 2023 – 2.25%



d) Other Healthcare

- [**Canadian Union of Public Employees and its Local 4599 v Kensington Health Centre**](#)

Board: Jesin, Kleiner, Garzouzi

The employer is a not-for-profit, community-based health centre. The following increases were awarded:

- Effective June 1, 2019 - 0.4% GWI (in addition to the 1% already awarded)
- Effective June 1, 2020 – 0.5% GWI (in addition to the 1% already awarded)
- Effective June 1, 2021 – 0.5% GWI (in addition to the 1% already awarded)

- [**ORNGE v Unifor, Local 2002**](#)

Sole Arbitrator: William Kaplan

The employer provides air ambulance and medical transportation services. Arbitrator Kaplan awarded the following wage increase:

- August 1, 2020, an additional 1%
- August 1, 2021, an additional 1%
- August 1, 2022, an additional 1%

- [**Service Employees International Union, Local 1 v Hospice Niagara**](#)

Board: Steinberg, Wood, Caley

The employer provides hospice care. The Board awarded an improvement in wages as follows:

- September 11, 2020 - 0.5% (in addition to the 1%)
- September 11, 2021 - 1.0% (in addition to the 1%)
- September 11, 2022 - 2.5% (in addition to the 1%)

Interest Arbitrations in the Middle

The following decisions are interest arbitration awards that were directly impacted by the Bill 124 ruling.

a) Long-Term Care, Retirement and Nursing Homes



- [***Victoria Village Inc. v Canadian Union of Public Employees, Local 4660***](#)

Board: Kugler, Wilson, Garzouzi

The employer is a long-term care provider. Specifically, it appears that the three (3) years covered by the collective agreement constituted the moderation period under Bill 124. The increases awarded were as follows:

- January 1, 2019: 0.5% (In addition to 1%, already paid)
- January 1, 2020: 0.5% (In addition to 1%, already paid)
- January 1, 2021: 0.5% (In addition to 1%, already paid)
- December 31, 2021: 1.5%

Further, there was a 0.5% increase in the percentage-in-lieu of benefits.

- [***Canadian Union of Public Employees and its Local 4886-00 v Ehatare Retirement and Nursing Home***](#)

Board: Jesin, Garzouzi, Kleiner

This was an award for a renewal collective agreement for a bargaining unit of employees of a nursing and retirement home. The parties agreed that the collective agreement would have a three-year term effective July 18, 2020, to July 17, 2023. The Board noted that in determining the matters in dispute and subject to the constraints of Bill 124, they applied the principles of replication and comparability.

- Year 1 (Effective July 18, 2020) – 1.5% GWI
- Year 2 (Effective July 18, 2021) – 1.5% GWI
- Year 3 (Effective July 18, 2022) – 3.5% GWY

- [***Shalom Village Nursing Home v Service Employees International Union, Local 1 Canada***](#)

Board: Burkett, Gooding, Garzouzi

The employer is a nursing home. The parties were bargaining under the limitations imposed by Bill 124, and the employees were set to commence the moderation period on May 1, 2022. After bargaining, but before the hearing, Bill 124 was declared void and of no effect. The parties amended their positions. The parties were directed to enter into a renewal collective agreement running from May 1, 2022, to April 30, 2024, with the following wage increases:

- 3.25% effective May 1, 2022
- 3.25% effective May 1, 2023



b) Hospitals

- **[Almonte General Hospital Operating as Lanark County Paramedic Services v Canadian Union of Public Employees, Local 4480](#)**

Board: Albertyn, Garzouzi, Malette

This was an interest arbitration under the *Hospital Labour Disputes Arbitration Act, 1990* and provides the terms for the parties' renewal collective agreement for the period January 1, 2021, to December 31, 2023. The initial hearing took place in October 2022, when Bill 124 applied. The context for bargaining changed, however, in November 2022 when Bill 124 was declared to be void and of no effect.

The following wage increases were awarded, retroactive to the date:

- January 1, 2021: 3.5%
 - January 1, 2022: 4.75%
 - January 1, 2023: 3.5%.
- **[Halton Healthcare Services v Ontario Public Service Employees Union, Local 296](#)**

Board: Parmar, Shaw, Robbins

The employer is comprised of three (3) previously independent hospitals. The parties were directed to enter into a renewal collective agreement for the term April 1, 2020, to March 31, 2023. The following wage increases were awarded:

- April 1, 2020: 0.75% (in addition to the 1% already agreed to)
- April 1, 2021: 0.75% (in addition to the 1% already agreed to)
- April 1, 2022: OPSEU Central wage adjustment (less the 1% already agreed to) (including any lump sum payment)

c) Education

- **[University of Toronto v University of Toronto Faculty Association](#)**

Sole Arbitrator: Eli A. Gedalof

The parties entered a three-year agreement commencing July 1, 2020, to June 30, 2023. They agreed on the monetary provisions for the first two years but referred the final year to interest arbitration.

When the proceeding commenced, the three-year term was subject to Bill 124. The Union sought an across-the-board increase of 12.75%, in addition to the 1% previously awarded,



together with lump sum payments equivalent to an additional 1.75% increase to compensate for lost salary in years 1 and 2.

The Board awarded an increase of 8%, inclusive of the 1% initially ordered, retroactive to July 1, 2022.

Regarding the lump sum payments for years 1 and 2, Arbitrator Gedalof found that he had a limited jurisdiction, and this issue was not before him.

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