



Ontario Confederation of University Faculty Associations
Union des Associations des Professeurs des Universités de l'Ontario

November 2, 2017

Standing Committee on Finance and Economic Affairs
Room 1405, Whitney Block
Queen's Park, Toronto
ON M7A 1A2
Sent via email to comm-financeaffairs@ola.org

Dear Standing Committee on Finance and Economic Affairs,

The Ontario Confederation of University Faculty Associations (OCUFA) represents over 17,000 professors and academic librarians at 28 faculty associations at every university in Ontario. OCUFA represents full-time tenure-stream faculty, and at many universities also represents contract faculty members who work either on a limited-term contract or on a per-course basis. OCUFA estimates that the number of courses taught by contract faculty at Ontario universities has doubled since 2000.

University professors and academic librarians have been active participants in both the Changing Workplaces Review and consultations regarding Bill 148, Fair Workplaces, Better Jobs Act. A more comprehensive submission was submitted by OCUFA during the First Reading consultation process. That submission is available [online](#) and includes a full suite of recommendations for changes to the Employment Standards Act (ESA) and Labour Relations Act (LRA) that would help address fairness for contract faculty and ensure the right to effective collective representation for academic staff.

Faculty across the province are heartened to see the government take steps towards ensuring decent work for academic staff and all workers. The bill includes welcome plans to improve rules for joining unions, provide all workers with two paid emergency leave days, and increase the minimum wage to \$15 per hour by January 2019. The proposed legislation also aims to address several challenges that faculty understand are important based on experiences in our own workplaces, such as equal pay for work of equal value, options for consolidating bargaining units, and fair scheduling. While these issues are on the table, it is imperative that the government carefully consider the most effective legislative approaches for addressing each of them.

Equal pay for work of equal value

As university faculty, we understand the importance of a strong equal pay provision in the Employment Standards Act. While the expectations of university teaching done by contract faculty and full-time tenure-stream faculty are the same, contract faculty are not being compensated on an equal basis. In most cases, contract faculty also have limited or no access to benefits. Strong minimum standards that require equal pay for work of equal value, regardless of a worker's employment status, could help contract faculty, especially those working on a per-course basis, to obtain fair compensation.

The equal pay provision in the proposed legislation is a welcome signal of the government's openness to closing the pay gap for contract, part-time and temporary workers. However, it must be strengthened to be effective. If the equal pay provisions are not strengthened, women and racialized workers, who are over-represented in part-time, contract and temporary employment, will continue to be left behind.

- ▶ **The equal pay provision should be amended to expand the scope of comparable work by replacing the language of “substantially the same” with “similar” or “of equal value”.**

Historically, the proposed language of work that is “substantially the same” has been interpreted narrowly when it comes to protecting women from unequal pay due to sex discrimination, enabling employers to manipulate minor job duties to maintain unequal pay.ⁱ Replacing the language of “substantially the same” with work that is “similar” or “of equal value” would help avoid the use of minor differences to justify unequal pay. (ESA, Section 42.1)

- ▶ **The exceptions in the proposed equal pay provision should be limited to seniority and merit by removing the exemptions for “quantity or quality of production” and “any other factor”.**

The scope for exceptions in the proposed legislation is too wide. Experiences with existing pay equity legislation have proven that, to be effective, the language needs to be tightened. Historically, “other factors” has been interpreted loosely – even to include an employer's wage structure – when women have challenged gender pay discrimination.ⁱⁱ It is crucial that exceptions to the equal pay entitlement be limited to objective factors, such as seniority and merit. (ESA, Section 42.1)

- ▶ **The definition of seniority based on hours worked should be removed.**

This problematic definition of seniority was added to the legislation after First Reading. Defining seniority based on hours worked will defeat the intent of these equal pay protections by entrenching inequality between full-time workers and part-time workers who work fewer hours due to their employment status. (ESA, Section 42.1)

- ▶ **The equal pay provision should be accompanied by strong transparency rules that require employers to disclose information about pay scales and pay structures to their employees.**

Strong transparency rules will help make the equal pay provision effective. Requiring employers to make their pay scales and pay structures available to employees would help ensure that workers have the information they need to enforce their rights. In particular, non-unionized workers typically do not have access to this information. Strong transparency rules are the best way to ensure employees do not face reprisals for seeking information required to enforce their new right to equal pay. (ESA, Section 42)

- ▶ **An inclusive definition of “rate of pay” should be included in the ESA, so that the equal pay provision applies to the total compensation package provided to employees.**

The equal pay language proposed in the bill protects against differences in “rate of pay” based on employment status. In addition to earning low wages, contract faculty at Ontario universities lack access to benefits and pensions. This is also the case for contract, part-time, and temporary workers in other sectors of the economy. The bill could help contract

faculty obtain access to benefits by providing an inclusive definition of “rate of pay” that addresses salary, benefits, pension contributions, and other benefits that form the total compensation package provided to an employee. (*ESA, Section 42*)

Options for consolidating bargaining units

A number of faculty associations in Ontario have multiple bargaining units as a result of different groups of workers being organized at different times. Sometimes the second units are much smaller and they are often made up of workers in more vulnerable, insecure positions such as contract faculty. Providing an option to consolidate bargaining units would make bargaining more effective at addressing precarious work and gender-based pay inequities, and would help avoid fragmentation in the future.

- ▶ **The provision that empowers the OLRB to consolidate newly certified bargaining units with existing units to promote effective bargaining should be extended by removing the requirement that applications be filed within three months of certification.**

Legislative changes proposed in the bill would permit applications from the employer or union to the Ontario Labour Relations Board (OLRB) for consolidation within three months of a unit’s certification. The OLRB would then have the power to consolidate the new unit with existing units if it would contribute to “an effective collective bargaining relationship” and “development of collective bargaining in the industry”. Under this provision, the new unit must not yet have a collective agreement, and the same union must already represent workers to the same employer.

This provision could be a useful tool for consolidation, however, it should be modified to apply to all bargaining units, not just newly certified units. Many unions that would have accessed this provision when they certified new units in the past are now struggling to manage fragmented bargaining units. The time restriction must be removed so that these unions have access to this provision and can request consolidation where it would contribute to more effective collective bargaining. (*LRA, Section 15.1*)

Fair scheduling

It has become increasingly common for contract faculty to be notified they will be teaching a course right before the beginning of the term. Sometimes they will only have a week to prepare a syllabus, readings and lectures, and to make the necessary arrangements in their personal and family life. Workers in other sectors are also experiencing a growing trend towards “just-in-time” scheduling.ⁱⁱⁱ

- ▶ **The broad exemptions to the fair scheduling provisions should be removed.**

The proposed legislation includes provisions that aim to protect employees from last-minute scheduling changes, ensuring they receive at least three hours of pay if their shift is cancelled within 48 hours of the start time or if they are “on call” but not called in to work. However, exemptions were added after First Reading for several circumstances including “any other reasons as may be prescribed”. These new exemptions are too broad and will severely limit the application of this provision. (*ESA, Section 21.3 and 21.6*)

- ▶ **Reasonable scheduling provisions should be put in place to provide employees with at least two weeks' notice of work.**

This would strike a more appropriate balance between the needs of employers and employees. In the university sector, two weeks' advance notice would still not be adequate for contract faculty who require time to develop and prepare a course. However, it would be an improvement on existing minimum standards and would provide a stronger starting point for bargaining adequate notice of work for university professors.

It is disappointing that the abuse of fixed-term contracts is not addressed in the bill because this is a central issue for contract faculty at Ontario universities. A study of contract faculty at 12 Ontario universities showed that over 15 per cent had been working as contract faculty for more than 15 years.^{iv} Despite working at the same university for so long, sessional contract faculty still have to apply for their job every four months. This leaves contract faculty without the stability they need to make long-term plans for themselves and their families. This type of precarious employment has also been shown to have negative impacts on general and mental health, household well-being, and community participation.^v In addition, discontinuous contracts or gaps in service too often allow employers to sidestep obligations such as pensions and benefits.

The government should seriously consider the recommendations from the Final Report of the Changing Workplaces Review that the "government continue to monitor the use of fixed-term contracts" and "assess the impact of relevant legislation in other jurisdictions" to identify best practices for Ontario.^{vi} Addressing the growth of contract work must be a key component of any plan to curb the rise of precarious work in the province. Equal pay provisions should also be strengthened with an eye towards protecting contract workers. A strong provision to ensure workers on contract receive pay that is equal to their colleagues' rate of pay for work of equal value will reduce the financial incentive for employers to hire on contract.

OCUFA is pleased that the Changing Workplaces Review and subsequent legislative process to review Bill 148 has brought the need for improved minimum standards into sharp focus. At a time when many people in Ontario are facing an erosion of their working conditions, better employment and labour laws will lift the floor for all workers and provide a stronger starting point for meaningful collective bargaining. Faculty have felt the negative impacts as our own universities are transformed by the growth of precarious work. We understand the urgent need for government leadership to ensure decent work in our communities.

If this committee is serious about fairness for contract faculty, and all workers, it must turn its attention to strengthening the equal pay and scheduling provisions, and improve options for consolidating bargaining units in this round of consultations. We urge the committee to move quickly and effectively to make the necessary changes to the bill, so that this legislation can be passed and deliver results for contract faculty as soon as possible.

Sincerely,



Gyllian Phillips, OCUFA President

ⁱ Faraday, Fay & Jan Borowy (2017). Bill 148 and the Equal Pay Provisions. Ontario Equal Pay Coalition, Pg. 2 and 4.

ⁱⁱ *ibid*, Pg. 5-6.

ⁱⁱⁱ Workers' Action Centre (2015). Still Working on the Edge: Building Decent Jobs from the Ground Up, Pg. 29.

^{iv} Field, Cynthia & Glen Jones (2016). Survey of Sessional Faculty in Ontario Publicly-Funded Universities. Centre for the Study of Canadian & International Higher Education, Pg. 14.

^v *Poverty and Employment Precarity in Southern Ontario (PEPSO) Research Group*, "The Precarity Penalty: Executive Summary," *McMaster University and United Way Toronto*, May 2015, 9-14.

^{vi} Mitchell, C. Michael & John C. Murray (2016). The Changing Workplaces Review Final Report. Ministry of Labour, Pg. 187.