

OCUFA submission on the Changing Workplaces Review Interim Report

October 2016

OCUFA

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

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The Ontario Confederation of University Faculty Associations is the voice of 17,000 university professors and academic librarians in 28 faculty associations across Ontario.

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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.

OCUFA welcomes the opportunity to provide feedback on the Interim Report of the Changing Workplaces Review in advance of the preparation of the Special Advisors' Final Report. This submission follows thirteen presentations made by faculty association representatives during the public consultations across the province between June and September 2015, and a written submission made by OCUFA in September 2015.

This document begins with a short discussion of the principles identified in the Interim Report, and then responds to the options included in the Interim Report in five priority areas for OCUFA: fair pay and access to benefits for contract workers, more job security and stability for contract workers, reasonable notice of work, consolidation of bargaining units, and effective collective representation.

OCUFA has endorsed the Fight for \$15 and Fairness and supports the recommendations made in submissions put forward by the Ontario Federation of Labour and Workers' Action Centre (with Parkdale Community Legal Services) in response to the Interim Report.

STRONG PRINCIPLES FOR AN EFFECTIVE PLAN

The Interim Report of the Changing Workplaces Review released by the Special Advisors in July 2016 has the potential to serve as a starting point for an effective plan to address precarious work and promote good jobs at Ontario's universities and throughout the broader economy.

The Interim Report recognizes that the rise of precarious work "is an urgent and serious threat to the well-being, not only of a significant number of workers in Ontario, but also to their families and Ontario society" (p. 8). It outlines some strong principles, which the Special Advisors should ensure continue to guide the recommendations in their final report, including that the "right to meaningful collective bargaining is a critically important constitutional right" (p. 16) and that "decent work" should form the basis for employment and labour law (p. 12).

In this document, OCUFA will comment on the options laid out in the Interim Report that are of particular interest to faculty. As stated in OCUFA's initial submission, supporting the achievement of fair working conditions for contract faculty is one of our key priorities. We encourage the Special Advisors to continue to address issues of fair pay, access to benefits, job security, reasonable scheduling, consolidation of bargaining units and effective collective representation in their final report.

FAIR PAY AND ACCESS TO BENEFITS

The Interim Report acknowledges existing inequities in the labour market between full-time workers, and part-time and contract workers who experience lower wages and less access to benefits (p. 39, 40-1 and 223). An option listed in the report is that it be required that "part-time, temporary, and casual employees be paid the same as full-time employees in the same establishment unless differences in qualifications, skills, seniority, or experience or other objective factors justify the difference... This could apply to pay or to pay and benefits" (Option 2 and 3, Section 5.3.7, p. 227-8).

OCUFA encourages the Special Advisors to include this as a recommendation in their final report and argues that it should be extended to benefits and working conditions as well as pay. In addition, benefits for part-time and contract workers should be comparable to those provided to full-time workers. If a threshold is put in place for access to comparable benefits, it should be established based on the principle of ensuring equal treatment and should be low enough that it curbs the incentive for employers to hire more employees below the threshold. The provision of equal pay and access to benefits should be extended to all workers with no exemptions.

MORE SECURE AND STABLE WORK

The Interim Report recognizes the practice of hiring workers on continuous limited-term contracts to rationalize lower wages and lack of benefits. It states that contracts are often renewed “over many years so that they appear to be almost permanent” and “in some professions and disciplines, permanent employment with the salaries, benefits and security that come with it seems remote and impossible to attain” (p. 40). The report identifies concerns about the “growth of individuals working on ubiquitous fixed and limited term contracts” and “the lack of security, particularly in instances where it appears that employees are kept in such positions indefinitely to justify lower wages and lack of benefits” (p. 221). An option laid out in the report is that a limit be placed on the number or total duration of limited term contracts (Option 5, Section 5.3.7, p. 228).

OCUFA encourages the Special Advisors to refine this recommendation in their final report to ensure that after an employee has been employed on fixed-term contracts for a set period of time (e.g. one year) that their employment is considered continuous for all purposes. This would deter employers from hiring on contract in order to sidestep obligations, such as the provision of benefits. The set period of time must also be short enough that it diminishes the incentive to hire more contract workers for a shorter duration. To be effective, this provision should be accompanied by a strong just cause protection for contract workers when at the end of the contract someone else is hired to do the same work.

REASONABLE NOTICE OF WORK

The Interim Report acknowledges workers’ need for predictability in their work lives (p. 39). An option listed in the report is that all employers be required to provide advance notice in setting and changing work schedules to make them more predictable, including posting schedules at least two weeks in advance and requiring employers to pay employees more for last-minute changes to schedules (Option 4, Section 5.3.2, p. 203).

OCUFA encourages the Special Advisors to include this recommendation in their final report. While two weeks advance notice is not adequate for university professors who require time to develop and prepare a course, it would be an improvement on existing employment law and would provide a stronger starting point for bargaining adequate notice of work for faculty.

CONSOLIDATION OF BARGAINING UNITS

The Interim Report acknowledges the issue of “whether there ought to be an explicit power to revise, amend and consolidate bargaining units... in circumstances where the original bargaining unit structure is no longer appropriate” or “where bargaining units are overly fragmented” (p. 86). It considers introducing a mechanism for combining existing smaller units into “more rational” bargaining structures (p. 88). An option is included that would reintroduce the consolidation provision that was in the Labour Relations Act from 1993-95, which allowed the OLRB, upon application from the union or employer, to consolidate bargaining units where the employer is the same and only one union is involved (Option 2, Section 4.3.4, p. 86 and 88).

OCUFA encourages the Special Advisors to include this recommendation in their final report. OCUFA’s current interest in this provision is to empower unions to request consolidation in order to reduce the fragmentation of units where one union and one employer is involved. The test for consolidation from the previous Labour Relations Act provision remains appropriate – it included consideration of whether it would “facilitate viable and stable collective bargaining, reduce fragmentation of bargaining units, or cause labour relations problems” (Option 3, Section 4.3.4, p. 88). Overall, as models for the consolidation of bargaining units are proposed, it is crucial to preserve the agency of union members to choose their own representation.

EFFECTIVE COLLECTIVE REPRESENTATION

The Interim Report recognizes that the “right to meaningful collective bargaining is a critically important constitutional right” (p. 16) and makes a commitment to “consider whether the decline [in the number of unionized employees] means that the structure of the industrial relations system has to be revised” (p. 32). Numerous options are included in the report that would help workers exercise their right to organize collectively to improve their conditions of work and join a union.

For example, the report cites research demonstrating that mandatory vote models of union certification are associated with fewer certification applications and lower success rates than card-based certification (p.72). Therefore, an option is included to reinstate card-based certification (Option 2, Section 4.3.1.1, p. 73). OCUFA encourages the advisors to include this as a recommendation in their final report, alongside a comprehensive set of reforms (as laid out in the submission from the Ontario Federation of Labour) that will ensure fair rules for joining a union in Ontario.

The report also gave some consideration to new models for broader-based bargaining, with a focus on difficult-to-organize workplaces and sectors. Various options were put forward

including models that allow for organizing and bargaining on a multi-employer basis, for franchisee units to be brought under initial agreements reached with the parent franchisor, and for unique bargaining structures to be established in specific industries (Options 3, 4, 7, 8 and 9, Section 4.6.1, p. 124-126). Given the need to organize more workers in precarious jobs and the fact that broader-based bargaining would be a novel feature of Ontario labour law, the Special Advisors should proceed on these issues in close consultation with workers and unions in difficult-to-organize workplaces and sectors to determine appropriate models.

While generally not addressed in the submissions received, the Interim Report includes a section on exploring non-union models for providing “employee voice” (p. 126-133). However, the report also acknowledges concerns about non-union forms of employee representation being “employer-dominated” in some jurisdictions (p. 129). OCUFA cautions against any models that would not provide workers with meaningful, collective influence over their working conditions (Options 2, 3 and 4, Section 4.6.2, p. 133). Rather than exploring non-union models of representation, OCUFA encourages the Special Advisors to prioritize removing unfair barriers to joining a union and exploring broader-based bargaining models, with a particular focus on effective models for workers in precarious jobs.