

Submission to the Treasury Board Secretariat consultations on collective bargaining in the public sector

May 17, 2019

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 has been the provincial voice of university faculty since 1964. OCUFA represents over 17,000 professors and academic librarians in 29 faculty associations across Ontario.

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Introduction

We are responding to the Treasury Board Secretariat's (TBS) call for written responses as part of the consultations on collective bargaining in the public sector. This written submission follows up on our appearance at the in-person consultation in Toronto on May 3. The tone and tenor of this submission will be guided by our impression of the consultation process thus far – which, to be candid, has amounted to little more than a charade. The external legal counsel retained by TBS was unable to answer a single substantive question and did nothing to dispel the widespread suspicion that wage cap legislation is already written and ready to be introduced the week of May 27. It seems clear that there is no genuine intention to consult our sector before bringing radical change to collective bargaining in Ontario's public sector. Despite the cynicism underlying this process, we will set out our concerns about centralized bargaining in the university sector.

These are turbulent times for universities in Ontario, starting with the government's introduction of needless directives on free speech, then the cuts to OSAP for students and the 10 per cent tuition reduction that cut over \$350 million from the system, and, most recently, the introduction through the Ontario Budget of so called performance-based funding tied to 60 per cent of the operating budgets of our institutions.

The clear pattern of all of these measures is government intrusion into the autonomy of Ontario universities. And that is not merely a budgetary problem or a political annoyance, it is a direct attack on the societal purpose of universities and what makes universities effective and unique social institutions that address the most pressing social, economic, and cultural problems facing the people of Ontario. The principles of tenure, academic freedom, and collegial governance are not job perks but rather the lifeblood of any modern university and the living, breathing guarantee that universities remain autonomous from state and private interests.

Further, the autonomy of each university is integral to its ability to serve the local and individual needs of its community, students, and faculty. It is this autonomy that fosters the distinct character and culture of each institution, contributing to differentiation and providing unique value to local communities and the people of Ontario.

Regrettably, we see these consultations as the latest attack by the government on university autonomy and university faculty. Like much of this government's policy thus far, it is, in essence, a manipulative, cynical solution in search of a problem. In addition to our unique legislative and societal mandate, it is important to note that the government of Ontario currently only funds 35 per cent of university operating budgets and, therefore, universities are not a part of the public sector as defined in the *Pay Equity Act*.

In addition, like many others in the public sector, our monetary settlements have barely kept up with inflation and operating funding for universities has not kept up with inflation. As we outline below, salaries in our sector have come in well under private sector settlements in recent years and wage legislation would only serve to undermine mature bargaining relationships. Blaming faculty and other public sector workers for Ontario's fiscal challenges is fact-free scapegoating. Both nominally and legally, the Government of Ontario is not our employer and legislated centralized bargaining would not only be counterproductive, it would destabilize labour relations in our sector and undermine flexibility, collaboration, and creativity in collective bargaining in a sector that is varied and complex. The

government has offered no substantial rationale for why destabilizing labour relations in a sector that more or less works well will assist the government with its purported “fiscal crisis.”

Manufacturing crisis: Setting the policy context

A careful review of the government’s own data quickly reveals that Ontario is facing a revenue problem, not a spending problem as the Ford Government repeatedly and falsely claims.

In addition, the government assumes, without substantiating data or evidence, that public sector pay increases, negotiated through collective bargaining, are to blame for Ontario’s deficit. The government has yet to substantiate this claim.

Below we present our data-based analysis, which counters the government’s false claims regarding public-sector pay increases. An evaluation of the government’s public debt must include a rigorous evaluation of both government expenditures and revenue.

According to the Financial Accountability Office of Ontario (FAO), the Ontario government has the lowest per capita spending in the country.¹ Ontario’s per capita program spending is more than \$2,000 below the average in Canada. This includes spending on essential public services such as long-term care, childcare, education, transit, water, and infrastructure. In addition, since 2011, Ontario’s program spending has grown at less than half the rate of other provinces.

In the postsecondary education sector, Ontario’s per capita funding is 21 per cent lower than the rest of Canada. The last meaningful investment in Ontario’s postsecondary system was well over a decade ago and since then public funding for postsecondary education has been on a downward trend.

The Ford Government’s commissioned line-by-line review stated that, “[G]overnment expenditures as a portion of GDP have shrunk over the relevant 15-year time period for Ontario.” This means that the economy is growing at a faster pace than government expenditure in the province and that public spending, as a share of GDP, has decreased over the reporting period.²

The Ontario Chamber of Commerce (OCC) noted that, “Ontario has exhibited strong fiscal prudence compared to other provinces” and has suggested that the Ford Government has misrepresented the gravity of Ontario’s debt, given that provinces in Canada provide essential services that federal governments usually provide in other countries. The OCC also emphasized the negative consequence of spending cuts and failure to invest in critical infrastructure, social programs, and growth-supporting services.³

Ontario also had the lowest revenue per person in Canada in 2017, almost 16 per cent lower than the national average. According to the FAO, Ontario’s personal income tax revenue is equivalent to 9.9 per cent of labour income, which is significantly below the 11.7 per cent share in the rest of Canada. At 11.8 per cent, Ontario’s corporate income tax rate (tax revenue as a share of corporate profits) is also below the ratio for the rest of Canada which is 12.2 per cent.

The purported rationale for legislated wage caps is that Ontario is facing an unprecedented fiscal crisis, but the rhetoric from the Ford government does not stand up to scrutiny. Credible economic think tanks in the province have repeatedly warned of the government’s “financial fear mongering.”⁴ The OCC has advised the Ford Government to avoid “the siren song of austerity.”⁵ Even Moody’s, the Wall

Street credit rating agency, has raised alarm over Ontario's low revenue and cited it as a main reason for downgrading the province's credit rating last December.⁶

The Ford Government has consistently ignored the facts and economic advice. Instead, it has used contrived fiscal crisis rhetoric to introduce devastating cuts to Ontario's public spending that will have negative, long-term economic, and social consequences for the public services all Ontarians rely on. In addition, the deepest government cuts have been directed at programs that serve the poorest and most marginalized in the province. None of the cuts are supported by a sound financial or economic analysis or any evidence of how they will serve Ontarians or impact the province's finances.

Amidst this manufactured fiscal crisis, the Ford government is contemplating legislated wage caps for all public sector bargaining. Legislating caps for public sector wage increases would undermine the right to free and fair collective bargaining and will destabilize labour relations in our sector.

It is important to note that universities in Ontario are autonomous bodies that engage in free collective bargaining directly with their employees. As such, the Ontario government is not the direct employer of university faculty and currently only provides 35 per cent of university operating funding in Ontario.

It is unclear how capping negotiated pay increases in public sector unions, and faculty associations, will reduce Ontario's deficit. This is especially true as the government's own statistics show that average wage settlements in the public sector have been lower than those in the private sector for five years running, as demonstrated in the chart below.

Annual average wage increases in Ontario collective bargaining		
Year	Public sector	Private sector
2017	1.9%	2.1%
2016	1.4%	1.9%
2015	0.8%	1.7%
2014	1.4%	1.9%
2013	0.5%	2.3%

The government has yet to substantiate its rationale for how destabilizing labour relations in a sector will remedy the so called "fiscal crisis," especially when changes in faculty compensation will have no impact on the provincial budget, as they are one of many components of university operating budgets.

We agree with Treasury Board President Peter Bethlenfalvy that "Ontario must chart a new fiscal path or risk becoming a failed economic state."

We believe, based on data and economic analysis, that the new path must include comprehensively addressing Ontario's revenue problem and adequately investing in public services in Ontario, including those the most marginalized rely on.

Targeting our right to free and fair collective bargaining is not only reckless, it will undermine Ontarians' rights under the *Canadian Charter of Rights and Freedoms* and de-stabilize labour relations, potentially harming the economy in Ontario.

Faculty compensation and collective bargaining: A solution in search of a problem

Unions play an important societal role in reducing income inequality and improving workplace fairness. Academic research has demonstrated that unions also play a beneficial role in improving organizational effectiveness and governance by giving workers a collective voice through the bargaining relationship, to the benefit of both the individual employer and society in general.⁷

Ontario's university faculty have recognized this multi-faceted value of collective representation and a collective bargaining framework for more than half a century, creating the first faculty associations in the 1950s and then pursuing unionization energetically in the decades that followed. Faculty unionization in Ontario dates back to 1964, when Ryerson University (then Ryerson Polytechnic) was voluntarily recognized by the administration. Since then, all but a few Ontario faculty associations have become certified unions. At greater than 80 per cent, Ontario faculty have one of the highest rates of union density of any occupation in Ontario, in league with teachers and nurses.

As our organizing history makes very clear, individual faculty teaching in universities across the province have embraced collective bargaining in order to solve workplace problems, end injustices, and achieve fair compensation. Faculty members expect that their right to a collective voice through their faculty association, as guaranteed under Ontario law, will be respected by governments and employers alike.

The process of collective bargaining is generally a story of success in our sector, historically roughly 97 per cent of collective agreements in Ontario are settled without a labour disruption and that proportion has been rising over time. This pattern has held in good economic times and in bad and there are many important reasons for this relative labour peace, but we want to highlight two in particular.

First, collective bargaining, at its best, creates a forum for local problem-solving. The capacity to set goals and trade off employer issues against worker demands creates broad scope for making a deal. Collective bargaining has never been exclusively about compensation; most faculty collective agreements cover roughly forty articles or areas of workplace concern, and only a small number deal with compensation matters. The final collectively bargained deal is limited only by the creativity of the parties and their willingness to act in good faith.

Beyond compensation, faculty have made significant gains in collective bargaining concerning academic freedom and collegial governance, hiring processes that foreground equity and fairness, strong anti-discrimination and harassment protections, course-based security for contract faculty and a host of other improved terms and conditions of employment. These non-monetary gains are locally crafted to fit the unique culture and needs of the faculty and administration at each university. These win-win solutions can only be achieved through unfettered local collective bargaining.

Second, the ability of workers to strike or employers to lock-out can be a costly path to resolving an impasse in terms of the toll it can take on the bargaining relationship and, as such, is invoked rarely. Certainly, in the university sector, both faculty associations and employers will pull out all the stops in the final hours of bargaining to find a path to a settlement. As a result of this commitment, strikes are

extremely rare in the sector. Since 1996, through 235 rounds of faculty collective bargaining, in only 8 was a strike required to reach a settlement.

For many decades, in all fiscal situations and in the face of persistent underfunding in the postsecondary sector, Ontario faculty have bargained in the long-term interests of Ontario's universities and always enter into negotiations with the good of the province as a whole in mind. But the continued success and stability of labour relations in universities requires that all issues, including compensation levels, remain within the scope of bargaining, and that the local parties to the agreement be left to craft settlements that are responsible, win-win, and reflect local culture and needs.

Universities flourish when they are independent, self-governing, and attract the very best national and international talent. The right of academics to have a meaningful say in how universities are run is not a management prerogative or the province of any partisan government but rather the intellectual and cultural lifeblood of a modern university. It is the distinguishing feature that sets universities apart from all other social institutions and provides a unique space for academics to tackle the most vexing social, economic, cultural, and environmental problems of our time. And this context informs the unique labour relations at Ontario's universities. That bargaining relationship is vital to protecting and enhancing the unique pedagogic, regional, service and research mandates of each institution. The TBS is proposing to micromanage bargaining in a complex sector that relies on dynamic, local, and collaboratively bargained conditions of employment.

It is also crucial to note faculty monetary settlements have been constrained for some time by the austerity levels of postsecondary funding that are endemic in Ontario. As demonstrated in the chart below, over the last five years, the compounded annual inflation rate for Ontario is 9.9 per cent. Over this same time frame, individual faculty have received a compounded average of 9.2 per cent to offset the effect of inflation on salaries, resulting in a 0.7 per cent erosion of income relative to the cost of living. Over a career, failing to have salary increases that keep up with inflation compounds to a large, permanent, and corrosive impact on living standards that carries into retirement.

Faculty salary settlements, annual change, 2014 to date		
Year	Across the board increase*	Ontario CPI
2018-19	1.9%	2.4%
2017-18	1.6%	1.7%
2016-17	1.8%	1.8%
2015-16	1.7%	1.2%
2014-15	1.9%	2.4%
Compound change	9.2%	9.9%

*Weighted average system across the board increase.
 Source of settlement data: Ontario faculty memorandums of agreement as reported to OCUFA.

The headline loss of inflation protection for faculty as a whole obscures the differential impact of wage restraint on more vulnerable sub-groups within the university system. In fact, salaries vary considerably across the province and between groups of faculty within the same institution. The groups hit hardest by wage restraint are always those that can least afford it – faculty in small and northern universities, women and other equity-seeking groups whose salaries are lower due to wage discrimination, young faculty for whom wage restraint will compound over a lifetime, and precariously employed contract faculty.

Despite a regulated system of grants and tuition that is relatively uniform across the system, faculty at small institutions are paid significantly less than those at larger Ontario institutions.

The faculty at OCAD, despite facing Toronto level living costs, are paid one-third less than the median Ontario university, and roughly 40 per cent less than faculty at the top of the salary rankings.

Northern university faculty fare only slightly better. Faculty at Nipissing University make 20 per cent less than the median Ontario university, and 30 per cent less than the salaries paid at the top of the system. Through the collective bargaining process, faculty at small and northern universities have been demanding that this level of inequality within the system be reduced, and constraints on free collective bargaining will jeopardize their opportunity to achieve a fairer salary distribution across the university sector.

Sub-groups within universities also face unjustifiable salary inequities. A number of recent salary gap studies have shown that female faculty continue to experience gender-based discrimination in income. In 2015, McMaster University paid out \$3,515, and the University of Waterloo paid out \$2,905 to female faculty to close the gender wage gap. A number of other salary anomaly studies and pay equity legal challenges are ongoing. The work of identifying gender-based salary discrimination must be completed and restitution must be made. It is clear across jurisdictions that legislated wage caps and wage freezes exacerbate inequity and interrupt the important work of rectifying historical economic injustice on the basis of gender, race, and geography.

It is also important to note that, although all faculty suffer a loss in living standards when salaries fail to keep up with expectations, wage restraint has the biggest impact on faculty at the beginning of their careers, as the gap compounds over many years and substantially erodes lifetime earnings. For example, assuming wage restraint artificially constrains salary increases to half the rate of inflation, a typical newly hired faculty member will suffer a loss of \$293,292 (2019 dollars) in lifetime earnings, even if the restraint is short-lived. If these losses are not restored in the future, these individuals will have lower lifetime earnings than younger colleagues hired in the future.

But the most egregious effects of wage restraint by far will be felt by contract faculty, who are paid low stipends that leave many of them struggling every month, who have precarious jobs and volatile incomes, and who have waited too long already for fair pay and just working conditions.

An OCUFA review of salary data at universities across the province reveals a pay gap of about 40 per cent. While sessional faculty are paid an average per-course stipend of \$7,500, full-time faculty are paid an average of \$12,800 for the equivalent portion of their work. This is an unacceptable pay gap – one that once again disproportionately impacts women who make up the majority of sessional faculty at Ontario universities.

The right to free and fair collective bargaining

In addition to our pragmatic and policy objections to legislated bargaining, we have a principled objection to the government undermining the right of university faculty to free and fair collective bargaining. Several recent Supreme Court of Canada judgements enshrine the right to free and fair collective bargaining as part of the *Charter of Rights and Freedom's* protection of freedom of association. In the decisive first move in overturning the prevailing labour trilogy, the Supreme Court of Canada (SCC) elegantly captures the stakes of these consultations by affirming the right to free and fair collective bargaining:

The right to bargain collectively with an employer enhances the human dignity, liberty and autonomy of workers by giving them the opportunity to influence the establishment of workplace rules and thereby gain some control over a major aspect of their lives, namely their work. . . Collective bargaining is not simply an instrument for pursuing external ends. . . rather [it] is intrinsically valuable as an experience in self-government.⁸

This decision was the first of three key SCC decisions affirming the right to free and fair collective bargaining, and all were anchored by the underlying democratic principle that employees and their representatives have a right to negotiate terms and conditions of employment.

Though these stage managed consultations are clearly designed to protect the government from a *Charter* challenge, we take the view that legislated wage caps circumvent the bargaining process and are, by definition bad faith attempts to skew labour relations in favour of employers. Historically, politically, and legally, the power of unions has been acknowledged as a necessary corrective to employer and state power. And the SCC lays bare this dynamic in rebuffing the attempts of governments in other provinces to legislate away the right to collective bargaining when it states that collective bargaining “should be understood as protecting the right of employees to associate for the purpose of advancing workplace goals through a process of collective bargaining.”⁹ The Court goes on to make very clear that bargaining must not be circumvented or controlled by the state:

It follows that the state must not substantially interfere with the ability of a union to exert meaningful influence over working conditions through a process of collective bargaining conducted in accordance with the duty to bargain in good faith. Thus the employees' right to collective bargaining imposes corresponding duties on the employer. It requires both employer and employees to meet and to bargain in good faith, in the pursuit of a common goal of peaceful and productive accommodation.¹⁰

The pragmatic accommodations that have been agreed to by the parties at Ontario's universities are imperiled by a centralized model of bargaining enforced by legislation. And it is our view that legislated wage caps would ignore settled law that enshrines the right to free and fair collective bargaining as an important democratic right in the 21st century.

Conclusion

“No matter how cynical you become, it's never enough to keep up” – Lilly Tomlin

While we understand that every government may not share our vision of collective bargaining and universities, we would be remiss if we did not conclude with a few remarks on the hollow sham that these consultations are. It seems clear from the outset that the process was only initiated to shield the

legislation from a *Charter* challenge *when* it is passed. The dishonest pretense governing this process is that no decisions have been made and no legislation drafted. If, as we expect, legislation is introduced the week of May 27 we will know for certain that was all a lie. The deadline for written submissions is May 24 and there is simply no way that our feedback could be considered in good faith and legislation drafted after the government considers the thousands of pages of submissions it will surely receive by May 24.

Manipulative consultations such as these corrode the very concept of democracy and feed a cynicism and distrust in government that will have far reaching consequences for civil society and the role of a non-partisan civil service in Ontario. The duty to consult is a part of the responsibility that comes with governing in a democracy. Nobody is owed an outcome to consultations but the important principles of integrity, transparency, and good faith lose their currency when they are demeaned, distorted, and devalued as they have been in this consultation process.

For all of the reasons stated above, our written submission and verbal representations on May 3 in no way fetter our legal right to challenge wage cap legislation that was likely written before these consultations even began.

Endnotes

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7. Freeman, Richard, and James Medoff. *What Do Unions Do*. N.Y. Basic Books, 1984.
8. *Health Services and Support-Facilities Subsector Bargaining Association v. British Columbia*, 2007 SCC 27.
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