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

OCUFA response to Bill 148, Fair Workplaces, Better Jobs Act

July 2017

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 were active participants in the recent Changing Workplaces Review – thirteen presentations were made by faculty association representatives during the province-wide public consultations between June and September 2015, and written submissions were made by OCUFA in September 2015 and again in October 2016 following the Review's Interim Report. In its submissions, OCUFA focused on five key areas:

- All workers should receive equal pay and have equal access to benefits, regardless of their employment status as contract, part-time, casual, or temporary.
- The use of sequential or discontinuous contracts to prevent the achievement of workplace rights should be eliminated.
- Employers should be required to provide workers with at least two weeks' notice of work.
- The Ontario Labour Relations Board (OLRB) should be empowered to redefine the scope of bargaining units or consolidate bargaining units that are in the same union.
- The Labour Relations Act should be updated to ensure workers can organize collectively to improve their conditions and join a union.

After extensive consultation on employment and labour law reform, OCUFA is pleased that the government is taking steps in *Bill 148, Fair Workplaces, Better Jobs Act* to bring more fairness to workplaces across Ontario.

The bill includes positive measures to ensure equal pay for part-time, casual, contract and temporary workers, more reasonable scheduling, and better rules for joining unions in some sectors. It also includes a welcome plan to increase the minimum wage to $15 per hour by January 2019.

This submission will provide feedback on how the proposed legislation can be improved to deliver more fairness for contract faculty and all workers in Ontario. It complements presentations made by over ten faculty association representatives at the Bill 148 committee hearings across the province.

OCUFA has endorsed the Fight for $15 and Fairness and supports their recommendations, as well as those put forward by the Ontario Federation of Labour.

Summary of Recommendations

Equal pay for equal work

- 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".
- 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".
- 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 transitional measure that would exclude existing collective agreements from the new equal pay provision should be removed.
- 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.

More secure and stable jobs

- A provision should be added to the bill that disallows the use of sequential or discontinuous contracts to prevent the achievement of workplace rights by requiring that after an employee has been employed on fixed-term contracts for a set maximum duration their employment is continuous for all purposes.
- This provision should be accompanied by just cause protection for contract workers when at the end of the contract someone else is hired to do the same work.
- The government should monitor the use of fixed-term contracts and assess the impact of relevant legislation to identify best practices.

Fair scheduling

- Measures to ensure workers receive at least three hours of pay if their shift is cancelled within 48 hours or are "on call" but not called in to work should be maintained.
- Complimentary scheduling provisions should be put in place to provide employees with at least two weeks' notice of work.
- The measures that exclude unionized employees from scheduling provisions under the ESA should be removed.

Consolidation of bargaining units

- 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.
- The provision that empowers the OLRB to consolidate and reconfigure bargaining units where the arrangement is no longer appropriate should be amended to apply only in instances where one union is involved.

Right to join a union

- The provision that extends card-based certification to specific sectors should be expanded to cover workers in all sectors.
- The provision that provides just cause protection for workers from the time of certification should be extended to apply to workers organizing a union from the time of application.
- The provision that provides access to first contract arbitration when the union is remedially certified should be expanded to provide automatic access to arbitration for all first contract disputes.

Equal pay for equal work

As the number of contract faculty working on our campuses grows, concerns are being raised about their unfair working conditions. In particular, it is widely acknowledged that contract faculty are paid less than their full-time colleagues for performing work of equal value. 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.

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. A review of salary data at universities across the province reveals a pay gap of about 40 per cent between contract faculty and full-time tenure-stream faculty. This is an unacceptable pay gap – one that disproportionately affects women who make up the majority of contract faculty at Ontario universities.[2]

This pay gap is calculated based on full-time tenure-stream faculty teaching workloads and distribution of work (between service, teaching, and research work) laid out in collective agreements, or where absent in collective agreements, on general workload and distribution of work norms. This proportional model for equal pay posits that contract faculty should be paid for the courses they teach at a rate equal to the rate their full-time colleagues are paid for their teaching responsibilities.

There are limits to this proportional model that would suggest the pay gap for contract faculty is even wider. While contract faculty are only compensated for teaching, they often take on additional unpaid research work because, in the classroom, professors are expected to be experts in their field. Moreover, in order to remain competitive for future positions, many contract faculty maintain an active research agenda over and above what is required to carry out their teaching duties. Research has shown that over 75 per cent of contract faculty aspire to a full-time position in academia.[3]

The Final Report of the Changing Workplaces Review advises that addressing unequal pay for contract, part-time, and temporary workers be made a priority. It argues that "the principle that those who perform the same or similar work should be paid the same is a powerful equitable argument that accords with fairness and decency".[4] The report recommends that legislation guarantee "no employee shall be paid a rate lower than a

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In the Final Report of the Changing Workplaces Review, the Special Advisors express their sympathy for the concerns of contract faculty. They argue that the inequitable treatment of contract faculty is related to the funding of universities and structures of university teaching, and not "susceptible to an ESA solution".[4] OCUFA recognizes the unique structure of university work, and agrees that adequate funding for universities is essential to providing high-quality postsecondary education and would provide a stronger foundation for improving contract faculty working conditions. However, the argument that minimum standards cannot be part of the solution for contract faculty should be rejected. When it comes to teaching, the work contract faculty and full-time tenure track faculty do is the same. A strong provision for equal pay for equal work in the ESA would deliver more fairness for contract faculty. This is the basis for our recommendations to strengthen the equal pay provision in Bill 148.

comparable full-time employee of the same employer" and recognizes that it is "long-past time" for the adoption of such a measure and "unconscionable to ignore it any longer". [6]

Other jurisdictions have taken steps in this direction. In the European Union (EU), most member countries have adopted EU directives on part-time and fixed-term work, which aim to eliminate discrepancies in pay and conditions of work between part-time or contract and full-time, permanent workers.[7] In many countries, employment law allows for access to equal compensation (including pay and benefits) on a proportional basis, including in Austria, Denmark, Belgium, Germany, Malta, Slovenia, and Spain.[8]

Strengthening Bill 148: Closing gaps in the equal pay provision

The proposed legislation aims to ensure equal pay for equal work. These changes would require part-time, casual, and seasonal workers to be paid equally to full-time workers when performing "substantially the same" job for the same employer, if the work requires the same skill, effort and responsibility, and is performed under similar working conditions. Differences in pay would be allowed when the difference is based on seniority, merit, "quantity or quality of production", or "other factors" (Section 42.1).

While these proposed legislative changes are a welcome signal of the government's commitment to closing the pay gap for contract, part-time, and temporary workers across the province, it must be strengthened to ensure it will have the intended impact. 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.[9] 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.

Several European jurisdictions have adopted more useful language to define comparable work. For example, in the United Kingdom, regulations include protections for part-time and contract workers who do "broadly similar" work for the same employer, preferably in the same establishment. This is better than the narrower comparator language in the legislation being proposed in Ontario. Moreover, it has been recognized by the British employment tribunal that a narrow interpretation of the comparator "may well rob the legislation of its effectiveness".[10]

The scope for exceptions in the proposed legislation is also too wide. Experiences with existing pay equity legislation have proven that, to be effective, the language needs be tightened. Historically, "other factors" has been interpreted loosely – even to include an employer's wage structure – when women have challenged gender pay discrimination.[11] It is crucial that exceptions to the equal pay entitlement be limited to objective factors, such as seniority and merit. The exceptions that allow piece work and "other factors" to justify differences in pay must be removed.

These two key changes to the bill to expand coverage and limit exceptions will help to ensure it achieves its intended impact. A real opportunity exists with this bill to deliver more fairness for contract faculty and other part-time, contract, and temporary workers across the

province who most need support. However, if these amendments are not made, experts expect loopholes in the current language will largely negate the intent of the equal pay provision.

Recommendations:

- 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".

> Amend section 42.1 (1) of the ESA to read:
>
> *No employer shall pay an employee at a rate of pay less than the rate paid to another employee of the employer because of a difference in employment status when,*
>
> *(a) they perform **similar** work in the same establishment;*
>
> *(b) their performance requires **similar** skill, effort and responsibility; and*
>
> *(c) their work is performed under similar working conditions.*

- 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".

> Amend section 42.1 (2) of the ESA to read:
>
> *Subsection (1) does not apply **if the employer is able to show that the difference in pay is the result of,***
>
> *(a) **a formal seniority system that does not discriminate on the basis of sex or any other ground protected under the Human Rights Code; or***
>
> *(b) **a merit compensation plan that is based on formal performance ratings and that has been brought to the attention of the employees and that does not discriminate on the basis of sex or any other ground protected under the Human Rights Code.***

Strengthening Bill 148: Making the equal pay provision more effective

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. Other jurisdictions have taken this approach, for example, under EU law a broad definition of "pay" has been long established to include both salary and benefits.[12]

In addition, the proposed legislation sets a dangerous precedent by excluding some groups of unionized workers from the new equal pay provision set out in the Employment Standards Act (ESA). The current language states that rules in a collective agreement (in effect as of April 1, 2018) that are inconsistent with the new equal pay provision will take priority until the agreement is renegotiated (Section 42.1(7)). This undermines the fundamental principle that the ESA sets minimum standards that no worker should fall below. This transitional

measure should be removed to ensure that no contract, part-time, or temporary workers are left behind as the equal pay provision is implemented.

Finally, 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.

Recommendations:

- 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.

  > Under section 42 of the ESA, the definition of "rate of pay" should include salary, benefits, bonuses, commissions, pension contributions, health plan premiums and other benefits that form the total compensation package provided to an employee.

- The transitional measure that would exclude existing collective agreements from the new equal pay provision should be removed.

  > Repeal sections 42.1 (7), (8) and (9), and 42.2 (7), (8) and (9) of the ESA.

- 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.

  > A new provision that includes strong transparency rules should be added under section 42. For proposed language see Appendix A.

For full proposed language for a strengthened section 42 that would better ensure equal pay for equal work, please see the submission from the Ontario Equal Pay Coalition prepared by Fay Faraday and Jan Borowy. A copy of the proposed language for section 42.1 (Equal pay for equal work – difference in employment status) and 42.3 (Equal pay for equal work – Pay transparency) is included as Appendix A.

More secure and stable jobs

In the university sector, it has become increasingly common for faculty to work on fixed-term contracts. While contract faculty lack job security, the reality is that they have often been working in these positions for years and even decades. 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.[13] Despite working on sequential contracts for the same employer for so long, their continuous employment is not recognized and they continue to experience job insecurity. In addition, discontinuous contracts or gaps in service too often allow employers to sidestep obligations such as pensions, benefits, and other entitlements.

The Interim Report of the Changing Workplaces Review 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".[14] 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".[15] An option laid out in the report is that a limit be placed on the number or total duration of limited-term contracts.[16]

The Final Report of the Changing Workplaces Review also recognizes the growth of contract work.[17] However, it rejects the idea of placing a cap on the duration of fixed-term contracts due to concern that, when the cap is reached, employers may be incentivised to discontinue the employment of these workers.[18] To avoid this impact, such a provision should be accompanied by strong just cause protection for contract workers when, at the end of the contract, someone else is hired to do the same work.

In the EU, a directive specifies that member countries must adopt measures to prevent the abuse of fixed-term contracts, either through setting a maximum number of fixed-term contract renewals, setting a maximum total duration of fixed-term contracts, or by requiring objective reasons for justifying the renewal of fixed-term contracts.[19] A variety of approaches have been taken to implement this directive, including limits on the maximum duration of successive fixed-term contracts of 18 months in France, 4 years in the UK and 6 years in Germany.[20] In fact, in France the use of successive fixed-term contracts for the same position is prohibited, and fixed-term contracts cannot be used for any position that relates to a company's normal and permanent business activities.[21]

Strengthening Bill 148: Addressing the growth of contract work

It is disappointing that the growth of fixed-term contracts is not addressed directly in the proposed legislation. In addition to seeking amendments that would strengthen the equal pay provisions, 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.[22] 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 evaluated 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 (see recommendations in the previous section). This would go a long way to pushing back against the proliferation of fixed-term contracts that leave workers without job security.

Recommendations:

- A provision should be added to the bill that disallows the use of sequential or discontinuous contracts to prevent the achievement of workplace rights by requiring that after an employee has been employed on fixed-term contracts for a set maximum duration their employment is continuous for all purposes.

  > A new provision in the ESA should limit the use of fixed-term contracts to a maximum duration (e.g. one year, as recommended by the Workers' Action Centre).[22] The goal of the provision should be to promote job security by transitioning contract workers to permanent positions.

- This provision should be accompanied by just cause protection for contract workers when at the end of the contract someone else is hired to do the same work.

  > A strong just cause protection in the ESA that applies to all workers after three months of employment would address this concern. See Appendix B for proposed language.

- The government should monitor the use of fixed-term contracts and assess the impact of relevant legislation to identify best practices.

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.[24]

The proposed legislation includes provisions that would 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 (Section 21). These are steps in the right direction that provide employers with some incentive to avoid erratic and last-minute scheduling.

The Interim Report of the Changing Workplaces Review acknowledges workers' need for predictability in their work lives.[25] 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.[26]

Strengthening Bill 148: Providing workers reasonable notice of work

OCUFA recommends that a minimum requirement of two weeks notice of schedules be included in the legislation. This would complement existing measures in the bill and follow many jurisdictions in the United States that have passed similar legislation in recent years.[27] It would also 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.

Recommendations:

- Measures to ensure workers receive at least three hours of pay if their shift is cancelled within 48 hours or are "on call" but not called in to work should be maintained.

  > Maintain sections 21.3, 21.4 (1) and (2), 21.5 (1) and (2), and 21.6 (1), (2) and (3) of the ESA.

- Complimentary and reasonable scheduling provisions should be put in place to provide employees with at least two weeks' notice of work.

  > A new provision in the ESA should require employers to provide employees with at least two weeks' notice of their work schedules.

- The measures that exclude unionized employees from scheduling provisions under the ESA should be removed.

> Repeal sections 21.4 (3), 21.5 (3) and 21.6 (4) of the ESA.

Consolidation of 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.

In some cases, merging contract faculty units with tenure-stream units could help contract faculty achieve gains in bargaining and reduce the financial penalty of precarious work. Merging units could also help reduce gender-based pay inequities because workers in more recently certified units – librarians, contract faculty, and teaching-stream faculty – often have a higher proportion of women than the initial tenure-stream units.

In other cases, consolidation can improve collective bargaining by addressing dramatic size differences between bargaining units. For example, at the University of Western Ontario, the librarians and archivists' unit has only 48 members while the faculty unit has just under 1600 members. Overall, consolidating units can make bargaining more efficient and make collective agreements easier to manage. Having a legal route available to request mergers would also curb future fragmentation by reducing employers' incentive to create new positions not covered by existing bargaining units.

While nothing under current labour law precludes changes to bargaining unit structure from being negotiated after certification, faculty associations have often not had success in bargaining this type of resolution. The static nature of bargaining unit structure currently sustained by existing legislation is poorly suited to accommodate the changes taking place at Ontario's universities and many other workplaces across the province. It is important that bargaining unit structures be allowed to evolve as our workplaces change.

Strengthening Bill 148: Improving options for bargaining unit consolidation

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 (Section 15.1).

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.

The proposed legislation also allows the OLRB to change the structure of a bargaining unit where the employer or union requests a review of the existing arrangements and the units are deemed to be "no longer appropriate for collective bargaining". In these instances, the Board is granted the power to consolidate, restructure or create new bargaining units. Where more than one union is involved, the Board may determine which union will be the bargaining agent and decide which collective agreement will apply (Section 15.2).

This provision could help unite communities of interest through adjustments to the definition and scope of existing units in some instances. However, the application to situations involving more than one union undermines historic decisions made by workers about their own representation, as well as workers' right to choose their union. It could also have the unintended consequence of creating further instability and uncertainty among workers about their representation and rights. Moreover, it opens up the possibility of this provision being used to lower standards in a workplace, working against the legislation's goal of addressing the growth of precarious jobs.

Therefore, in the same way that the legislation limits consolidation applications to instances where there is only one employer, it should remain limited to instances where bargaining units are in the same union. This principle underpins the proposed legislation for consolidation after certification (Section 15.1), and there is no reason for it not to be mirrored in the broader consolidation provision (Section 15.2).

Recommendations:

- 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.

> Amend section 15.1 (1) of the LRA to read:
>
> *If the Board certifies a trade union or council of trade unions as the bargaining agent of the employees in a bargaining unit, the Board may review the structure of the bargaining units if all of the following conditions are met:*
>
> *1. The employer, trade union or council of trade unions makes an application to the Board requesting the review at the time the application for certification is made**, or at any time thereafter.***

- The provision that empowers the OLRB to consolidate and reconfigure bargaining units where the arrangement is no longer appropriate should be amended to apply only in instances where one union is involved.

> Amend section 15.2 (1) of the LRA to add the following:
>
> *The Board may review the structure of the bargaining units if all of the following conditions are met:*
>
> ***3. The same union holds bargaining rights for all of the affected bargaining units.***

Right to join a union

Unions play an important role in reducing income inequality and improving workplace fairness. At Ontario's universities, faculty have recognized the value of collective representation for decades. In recent years, as precarious jobs on university campuses are reaching unprecedented numbers, effective unions will be essential for achieving more security, fair pay, and access to benefits. This is not just the case at universities, but in other sectors of the economy, many of which have much lower rates of unionization. Modernized labour laws will help to ensure that workers can access collective representation to make improvements to their lives.

When organizing, workers should only have to show their support for the union once if a majority of workers sign a union card. The requirement to then hold a vote is redundant. It also creates an unfair and unnecessary opportunity for employer intimidation and pressure. Where votes are mandatory, the number of unfair labour practices committed by employers during organizing drives increases.[28] Moreover, where a certification vote is required, fewer certification applications are made and there are lower success rates.[29] This trend is more pronounced in sectors with low wages and precarious jobs, where change is needed most.[30]

Strengthening Bill 148: Establishing a fair union certification process

The proposed legislation's expansion of card-based certification to specific sectors, including home care, community services, building services and temporary help agencies, is a welcome step (Section 15.3). However, there is no reason for card-based certification to be available to workers in some sectors and not others. It has proven to be a more effective model, and should be extended to ensure appropriate options are available to all workers who choose to exercise their right to meaningful collective bargaining.

Furthermore, to minimize fear and employer intimidation, workers should be protected from retribution for discussing the union with their colleagues or being involved in the certification process. The proposed legislation extends just cause protection to workers between the time of certification and when a first contract is reached (Section 12.1). However, many workers face retribution for their efforts during organizing drives, so just cause protection must be extended to apply from the time of application. A strong just cause provision in the ESA that applies to all workers after three months of employment would address this concern. Together, card-based certification in all sectors and just cause protection would help ensure that, in practice, workers have the effectual choice to join a union in Ontario.

Once workers democratically decide to join a union, it is also reasonable to expect that they will be able to reach a first collective agreement. Too often, however, delay tactics and a failure of employers to bargain in good faith creates another set of obstacles. First contract arbitration is one tool that should be available to employers and employees in reaching a first agreement. It has been correlated with reduced work stoppages and provides a strong incentive for both parties to come to the table with the intent to reach an agreement.[31]

The proposed legislation introduces a new intensive mediation process for all first contract disputes, which must be accessed prior to first contract arbitration. Once that process is exhausted, the legislation proposes automatic access to first contract arbitration in any

situations where the union was remedially certified (due to employer misconduct). In all other situations, applications for first contract arbitration can be made to the OLRB (Section 43). This is a welcome expansion of access to first contract arbitration, although it would benefit more newly organized workers if automatic access to arbitration were available in all first contract disputes.

Recommendations:

- The provision that extends card-based certification to specific sectors should be expanded to cover workers in all sectors.

  > Amend section 15.3 of the LRA by striking out subsections (1), (2) and (3), and striking out "specified industry" in section 15.3 (4).

- The provision that provides just cause protection for workers from the time of certification should be extended to apply to workers organizing a union from the time of application.

  > A strong just cause protection in the ESA that applies to all workers after three months of employment would address this concern. See Appendix B for proposed language.

- The provision that provides access to first contract arbitration when the union is remedially certified should be expanded to provide automatic access to arbitration for all first contract disputes.

  > Amend section 43.1 (5) paragraph 4 of the LRA to reflect the following:
  >
  > ***In the case of an order under clause (2) (a), a dismissal under clause (2) (b),*** *a party may make a second application under subsection (1) and the Board* ***shall direct the settlement of a first collective agreement by mediation-arbitration*** *if the Board is satisfied that, since the Board made its original decision under subsection (2), the applicant has taken all reasonable steps to engage in good faith collective bargaining with the assistance of a mediator.*
  >
  > Amend section 43.1 (6) of the LRA by adding "or paragraph 4 of subsection (5)" after "clause (2) (c)".

[1] Workers' Action Centre & Parkdale Community Legal Services (2016). Building Decent Jobs from the Ground Up: responding to the Changing Workplaces Review Special Advisors' Interim Report, Pg. 34.
[2] Field, Cynthia & Glen Jones (2016). Survey of Sessional Faculty in Ontario Publicly-Funded Universities. Centre for the Study of Canadian & International Higher Education, Pg. 13.
[3] *ibid,* Pg. 20.
[4] Mitchell, C. Michael & John C. Murray (2016). The Changing Workplaces Review Final Report. Ministry of Labour, Pg. 177.
[5] *Ibid,* Pg. 180.
[6] *ibid,* Pg. 182 and 179.
[7] Workers' Action Centre (2015). Still Working on the Edge: Building Decent Jobs from the Ground Up, Pg. 13-14.
[8] *Bundesgesetz, mit dem das Arbeitszeitgesetz und das Arbeitsruhegesetz geändert werden*, BGBl Nr. 461/1969 as amended, s. 19d (6); *Lov om gennemførelse af deltidsdirektivet*, Lov Nr. 443 af 7 juni 2001, s. 3, para. 2; *Loi du 5 mars 2002 relative au principe de non-discrimination en faveur des travailleurs à temps partiel* MB du 13/03/2002, page 10641, Art. 4, para. 2; *Teilzeit- und Befristungsgesetz vom 21. Dezember 2000 (BGBl. I S. 1966), das zuletzt durch Artikel 23 des Gesetzes vom 20. Dezember 2011 (BGBl. I S. 2854) geändert worden ist*, s. 4(1); *Part-Time Employees Regulations*, S.L.452.79, as amended, s. 6(1); *Zakon o delovnih razmerjih*, Uradni list RS; Number: 42/2002, Art. 65(3)-(4); *Real Decreto Legislativo 1/1995, de 24 de marzo, por el que se aprueba el texto refundido de la Ley del Estatuto de los Trabajadores*, «BOE» núm. 75, de 29/03/1995, Art. 12.4, para. D.
[9] Faraday, Fay & Jan Borowy (2017). Bill 148 and the Equal Pay Provisions. Ontario Equal Pay Coalition, Pg. 2 and 4.
[10] Biggart v University of Ulster, 0078/05, 19 February 2007.
[11] Faraday, Fay & Jan Borowy (2017). Bill 148 and the Equal Pay Provisions. Ontario Equal Pay Coalition, Pg. 5-6.
[12] Österreichischer Gewerkschaftsbund, supra para. 13-16.
[13] 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.
[14] Mitchell, C. Michael & John C. Murray (2016). The Changing Workplaces Review Interim Report. Ministry of Labour, Pg. 40.
[15] *ibid,* Pg. 221.
[16] *ibid,* Pg. 228.
[17] Mitchell, C. Michael & John C. Murray (2016). The Changing Workplaces Review Final Report. Ministry of Labour, Pg. 186.
[18] *ibid,* Pg. 187.
[19] European Union Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP.
[20] Prat, Bredin & Hengeler Mueller (2013). Slaughter & May. News: Fixed-Term Employment Contracts in France, Germany and the UK. *Note: In Germany and the UK, the limit applies unless the employer can provide objective justification for the fixed-term contract.*
[21] *ibid,* supra note 7.
[22] Mitchell, C. Michael & John C. Murray (2016). The Changing Workplaces Review Final Report. Ministry of Labour, Pg. 187.
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Appendix A:
Equal Pay Coalition's proposed language for equal pay provision (Section 42.1 and 42.3)

Source: Faraday, Fay & Jan Borowy (2017). Bill 148 and the Equal Pay Provisions. Ontario Equal Pay Coalition, Pg. 15 and 17.

Equal pay for equal work: Employment Status

42.1 (1) No employer shall pay an employee at a rate of pay less than the rate paid to another employee of the employer because of a difference in employment status when,

(a) they perform similar work in the same establishment;

(b) their performance requires similar skill, effort and responsibility; and

(c) their work is performed under similar working conditions.

(1.1) For the purposes of s. 42.1(1), work will be considered similar despite minor variations or differences in duties, responsibilities or work assignments.

(2) Subsection (1) does not apply if the employer is able to show that the difference in pay is the result of

(a) a formal seniority system that does not discriminate on the basis of sex or any other ground protected under the *Human Rights Code*; or

(b) a merit compensation plan that is based on formal performance ratings and that has been brought to the attention of the employees and that does not discriminate on the basis of sex or any other ground protected under the *Human Rights Code*.

(3) No employer shall reduce the rate of pay of an employee in order to comply with subsection (1).

(4) No trade union or other organization shall cause or attempt to cause an employer to contravene subsection (1).

(5) If an employment standards officer finds that an employer has contravened subsection (1), the officer may determine the amount owing to an employee as a result of the contravention and that amount shall be deemed to be unpaid wages for that employee.

(6) An employee who believes that their rate of pay does not comply with subsection (1) may request a review of their rate of pay from the employee's employer, and the employer shall,

(a) adjust the employee's pay accordingly; or

(b) if the employer disagrees with the employee's belief, provide a written response to the employee setting out the reasons for the disagreement.

Equal pay for Equal Work: Pay transparency

42.3 (1) No later than May 15 of every year, each employer shall file an annual Pay Transparency Report with the Minister.

(2) The annual Pay Transparency Report referred to in subsection (1) shall disclose the following information relating to the prior 12-month period ending on March 31 of each year:

(a) annual individual compensation of male employees, categorized by each classification and job status within the establishment,

(b) annual individual compensation of female employees categorized by each classification and job status within the establishment,

(c) if an employee's compensation is expressed as an hourly rate, the hourly wage rate and the annual compensation of male employees categorized by each classification and job status within the establishment,

(d) if an employee's compensation is expressed as an hourly rate, the hourly wage rate and the annual compensation of female employees categorized by each classification and job status within the establishment,

(e) the number of steps in a pay range by each classification and job status within the establishment,

(f) the rate of progression through a pay range by each classification and job status within the establishment.

(3) The employer shall post the Pay Transparency Report in prominent places in each workplace for the establishment to which the document relates in such a manner that it may be read by all of the employees in the workplace.

(4) No employer or temporary help agency may do any of the following:

(a) require, as a condition of employment, that an employee refrain from disclosing the amount of their wages;

(b) require an employee to sign a waiver or other document that purports to deny the employee the right to disclose the amount of their wages.

(5) Section 74 applies to this Part with no exceptions.

Appendix B:
Fight for $15 & Fairness proposed language for just cause provision (Section 62.1)

Source: Fight for $15 & Fairness, Workers' Action Centre, Parkdale Community Legal Services (2017). Submission to the Standing Committee on Finance and Economic Affairs on Bill 148, Fair Workplaces, Better Jobs Act, Pg. 43-45.

Appendix

Extend just cause protection for all workers.

Recommendation(s):

Amend section 62.1 of the ESA by adding the following:

Termination without just case

62.1 (1) Where the period of employment of an employee with an employer is three months or more, an employer shall not discharge that employee without just cause.

Complaint

(2) An employee who is discharged without just cause may make a complaint to the Ministry in accordance with section 96(1) within • days from the date on which the employee was dismissed.

Reasons for dismissal

(3) Where an employer dismisses a person described in subsection (1), the person who was dismissed or an employment standards officer may make a request in writing to the employer to provide a written statement giving the reasons for the dismissal, and any employer who receives such a request shall provide the person who made the request with such a statement within fifteen days after the request is made.

Officer to assist parties

(4) On receipt of a complaint under subsection (2), an employment standards officer assigned to investigate the complaint shall endeavour to assist the parties to the complaint to settle the complaint, and any settlement reached shall be governed by section 101.1.

Where complaint not settled within reasonable time

(5) Where a complaint is not settled under subsection (4) within such period as the employment standards officer endeavouring to assist the parties pursuant to that subsection considers to be reasonable in the circumstances, the employment standards officer shall, on the written request of the person who made the complaint request that the complaint be referred to an adjudicator under subsection (6),

(a) report to the Minister that the endeavour to assist the parties to settle the complaint has not succeeded; and

(b) deliver to the Minister the complaint made under subsection (2), any written statement giving the reasons for dismissal provided pursuant to subsection (3) and any other statements or documents the employment standards officer has that relate to the complaint.

Reference to adjudicator

(6) The Minister shall, on receipt of a report pursuant to subsection (5), appoint a Chair or Vice-Chair of the Ontario Labour Relations Board or an arbitrator on the Minister of Labour approved list of arbitrators as an adjudicator to hear and adjudicate on the complaint in respect of which the report was made, and refer the complaint to the adjudicator along with any statement provided pursuant to subsection (3).

Hearing to be held

(7) An adjudicator to whom a complaint has been referred under subsection (6) [shall consider the complaint within 30 days of his or her appointment.

Powers of adjudicator

(8) An adjudicator to whom a complaint has been referred under subsection (6) shall determine the procedure to be followed, and has all of the powers of an arbitrator under section 48(12) of the Labour Relations Act, 1995.

Decision of adjudicator

(9) An adjudicator to whom a complaint has been referred under subsection (6) shall,

(a)determine whether the dismissal of the person who made the complaint was unjust and render a decision thereon; and

(b) send a copy of the decision with the reasons therefor to each party to the complaint and to the Minister.

Where unjust dismissal

(10) Where an adjudicator decides pursuant to subsection (9) that a person has been unjustly dismissed, the adjudicator may, by order, require the employer who dismissed the person to,

(a) pay the person compensation not exceeding the amount of money that is equivalent to the remuneration that would, but for the dismissal, have been paid by the employer to the person;

(b) reinstate the person in his or her employ; and

(c) do any other like thing that it is equitable to require the employer to do in order to remedy or counteract any consequence of the dismissal

Exception

(11) This section does not apply to a person who is a member of a bargaining unit governed by a collective agreement which provides protection against unjust dismissal.