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

Bill 77, An Act to amend the Labour Relations Act, 1995 with respect to enhancing fairness for employees

Submission to the Standing Committee on Finance and Economic Affairs
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Prepared by the Ontario Confederation of University Faculty Associations

On behalf of the 17,000 faculty that the Ontario Confederation of University Faculty Associations (OCUFA) represents, we would like to express our strong support for the measures outlined in Bill 77, the Fairness for Employees Act and encourage the Standing Committee on Finance and Economic Affairs to report the bill to the House for third reading.

The provisions outlined in the bill represent a fundamentally important step toward creating a climate in which there are fewer impediments for employees to organize and join a union. OCUFA believes that an employee-friendly climate and increased union density are not just good for those who are organized, they are good for everyone. When employees come together to improve their conditions of work, it raises the standard of wages, benefits and working conditions, which ultimately works to reduce social inequality across the board.

While many of the measures proposed by this bill would bring about modest changes, the positive impact that they would have, particularly for the most vulnerable, precariously employed employees, is significant. From a faculty perspective, within the higher education sector, the measures outlined in Bill 77 would ensure that contract and sessional instructors, whose conditions of work are often extremely precarious, could organize and certify more easily.

The provisions of section 1 of the Act, which require employers to provide a trade union with a list of employees earlier in the bargaining process, would enable those interested in discussing their working conditions with their colleagues to do so and to organize more efficiently. In the university sector, we have begun to see a significant shift in the types of faculty appointments being made relative to the types of university appointments that we typically saw in the past. As university budgets are constrained, there is increasing reliance on contract faculty, limited term appointments and post-doctoral appointments. These are revolving door appointments in which employees are hired only for part of a year, part time or for a short number of years. Given the nature of these appointments, it is

extremely difficult for union representatives to identify and locate these employees because they are only employed for a short period of time. In light of these limitations, it is extremely challenging to mount a successful organizing drive in this context. For this reason, the availability of a list of employees earlier in the organizing process would be extremely valuable in the university sector. The requirement that 20 per cent of employees have signed union membership cards and the stipulation that the list be provided through the Ontario Labour Relations Board represent reasonable checks on this provision.

Section 2 of the Act, which provides for representation votes to be held either at a neutral site, electronically, or by telephone, is one of the single most important things that can be done to ensure that representation votes are conducted under free and fair conditions. Under current legislation, representation votes are conducted on the premises of the employer. Conducting voting in an insufficiently neutral site can in and of itself discourage employees from voting – particularly those who already work under precarious conditions. In the university sector, those who work under precarious conditions are the contract faculty, limited term appointments and post-doctoral fellows. These are at-will positions in which employees have no job security. Some strides have been made to ensure that contract or limited term faculty who have taught courses previously have some rights to return to teach, but these provisions do not even approach a reasonable level of job security. Under conditions in which employees have no job security, it is an extremely high-risk activity to undertake any kind of union-related activity. And as a practical consideration, it is often difficult for employees such as contract faculty who are not on the employer's premises on a regular basis to come to the employer's premises to vote. By allowing a representation vote to be held at a neutral location or by allowing voting to be conducted by telephone or electronically, a significant deterrent from voting is removed since it facilitates the process and allows employees to feel safer to participate. As a result, it becomes possible to get a more accurate sense of what employees want.

OCUFA supports the measures of Section 3 of the bill that would ensure that bargaining units engaged in their first round of negotiations can establish a contract within a reasonable amount of time through arbitration in the event that an agreement cannot be reached at the bargaining table. Arbitration is useful and necessary in first contract negotiation because it is often difficult for parties to establish the relationship of trust that is necessary for the possibility of successful bargaining. First contract arbitration helps to get both parties past the hurdle of establishing a first contract which then allows for more robust and effective negotiation for subsequent contracts. Arbitrated first contracts tend towards basic industry standards but create a framework that parties can build on in future rounds of bargaining. We believe that the threshold of conditions that must be met before arbitration can be initiated outlined in the bill is an appropriate one that balances the rights of employees and employers in a reasonable way.

The maintenance of a bargaining unit in the contract services sector's right to continue to bargain collectively following the sale of a business and change of employer as outlined by provisions in section 4 of Bill 77 is an important protection for some of the most vulnerable employees.

Finally, the provisions of section 5 that would seek to protect employees involved in an organizing drive from employer reprisal are central to the protection of employees' right to organize and to join a union. Firing employees without any sanction during an organizing drive gives employers an extraordinarily effective and powerful tool for destroying a union drive. It is important that the recourse available to employees be equally strong.

The measures outlined in this bill seek to ensure basic fairness for employees who want to improve the conditions under which they and their colleagues work by protecting their democratic right to join a union. Without these provisions, the procedural deterrents that stand between employees who want to organize and the actual establishment of a collective agreement are significant impediments that undermine what OCUFA believes to be an important right.