

To: C. Michael Mitchell
The Honourable John C Murray

From: Don Sinclair

Date: September 11, 2015

Re: Submission to the Changing Workplace Review

The College Employer Council is pleased to provide input into your review of the *Employment Standards Act, 2000* and the *Labour Relations Act, 1995*.

The College Employer Council (CEC) is a statutorily created organization which is the bargaining agent for Ontario's 24 community colleges under the *Colleges Collective Bargaining Act, 2008 (CCBA)*. In addition to our responsibilities for collective bargaining, the CEC is responsible for advising colleges concerning appropriate terms and conditions of employment for non-union employees. These employees include administrators, part-time and sessional teachers and part-time support staff employees.

Ontario's 24 community colleges are crown agencies. Each college is an autonomous employer governed by provincial collective agreements negotiated through CEC.

Our submissions will focus primarily on the application of the *Employment Standards Act, 2000* to the college sector.

Council is available for any follow-up questions that may arise from our submission by emailing don.sinclair@thecouncil.ca or calling 416-992-1257.

Thank you in advance for your consideration on this matter.



Don Sinclair
Chief Executive Officer.

Submissions from the College Employer Council to the Changing Workplace Review

The College Employer Council (CEC) is a statutorily created organization which is the bargaining agent for Ontario's 24 community colleges under the *Colleges Collective Bargaining Act, 2008 (CCBA)*. There is one central academic agreement which covers full-time and part-time load teachers in all of the colleges as well as a central full-time support staff agreement. The *CCBA* also establishes two part-time bargaining units, one Academic and one Support Staff. Employees in these two units are currently not represented by a bargaining agent, although there were unsuccessful certification applications made by OPSEU for both in previous years. In addition to its responsibilities for collective bargaining, the CEC is responsible for advising colleges concerning appropriate terms and conditions of employment for non-union employees. These employees include administrators, part-time and sessional teachers and part-time support staff employees.

The Ontario *Labour Relations Act (LRA)* is superseded by the *Colleges Collective Bargaining Act, 2008* in the Ontario College sector. The *CCBA* was significantly revised in 2008 after a review mandated by the Liberal government which was chaired by Kevin Whittaker, then Chair of the Ontario Labour Relations Board. It is our understanding that the *CCBA* is not part of the mandate of this review; however, we are aware that recommendations by the unions as part of the current consultations, includes a single step process for certification of a bargaining unit. We are of the view that the process for certification of a bargaining unit contained in both the *LRA* and the *CCBA*, already includes a democratic procedure that allows confirmation by vote of the employees' desire to unionize. We recommend that the current process for certification under the *LRA* be maintained as is.

These submissions will focus primarily on the application of the *Employment Standards Act, 2000* to the college sector.

The Employment Standards Act

The community colleges in Ontario are crown agencies. Only the provisions specified by Section 3(4) of the *Employment Standards Act, 2000 (ESA)* apply to college employees. Generally speaking, the terms and conditions of employment at colleges in Ontario are significantly better than the minimum standards contained within the *ESA*.

Community College Employees should continue to be Excluded from the Sections of the Act which do not Apply to Them

Regardless of what recommendations may be made to the government concerning the crown agent exclusions, it is requested that you recommend that employees of Ontario's community colleges continue to be excluded from the provisions of the Act that currently do not apply to them.

Our rationale for requesting the ongoing exclusion is outlined in the following pages.

Part VII and VIII - Hours of Work and Overtime

The structure of academic work does not lend itself to the manner in which hours of work are calculated and regulated under the *ESA*.

The nature of the teaching profession requires teachers to prepare materials, deliver curriculum, evaluate their students, and develop and modify course content. The only actual calculation of time that can be regulated and identified concerning a teacher's workload relates to the time the teacher spends in front of a class delivering the curriculum. In the college system, we call this a teaching contact hour (TCH). Nowadays, with the acceleration in the delivery of online courses, teachers are acting as facilitators and group leaders and responding to online inquiries from their students. The amount of time that each individual teacher takes to prepare materials may differ greatly, not only by subject, but also from one teacher to another depending upon their subjective view of what constitutes appropriate preparation. Similarly, the time spent evaluating and developing curriculum will vary widely depending on the skills and perception of each individual teacher.

OPSEU, the union representing full-time and partial-load teachers in the community college system in Ontario, and the CEC have bargained a comprehensive formula under their collective agreement which specifies the amount of time that the parties attribute to full-time teachers for preparation, evaluation, and other responsibilities. The parties and arbitrators acknowledge that this is simply an estimate and is not necessarily reflective of the amount of time that any individual teacher actually spends on these activities. That will vary from one individual to the next. Additionally, the parties have negotiated overtime arrangements that exceed *ESA* minimum standards.

Teachers have long been considered “professional” employees who are generally responsible for their own work production with oversight from academic administrators. It is noted that currently teachers as defined in the “*Teaching Profession Act*” are exempt from parts VII, VIII, IX, X and XI of the Act, as are other “professional” individuals who also are generally responsible for their own work product.

The full-time support staff collective agreement contains limits on weekly hours of work and overtime provisions that provide a greater benefit to employees than the *ESA*. These provisions, bargained by the parties, result in a maximum number of weekly hours of regular work. In 2011 the parties also negotiated an option for compressed work week arrangements, by mutual agreement of the college and the employee, to address evolving classroom hours at the colleges. At no time during the last several rounds of bargaining has the maximum hours of work per week or assignment of overtime been identified for review by either OPSEU or the Colleges.

In short this is a sector which does not fit neatly into the confines of the hours of work or overtime provisions of the *Employment Standards Act, 2001*. It is submitted that “employees of the Colleges of Applied Arts and Technology” continue to be excluded from Parts VII and VIII of the *ESA*.

Part X Holidays

Colleges are generally closed for all public holidays under the *ESA*. If teachers choose to prepare for classes or evaluate student progress on those days, they are free to do so. Basically when teachers choose to perform work away from the classroom, it is within their control. The *ESA* holiday provisions do not contemplate or address the concept of self directed work. It is recommended that the exclusion of “teachers who are employed by Colleges of Applied Arts and Technology” from Part X of the *ESA* be maintained.

College full-time support staff employees are paid holiday pay and have bargained overtime provisions when an employee works on a holiday. They also receive more “holiday” time in a calendar year than provided by the *ESA*. Since the parties have not been subject to the *ESA* they have negotiated their own rules concerning when entitlement arises and what conditions apply to the payment. We recommend that these rules be maintained as bargained.

Part XI Vacations

The academic collective agreement is structured such that full-time teachers earn their annual salary over 10 months but it is paid out over 12. This ensures that the teachers continue to receive income over the two-month vacation period in the summer. Technically it is not treated or characterized as vacation pay. Practically however, vacation pay is included in the teachers' annual salary. This is another example where the practice of the parties would not technically fit within the provisions of the *ESA* but as with other exemptions, the collective agreement provides a greater entitlement than the *ESA*.

In view of this well accepted practice that aligns with the academic year, it is recommended that teachers who are employed by Colleges of Applied Arts and Technology continue to be excluded from Part XI of the *ESA*.

Full-time support staff commence employment with an entitlement of 3 weeks of vacation which is earned during the year. Since the parties have not been subject to the *ESA*, they have negotiated their own set of rules concerning the method of calculation and scheduling of entitlement. Once again, the collective agreement provides a greater entitlement than does the *ESA*.

Managers

The definition of managers under the *CCBA* is distinctly different than that under the *Employment Standards Act* or the *Ontario Labour Relations Act*. This has not been an issue concerning overtime since those provisions of the *ESA* do not apply to the colleges. Were that to change, a consistent definition of management employees in the college sector should be utilized. As the parties are familiar with the longstanding definitions imported into the current *CCBA* from the prior *CCBA*, it would be our recommendation that the *CCBA* definition continue to be applied to the Ontario college sector.

Wages and Records

Our sector has no specific comments with respect to the exclusions from Parts V and VI wages and records other than to note that colleges maintain systems that effectively deal with these issues. We understand that the review will not touch on Part IX Minimum Wage.

Summary

We appreciate the opportunity to submit our recommendations for your consideration. We see no compelling need to change the regime the parties have freely negotiated in relation to these matters in order to meet the specific provisions of the *ESA*. Overall, the Ontario college sector is not a sector where minimum standards are of much relevance as employees are compensated well in excess of the *ESA*.

If it is ultimately recommended that the exclusion for Ontario colleges as crown agencies be removed, it is essential that the application of the *ESA* be delayed until the parties have had a chance to address the impact of any changes through the collective bargaining process.