

September 18, 2015

C. Michael Mitchell and the Honourable John C. Murray
Special Advisors, Changing Workplaces Review
Employment Labour and Corporate Policy Branch
Ministry of Labour
400 University Ave., 12th Floor
Toronto, ON M7A 1T7

Dear Mr. C. Michael Mitchell and the Honourable John C. Murray:

The Council of Ontario Universities (COU) welcomes the opportunity to provide comments and ideas to the Changing Workplaces Review.

COU is a membership organization of Ontario's universities. We work closely with our members, which are Ontario's 20 publicly-supported universities, on issues of mutual interest and concern.

Universities demonstrate profound commitments to the economic, social and cultural well-being of their communities, the province and the country. Economically, universities operate as major (and sometimes the largest) employers in their region. Universities employ a diverse workforce of faculty and staff.

This submission raises a few key areas of interest for universities that may be touched on by the scope of the review and raises two specific recommendations with respect to the *Labour Relations Act*.

Areas of interest raised in this submission include: 1) the complex composition of universities' contract instructional workforce; 2) the importance of ensuring that students can access and complete internships and work placements as components of academic programming; and 3) the importance for universities of retaining fiscal flexibility in the current economic environment. The recommendations related to the *Labour Relations Act* are related to taking ability to pay into consideration in interest arbitration and applying a threshold for union membership participation in strike votes.

University Teaching and Full-Time or Part-Time Contract Instructors

Universities strive to find the right balance of staff who are responsible for teaching students. University teaching is conducted by a mix of individuals: tenured and tenure-stream faculty (who undertake both teaching and research in their fields), teaching stream faculty, postdoctoral fellows, graduate students studying for advanced degrees, recent graduates who are seeking experience teaching a course as a contract instructor in order to make them more competitive on the job market, retired faculty members returning to teach a course, and other instructional staff who are hired on a per course

basis. Many of the last group are individuals for whom teaching a course is not their primary source of income or occupation; they are professionals who are occupied outside of the universities full-time, or retired professionals whose experience and knowledge in their professions inform their teaching in professional programs and are of great benefit to students. Others in this last group seek teaching opportunities on a contractual basis as their primary occupation on either a per-course or full-time contractual basis.

A variety of factors contribute to universities' need for flexibility in hiring contract instructors. For example: faculty research or study leaves during which faculty members are focusing on conducting research in their area of scholarship can result in a proportion of the faculty complement not performing teaching work at any one time, requiring that universities backfill their teaching in various academic areas. Maternity and parental leaves are another example of the need to backfill teaching capacity. Furthermore, the need to be responsive to changes in student demand creates the need for flexibility in course offerings. In addition, cost pressures relating to the appointment of full-time tenure-stream faculty and an aging professoriate, now that retirement at age 65 is not mandatory, also play a role.

Full-time and part-time contract instructors are not directly comparable to vulnerable workers in precarious employment in other sectors. Contract instructors have an advantage in the labour market in comparison to other vulnerable workers because they are often highly educated and frequently hold Master's or doctoral degrees. Additionally, most contract instructors at universities are members of bargaining units and have additional protections under collective agreements in comparison to workers who are exclusively protected by the *Employment Standards Act*.

The compensation (including benefits) levels of contract instructors should not be tied to the compensation levels of tenured or tenure-track faculty, as they do not perform the same duties or hold the same responsibilities. Tenured and tenure-track faculty members are expected to be active in teaching, research and service over a twelve-month period including the summer and are evaluated for their performance across all three areas of these work requirements. Contract instructors receive compensation commensurate with their contractual obligations, which is for teaching only and typically on a semester by semester basis.

Ensuring that students can access and complete internships, co-ops and work placements as components of academic programming

Universities build the talent and skills of Ontario's future workforce. Our graduates experience the highest employment rates and earnings across all education levels. While employment outcomes of university graduates are excellent, there continues to be high value in providing learning experiences that build skills that are needed in the workplace for the long term. Within this context, Ontario universities are committed to providing experiential learning and work-integrated learning opportunities to students. Providing students with real-life work experiences through placements, co-ops and internships across all disciplines has been a growing area for universities.

Ontario universities are supportive of maintaining the exemption in the *Employment Standards Act* for unpaid internships, co-ops and work placements that are part of a program approved by a university or college. Requiring that internships, co-ops and work placements that are part of a university or college program or for academic credit be paid may create an impediment to meeting student and program demands for experiential learning opportunities in the public, private and not-for-profit sectors.

Further, certain accreditation bodies have requirements for the amount of time that students spend in the field as part of their academic programming. Eliminating the exemption may create barriers for students pursuing degrees that are accredited by professional bodies.

The Importance of Fiscal Flexibility

Maintaining fiscal flexibility is critical for universities in order to deliver on the academic mission.

Universities face significant financial pressures and, along with other Broader Public Sector (BPS) organizations, have limited avenues in which to raise additional revenue. Within this context, Ontario universities make efficient and productive use of scarce resources.¹

As noted above, universities will have an ongoing need for instructional staff hired on contract, to provide coverage for faculty research and other leaves, to bring knowledge and experience of professional practice, to provide opportunities for teaching experience to graduate students and recent graduates, and to respond quickly and efficiently to changes in student demand for programs and courses.

In some instances, universities have sub-contracted out various non-core functions in order to achieve financial efficiencies in ways that respect bargained agreements. Maintaining the flexibility of subcontracting out, as provided in collective agreements, is critical in a challenging economic environment.

Changes Related to the *Labour Relations Act*

Universities are largely unionized environments, and are committed to achieving collectively bargained agreements with unionized faculty and staff. At present, the *Labour Relations Act* provides a solid regulatory framework that balances the needs of employees and employers in the modern economy.

At present, there is variability in the sector with respect to the types of employees that are included in bargaining units. In some cases the bargaining unit for full-time tenured and tenure track faculty also includes full-time and/or part-time contract instructors. In other cases, these units are separate. Amalgamation of bargaining units should remain a matter for local negotiation to enable arrangements that better meet local needs.

¹ The Higher Education Quality Council (HEQCO) Performance Indicators project states that Ontario universities “are teaching more students per full-time faculty member with less money per student than all other Canadian provinces.” Available at: <http://www.heqco.ca/en-ca/Research/performanceindicators/Pages/Productivity.aspx>

The following two recommendations would assist universities in maintaining a labour relations environment that respects the collective bargaining process and supports the prudent management of university funds and provision of education to students.

1) Taking Ability to Pay into Account in Interest Arbitration

Interest arbitration can be a major determinant of compensation costs for universities, when disputes are resolved through an arbitration process, or in the case of first contract arbitration.

High compensation awards that do not take ability to pay into account, and may be retroactively applied, can create significant costs for universities that have been neither projected nor budgeted.

Universities would support the development of specific and well-defined objective criteria concerning ability to pay that interest arbitrators would be required to take into account in formulating their awards/decisions. Ability to pay criteria should be broad and include economic and fiscal environment factors, and productivity criteria. Factoring in ability to pay could create an incentive for more institutions to consider interest arbitration as an alternative to a strike or lock-out. It would also help create a more fiscally responsive framework for interest arbitration awards for unionized workplaces that currently make use of interest arbitration.

2) Applying a Threshold for Union Member Participation in Strike Votes

Under the *Labour Relations Act*, a strike vote of 50%+1 of those who vote suffices for a positive vote in favour of strike action, irrespective of the number of union members who are in the bargaining unit. Setting a threshold of a certain proportion of the membership required to vote in favour of a strike for the vote to succeed, (for example, 50% +1), would ensure that a strike mandate is supported by a defined percentage of union members. We believe that requiring a minimum representation of union members is not unreasonable in view of the significant implications of a strike vote.

Thank you for the opportunity to contribute to the review.

Yours sincerely,

A handwritten signature in black ink that reads "Bonnie M. Patterson". The signature is written in a cursive, flowing style.

Bonnie M. Patterson, C.M., O.Ont
President and CEO