

Improving workplace standards, bringing fairness to Ontario universities

OCUFA's submission to the Changing Workplaces Review

September 2015

OCUFA

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

Acknowledgements:

This document was prepared by OCUFA with feedback and contributions from staff at the Canadian Association of University Teachers (CAUT). It is also informed by conversations with university faculty across Ontario who have shared their experiences and proposals for change.

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The Ontario Confederation of University Faculty Associations is the voice of 17,000 university faculty and academic librarians in 28 faculty associations across Ontario.

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The Ontario Confederation of University Faculty Associations (OCUFA) represents over 17,000 professors and academic librarians at 28 faculty associations at every university across 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 welcomes the opportunity to provide feedback on Ontario's employment and labour law. This review is timely and much needed as the incidence of precarious work in Ontario continues to grow. Since 2000, the growth of temporary work has outpaced permanent employment growth by more than 20 per cent, while part-time work grew by 25 per cent and full-time work grew by only 16 per cent.¹ These same trends have been playing out on Ontario's university campuses.

University professors and academic librarians in Ontario are highly unionized. Many faculty members have benefitted from the protections afforded by Ontario's existing employment and labour laws. We are keen to participate in this review to ensure that the law is updated to reflect changes in our workplaces. The rise of precarious jobs, even in a sector with strong union representation, brings the need for improved minimum standards into sharp focus. At a time when many people are facing an erosion of their working conditions, better employment standards will lift the floor for all workers and provide a stronger starting point for meaningful collective bargaining.

In this fast changing environment, it is also important that the law be updated to guarantee all workers have an opportunity to work together to improve their conditions of employment. The choice to join a union is foundational for those seeking more security and fairness in their place of employment. As workplaces change, laws that support effective union representation are central for building strong and thriving universities, economies and communities.

This submission complements presentations made by OCUFA's outgoing President Kate Lawson at a public consultation in Toronto on June 16, 2015 and by full-time and contract faculty and academic librarians on behalf of their faculty associations at consultations across the province between June and September 2015.² OCUFA has also endorsed and supports the recommendations of the "Fight for \$15 and Fairness" campaign. In addition, this submission has been informed by the Ontario Federation of Labour's proposals for labour law reform.

THE RISE OF PRECARIOUS WORK AT ONTARIO UNIVERSITIES

One of the most dramatic changes at Ontario's universities over the last quarter century has been a shift in the nature of academic work away from full-time tenure-stream positions towards insecure, contract positions. OCUFA estimates that the number of courses taught by contract faculty at Ontario universities has nearly doubled – increasing by 97 per cent – between 2000-01 and 2013-14.

Contract faculty is an umbrella term used in the university sector to capture workers in several employment situations with little to no job security, including sessional faculty and faculty with limited-term appointments. Sessional faculty are generally hired only to teach and are remunerated on a per-course basis, receiving separate contracts for each course taught. Faculty with limited-term appointments, while hired on contracts of limited duration (usually one to three years), are more likely to perform the full range of duties – teaching, research, and service. Both sessional faculty and limited-term faculty are precariously employed, with no guarantee of employment after that contract has expired. The challenges faced by sessional faculty also include relatively low pay and a lack of access to benefits and pensions.

While the experiences of contract faculty vary, there are several common challenges. Job insecurity and last-minute hiring leaves workers without the stability needed to make long-term plans for themselves and their families. This type of precarious employment has been shown to have negative impacts on general and mental health, household well-being, and community participation.³ It also creates a disincentive for employers to provide professional development and training opportunities, and has been shown to reduce productivity.⁴

Many contract faculty also work at multiple schools simultaneously just to make a living, which requires a lot of time on the road commuting between campuses and can create additional barriers accessing benefits. While they may be approaching or exceeding full-time hours, their employment classification and the reality of working at several institutions can mean that they still do not qualify for benefit or pensions plans. Moreover, contract employees bear unequal risk when employers face financial pressure.⁵ This raises concerns for the well-being of faculty working at Ontario's universities in the context of austerity and stagnating government funding.

The rise of precarious academic work also threatens the quality of education offered by Ontario's universities. While contract faculty are skilled teachers and researchers, they are too often constrained by their working conditions and lack the institutional support to achieve their full potential and deliver the highest possible quality learning experience for students. For example, lack of job security reduces the ability to follow through with students (e.g. one-on-one mentoring and letters of recommendation for graduate school); last-minute scheduling

limits time for course preparation affecting the quality of assignments and syllabi; and inadequate office space, or lack thereof, impacts class preparation and a professor's ability to meet with students.

Furthermore, this change in the nature of academic work has a profound impact on Ontario's research capacity. While many contract faculty do *unpaid* research because they need the publications in order to be considered for future tenure-stream positions, they are not supported in this work nor do they have access to the same resources as their tenure-stream colleagues. A decline in research capacity at Ontario's universities is not in the public interest and is inconsistent with the government's vision of advancing a knowledge economy. Universities are also important drivers of local economies because their workers have good jobs – they live and spend in their communities. The loss of good jobs hurts the communities in which faculty work and live.

Finally, the university's broader role in society of promoting democracy and fostering critical thinking is threatened as professors' job security is eroded. Without job security, academic freedom – the ability to pursue research, explore ideas, and teach concepts free from fear or interference – is endangered. Legal decisions, including at the Supreme Court, have acknowledged that faculty job security or tenure is foundational to achieving academic excellence.⁶ In sum, a shift towards precarious work at Ontario's universities is not an effective or responsible use of talent or resources.

The provincial government must take a leadership role in setting the future of academic work on a new path. In terms of improving the terms and conditions of work for contract faculty, there are several key ways the law can be updated to reflect changing workplaces and provide these workers with adequate protections. The benefits will be felt widely, not only by faculty and students at Ontario's universities, but also in their communities and economies.

TOWARDS FAIRNESS FOR ALL FACULTY

FAIR PAY AND ACCESS TO BENEFITS

“I am deeply passionate about postsecondary education, I consider teaching a privilege and a tremendous opportunity. We must begin to recognize and support contract faculty as professionals who make important contributions.” – Fran, Contract faculty

In the university sector, contract faculty are too often paid less than their full-time colleagues for performing work of equal value. While there is a lack of comprehensive data about working conditions for contract faculty across the province, local data can be illustrative. At Wilfrid Laurier University (WLU), the faculty association’s contract faculty members make average earnings of \$28,000 per year – and only an average of approximately \$18,000 of that amount comes from their work at WLU specifically. At the University of Ottawa, the majority of their approximately 1,800 contract faculty members teach two or three semester-long courses for an average salary of \$15,000 to \$22,000 per year. In most cases, contract faculty also have limited or no access to benefits.

While the expectations of university teaching done by contract faculty and tenure-stream faculty are often the same, contract faculty are not being compensated on an equal basis. Contract faculty deserve fair remuneration commensurate with their experience, performance and responsibilities. Minimum standards that require equal pay for work of equal value regardless of a worker’s classification could help contract faculty, especially those working on a per-course basis, obtain fair compensation.

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 fixed-term workers and full-time, permanent workers.⁷ In Canada, Quebec’s employment law prevents employers from paying an employee less on the basis that they work fewer hours per week.⁸

Ontario’s employment standards should also protect workers from less favourable treatment based on their classification or hours. In the university sector, this would support contract faculty in attaining compensation that is pro-rated to the total compensation for a full-time position with similar responsibilities and requiring similar qualifications. Minimum standards that require equal access to benefit programs regardless of a worker’s classification would also help contract faculty obtain access to benefits.

Recommendation One: All workers, including part-time and contract workers, should receive equal pay for work of equal value and equal access to benefits regardless of their employment status.

MORE SECURE AND STABLE WORK

“Contracts give the illusion that we are ‘discontinuous’ employees. And it’s this fallacy, above everything else, that gives our employers the grounds to bar contract faculty from accessing the rights and benefits that almost every other employee at our workplace enjoys.” – Michele, Contract faculty

“I am 45 years old, but I was only able to start contributing to a company pension three years ago, significantly lowering my overall pension benefits whenever it is that I am able to retire. Even though I have been employed at the university for nine years, my first six years do not count towards any pension benefits.” – Camille, Recent contract faculty

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 several years, even decades. For example, at Wilfrid Laurier University (WLU) 15 per cent of the faculty association’s contract faculty members have been teaching for WLU for more than 10 years and over half have been there for more than five years. Despite working for the same employer for many years, discontinuous contracts or gaps in service too often allow employers to sidestep obligations.

The insecurity and instability of contract faculty employment creates barriers for accessing benefits, pensions, and other entitlements. For example, while all universities in Ontario have pension plans, the growing numbers of contract faculty working on our campuses often do not have access to a workplace pension. The Pension Benefits Act allows employers to require two years of continuous employment at one university and that employees earn 35 per cent of the Year’s Maximum Pensionable Earnings (YMPE) in order to access a workplace pension plan. All universities have included these requirements in their workplace pension plans. This can be a difficult threshold for contract faculty to reach when employers consider their ongoing service as discontinuous.

Ontario’s current employment standards require that discontinuous periods of employment be treated as continuous for severance pay purposes – both for determining whether a worker has worked the five years required to qualify, and in calculating the amount owed.⁹ This requirement is a recognition by Ontario’s legislature that an employee’s contribution to their employer’s success is equally deserving of compensation, regardless of whether it is continuously served. This statutory acknowledgement of the equal value of work, whether on fixed-term contracts or not, should not be limited to severance pay claims. To deter the proliferation of contract work, the law must require that series of fixed-term contracts be treated as continuous.

Other jurisdictions have also taken various steps to minimize the proliferation of insecure, contract work. Many OECD countries, including France, Germany, Ireland, Italy, and the United Kingdom, have laws that either restrict the use of fixed-term contracts, enforce a maximum

number of successive contracts, or state a maximum cumulative duration of successive contracts.¹⁰ Updating the law could help bring more security and stability to university work in Ontario, as well as address the lack of access to entitlements that results from an inability to reach minimum thresholds or contribution periods.

Recommendation Two: The use of discontinuous contracts to prevent the achievement of workplace rights should be eliminated by requiring that after an employee has been employed on a number of fixed-term contracts their employment is continuous for all purposes.

REASONABLE NOTICE OF WORK

“I know all too well the financial, psychological, emotional and personal consequences of working on a per-course basis. It is a life of constant insecurity, not knowing what course – or even if I will be teaching or making any income – from semester to semester.” – Fran, Contract faculty

It has become increasingly common for contract faculty to be notified that they will be teaching a course right before the beginning of term. Sometimes they will only have a week to prepare a syllabus, readings and lectures, as well as to make the necessary arrangements in their personal and family life. To avoid the chaos, uncertainty and stress that results from unfair scheduling, employers must be required to provide reasonable notice of work and hours.

Currently, employment standards in Ontario are inadequate on the issue of notice of work and hours. As a result, workers in other sectors are also experiencing a growing trend towards “just-in-time” scheduling.¹¹ While employees are increasingly expected to be available, there is no reciprocal assurance of work on the part of employers. To ensure that scheduling is fair and balances the needs of employers and employees, employment standards must be updated to require a minimum of two weeks’ notice. In the university sector, even this minimum is often inadequate, but will provide a better starting point for negotiating more security and stability for contract faculty.

Recommendation Three: Employers should be required to provide employees with at least two weeks’ notice of work.

EVOLVING BARGAINING UNIT STRUCTURE

“My association has two bargaining units, one with just under 1600 faculty and the other with 48 librarians and archivists. I am one of those 48. We are clearly a much smaller bargaining unit, and we are a female-dominated group of employees... If we could rationalize our units, we could make bargaining much more effective and efficient.” – Kristin, Academic librarian

A number of faculty associations in Ontario have multiple bargaining units, with the more recently certified units made up of contract faculty, teaching-stream faculty, or librarians and

archivists. These second units tend to be much smaller, and often consist of workers in more vulnerable, insecure positions than the tenure-stream units. In many cases, rationalizing these units would make bargaining more effective and efficient and make collective agreements easier to manage.

As the nature of work at Ontario's universities changes, faculty associations are too often unable to unite communities of interest on their campus because they have no means for adjusting the definition or scope of existing units. It is important that bargaining unit structure be allowed to evolve as our workplaces change. To achieve this, the Ontario Labour Relations Board (OLRB) must be empowered to redefine the scope of an existing unit, merge bargaining units, or combine newly certified workers into an existing unit, if requested by the union.

A similar arrangement was in place in Ontario from 1993 to 1995, which permitted the OLRB to merge two or more bargaining units after considering the extent to which combining the bargaining units would "facilitate viable and stable collective bargaining, reduce fragmentation of bargaining units, and cause serious labour relations problems."¹² Provisions that authorize labour boards to amend existing bargaining units also exist in other Canadian jurisdictions, including British Columbia, Alberta, New Brunswick, Nova Scotia, and federally regulated industries.¹³ Typically, the labour board is given the power to review and reconsider certification orders they have previously issued.

The value of this approach in promoting a more comprehensive bargaining structure has been recognized widely. Labour relations board decisions across the country consistently certify the broadest-based appropriate bargaining unit, and have expressed the importance of avoiding undue fragmentation in configuring units at the application stage to facilitate viable collective bargaining and stable labour relations, as well as administrative efficiency and convenience.¹⁴

While nothing 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 that is being sustained by current labour law is poorly suited to accommodate the changes taking place at Ontario's universities. Processes must be put in place to review and refresh the scope of bargaining units.

Recommendation Four: The Ontario Labour Relations Board (OLRB) must be empowered to redefine the scope of an existing unit, merge bargaining units, or combine newly certified workers into an existing unit, if requested by the union.

SECURING THE RIGHT TO COLLECTIVE REPRESENTATION

“As faculty, we have an obligation not just to address our own concerns, but to speak out for all workers as part of the broader labour movement.” – Geoff, Faculty member

Unions play an important role in reducing income inequality and improving workplace fairness. Together, workers are better able to achieve adequate protections in their changing workplaces. At Ontario’s universities, faculty have recognized the value of collective representation for decades, creating the first faculty associations in the 1950s and then pursuing unionization in the decades that followed. Collectively, tenured faculty in particular have made significant gains concerning academic freedom and collegial governance, as well as improved terms and conditions.

Especially since the 1990s, as university administrators adopted managerial approaches previously only seen in the private sector, faculty associations have come to understand the importance of a strong collective voice.¹⁵ Now, as precarious jobs on campus are reaching unprecedented numbers, effective unions will be essential for achieving more security, fair pay and access to benefits. And, this is not just the case at universities, but also in other sectors in today’s economy with much lower rates of unionization.

In order to achieve the improvements to peoples’ lives that are possible through collective representation, we need better rules. Workers today are not in the same standard employment relationships as their predecessors. Especially for those with little job security and low pay, there are many barriers to getting organized and reaching a first collective agreement. Updating the law to better reflect these challenges would ensure that workers who do choose to pursue unionization have the opportunity to reach their goals.

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.¹⁶ Moreover, in a vote model fewer certification applications are successful.¹⁷ And, this trend is more pronounced in sectors with low-wage and precarious workers, where change is needed most.¹⁸

Furthermore, to minimize fear and employer intimidation, any change to a worker’s terms and conditions during a certification drive should be immediately reinstated to the original terms, until a hearing takes place. This would protect workers from retribution for discussing the union with their colleagues or being involved in the certification process. Together, restoring card-based certification and assuring reinstatement for employees during an organizing drive, would help ensure workers have the effectual choice to join a union in Ontario.

Once workers democratically decide to join a union, it is also a reasonable expectation that they are 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 also 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.¹⁹ In Ontario, making this avenue more accessible to both parties in bargaining would support the establishment of productive labour relations.

As more people find themselves in part-time and insecure employment situations, labour law must reflect the additional challenges faced by these workers in getting organized. Implementing card-based certification, guaranteeing the reinstatement of employees' terms during organizing drives, and lowering the threshold for accessing first contract arbitration, are part of a package of important reforms being put forward by the labour movement in Ontario. By making these changes, the government has an opportunity to facilitate workers' own efforts to bring fairness to their workplaces.

Recommendation Five: The Labour Relations Act should be updated to ensure workers can organize collectively to improve their conditions of work and join a union, including by providing automatic card-based certification, requiring the reinstatement of employees during organizing drives, and making first contract arbitration more accessible.

SUMMARY OF RECOMMENDATIONS

The nature of work in the university sector has changed dramatically in recent years. As more and more faculty are working on a limited-term contract or per-course basis, new priorities and needs have arisen. Contract faculty are seeking more fairness in terms of equal treatment, job security and stability, and reasonable scheduling. Moreover, these new challenges have brought into focus the need for updated rules that allow unions to evolve with their workplaces, and that support workers in joining a union and working together to improve their conditions.

In these changing times, faculty are looking to the government for leadership to ensure that employment and labour law respond to our new realities. OCUFA hopes that your recommendations will support the following proposals:

Recommendation One: All workers, including part-time and contract workers, should receive equal pay for work of equal value and equal access to benefits regardless of their employment status.

Recommendation Two: The use of discontinuous contracts to prevent the achievement of workplace rights should be eliminated by requiring that after an employee has been employed on a number of fixed-term contracts their employment is continuous for all purposes.

Recommendation Three: Employers should be required to provide employees with at least two weeks' notice of work.

Recommendation Four: The Ontario Labour Relations Board (OLRB) must be empowered to redefine the scope of an existing unit, merge bargaining units, or combine newly certified workers into an existing unit, if requested by the union.

Recommendation Five: The Labour Relations Act should be updated to ensure workers can organize collectively to improve their conditions and join a union, including by providing automatic card-based certification, requiring the reinstatement of employees during organizing drives, and making first contract arbitration more accessible.

¹ Kaylie Thiessen, "Seismic Shift: Ontario's Changing Labour Market," *Canadian Centre for Policy Alternatives – Ontario*, March 2014, 7 and 20.

² Presentations were made by the Association of Professors of the University of Ottawa and Queen's University Faculty Association in Ottawa, June 18; Ontario College of Art and Design Faculty Association in Mississauga, June 24; Wilfrid Laurier University Faculty Association in Guelph, June 25; Windsor University Faculty Association in Windsor, July 7; University of Western Ontario Faculty Association in London, July 8; Nipissing University Faculty Association in Sudbury, July 23; McMaster University Faculty Association in Hamilton, September 10; Lakehead University Faculty Association and Northern Ontario School of Medicine Faculty Association in Thunder Bay, September 16; and the University of Toronto Faculty Association in Toronto, September 18.

³ *Poverty and Employment Precarity in Southern Ontario (PEPSO) Research Group*, "The Precarity Penalty: Executive Summary," *McMaster University and United Way Toronto*, May 2015, 9-14.

⁴ Mariya Aleksynska and Angelika Muller, "Nothing more permanent than temporary? Understanding fixed-term contracts," *International Labour Organization*, March 2015, 5.

⁵ *ibid*, 4.

⁶ *Mckinney v. University of Guelph*, 1990 CanLII 60 (SCC), 3 S.C.R. 229, page 282-283.

⁷ *Workers' Action Centre*, "Still Working on the Edge: Building Decent Jobs from the Ground Up," March 2015, 13-14.

⁸ *ibid*, 14.

⁹ Employment Standards Act, 2000 (ESA), Section 65(2). Accessed July 2015 at <http://www.ontario.ca/laws/statute/00e41>.

¹⁰ Detailed descriptions of employment protection legislation in OECD countries (2012-13) is available at <http://www.oecd.org/els/emp/All.pdf>.

¹¹ *Workers' Action Centre*, "Still Working on the Edge: Building Decent Jobs from the Ground Up," March 2015, 29.

¹² Labour Relations Act, 1990. Section 7(3). Repealed in 1995. Accessed August 2015 at <http://www.ontario.ca/laws/statute/90l02>.

¹³ British Columbia: Labour Relations Code, Section 142; Alberta: Labour Relations Code, Section 45; New Brunswick: Industrial Relations Act, Section 22(1,2); Nova Scotia: Trade Union Act, Section 28(1); Canada: Canada Labour Code, Section 18(1).

¹⁴ For example, see *Retail, Wholesale and Department Store Union AFL-CIO-CLC, Local 1000 v. Hudson's Bay Company*, 1993 CanLII 7901 (ON LRB).

¹⁵ Craig Heron, "From Deference to Defiance: the evolution of Ontario faculty associations," *Academic Matters*. Spring-Summer 2015 Issue.

¹⁶ *Ontario Federation of Labour*, "Submission by the Ontario Federation of Labour to the Ministry of Labour on Modernizing the Ontario Labour Relations Act," December 2004, 8.

¹⁷ Sara Slinn, "An Empirical Analysis of the Effects of the Change from Card-Check to Mandatory Vote Certification," *Canadian Labour and Employment Law Journal*, 2004, 11, 259-301; Sara Slinn, "The Effect of Compulsory Certification Votes on Certification Applications in Ontario: An Empirical Analysis," *Canadian Labour and Employment Law Journal*, 2003, 10, 367-397; Chris Riddell, "Union Certification Success under Voting Versus Card-Check Procedures: Evidence from British Columbia, 1978-1998," *Industrial and Labor Relations Review*, 2004, 57(4), 493-517; Chris Riddell "Using Social Science Research Methods to Evaluate the Efficacy of Union Certification Procedures," *Canadian Labour and Employment Law Journal*, 2005, 12, 377-396.

¹⁸ Michele Campolieti, Chris Riddell and Sara Slinn, "Labor Law Reform and the Role of Delay in Union Organizing: Empirical Evidence from Canada," *Industrial and Labor Relations Review*, October 2007, 61(1), 32-58.

¹⁹ Susan J. T. Johnson, "First Contract Arbitration: Effects on Bargaining and Work Stoppages," *Industrial and Labor Relations Review*, July 2010, 63 (4), 585-605.