PROPOSED AMENDMENTS TO THE EMPLOYMENT STANDARDS ACT

Background:

Every college established under subsection (1) of the Colleges of Applied Arts and Technology Act is an agency of the Crown. 2002, Section 1 (4), c. 8, Sched. F, s. 2 (4).

Further, there shall be a board of governors for each college established under this Act consisting of such members as may be prescribed by regulation. 2002, Section 3 (1)

Excerpt from the regulations:

ONTARIO REGULATION 34/03 Ontario Colleges of Applied Arts and Technology (CAAT) Act, 2002

BOARDS OF GOVERNORS

Composition of boards of governors

4. (1) A board of governors of a college shall be composed of, […]

(c) one student, one academic staff member, one administrative staff member and one support staff member, each of whom shall be elected by the students or by the relevant staff group. O. Reg. 34/03, s. 4 (1); O. Reg. 169/10,

The Unions (Student Union, CAAT-Support, CAAT-Academic) appoint an elected individual to the Board of Governors as representatives to these various stakeholder constituencies.

Excerpt from the Employment Standards Act:

PART III

EXCEPTION, EMPLOYEES OF THE CROWN, ETC.

3. (4) Only the following provisions of this Act apply with respect to an employee and his or her employer if the employer is the Crown, a Crown agency or an authority, board, commission or corporation all of whose members are appointed by the Crown:

1. Part IV (Continuity of Employment).
2. Section 14.
3. Part XII (Equal Pay for Equal Work).
4. Part XIII (Benefit Plans).

5. Part XIV (Leaves of Absence).
6. Part XV (Termination and Severance of Employment).
7. Part XVI (Lie Detectors).
8. Part XVIII (Reprisal), except for subclause 74 (1) (a) (vii) and clause 74 (1) (b).
9. Part XIX (Building Services Providers). 2000, c. 41, s. 3 (4).

Excerpt from grievance proceedings, as asserted by the employer:

"With respect to the Union's assertion that the College violated the ESA, I will remind you that it does not apply to employees of the crown, or agencies thereof. I refer you to Part III of the Act."

It is clear the nature of the inter-connectivity of the language of the ESA – which by itself refers to other Acts and Regulations, can lead to misinterpretations which result in grievances. Advancing these disputes to arbitrations as provided under the Colleges Collective Bargaining Act has not brought resolutions. The issues invariably become settled by means of Memorandum of Settlements, which carry an overlying disclaimer:

> "This settlement is not an admission of liability by the College, such liability is expressly denied".

As well as:

> "This settlement is without precedent or prejudice to like cases in the future."

As a result, only the primary issues were accommodated, and no arbitrator has entertained a ruling on the applicability (or non-applicability) of the ESA to college employees – to my knowledge.

Consequently, other issues arising from the misinterpretation of the Collective Agreement, which may not expressly define parallel provisions as provided by the ESA, result in disputes 'in perpetuity'. No provisions of a Collective Agreement should circumvent provisions of certain Acts and Regulations, which the Employment Standards Act should provide to employees of the Colleges of Applied Arts and Techonology.

<u>Proposed Amendment:</u>

A separate clause should clearly define **that those Crown corporations where some or most of its board members are appointed by elected representative of its stakeholder groups, are <u>not</u> exempt from the Employment Standards Act**.

A further complication arises with employees who are identified in the Colleges Collective Bargaining Act (CCBA) – namely Part-Time employees and Sessional Employees, but who have no protection under a Collective Agreement as they form no part of a Union.

Excerpt from Part III of the ESA:

Other exceptions

3. (5) This Act does not apply with respect to the following individuals and any person for whom such an individual performs work or from whom such an individual receives compensation:

c. An individual who performs work under a program approved by a college of applied arts and technology or a university.

The scope and spirit of this exception implies an individual such as a student who may be working towards the requirements of an educational program, such as a Co-Op or work placement. As the two above-named groups of employees have no protection under a Collective Agreement with the employer, we have seen instances of their rights being denied owing to the employer's misinterpretation of this particular exception. The misconstrued interpretation is that *any* individual (be it a student, or faculty – unionized or not) who is associated with any college program as part of their work, is exempt from the ESA.

We have seen individuals working up to 70 hours per week, when measured against established standards, for a period of one semester, which can prolong upwards to 16 weeks. As these individuals are not protected under the provisions of a collective agreement, they cannot grieve under any provisions.

Proposed Amendment:

Section 3. (5) c. should be amended to read:

"An individual who **is enrolled in, and who** performs work ~~under~~ **fulfilling the academic requirements of,** a program approved by a college of applied arts and technology or a university."

This amendment would clearly identify the scope and spirit of the original intent of this clause of the Act.

Under the Ontario Labour Relations Act:

Non-application

3. This Act does not apply,

(a) to a domestic employed in a private home;

(b) to a person employed in hunting or trapping;

(b.1) to an employee within the meaning of the *Agricultural Employees Protection Act, 2002*;

(c) to a person, other than an employee of a municipality or a person employed in silviculture, who is employed in horticulture by an employer whose primary business is agriculture or horticulture;

(d) to a member of a police force within the meaning of the *Police Services Act*;

(e) except as provided in Part IX of the *Fire Protection and Prevention Act, 1997*, to a person who is a firefighter within the meaning of subsection 41 (1) of that Act;

(f) to a member of a teachers' bargaining unit within the meaning of the *School Boards Collective Bargaining Act, 2014*, except as provided by that Act, or to a supervisory officer, a principal or a vice-principal within the meaning of the *Education Act*;

(g) Repealed: 2006, c. 35, Sched. C, s. 57 (2).

(h) to an employee of a college of applied arts and technology;

As mentioned previously, there are certain groups of workers who are employed by the Colleges of Applied Arts and Technology, identified as Part-Time employees and Sessional employees, who to-date have no protection under any collective agreement, and are being denied their rights under the Employment Standards Act

These groups of employees are also deemed to be persona non grata relative to the Ontario Labour Relations Act, given the nature of the above language under sub-clause (h). Generally speaking, any member of that group has no protection against – as an example - reprisals such as Section 72 (b).

Proposed Amendment:

Just as it is inherently implied in preceding sub-clauses of the Section (3) – Non Application, which expressly identifies "bargaining unit employees" within the meaning of relevant Acts, an amendment to sub-clause (h) would offer protection to non-bargaining unit workers employed by the colleges:

Non-application

3. This Act does not apply, […]

(h) to a~~n~~ **bargaining unit** employee of a college of applied arts and technology **within the meaning of the Colleges Collective Bargaining Act**;

This amendment would establish a clear parallel to other workplace sectors, would rightfully exclude the bargaining unit employees (only) from the OLRA, and would allow application to all non-bargaining employees who may not have other provisions or protections otherwise.

Further, in the event that these two named groups of employees (Part Time employees and Sessional employees) were to unionize, they would then be excluded from the OLRA, and would then be under the purview of the CCBA.

These proposed amendments would benefit a disenfranchised group of employees who seem to have no appreciable rights in their workplace, which incidentally is a corporation of the government of Ontario.