



Submission to the
Standing Committee on Finance and Economic Affairs
Fair Workplaces, Better Jobs Act, 2017 (Bill 148)

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We wish to thank the Committee for the opportunity to make a presentation on Monday, July 17 in London. Please accept this document as our written submission.

OPSEU Local 110 represents full-time and partial-load professors, counsellors, and librarians at Fanshawe College.

Monday's verbal presentation was given by Darryl Bedford, Local President. In addition to his Local role, he was a member of the union's 2014 bargaining team and is currently a member of the 2017 team. He is also a Trustee and former Chair of the Board of the CAAT Pension Plan.

Our written submission consists of four parts:

1. Summary of precarious work in the Ontario college system
2. Steps the Government of Ontario can take to address the issues
3. Recommendations for improvements to Bill 148
4. Appendices with supporting materials, referenced in the verbal and/or written submissions

1. Reliance on Precarious Work in Ontario Colleges

Ontario colleges rely heavily on contract faculty. At Fanshawe College the ratio is 68% contract faculty to 32% full-time¹. We estimate it at about 70% contract faculty to 30% full-time faculty in the college system overall.

This trend has worsened over time². At Fanshawe College, we have about 1,100 contract faculty, an increase of 312% since 2002³.

Contracts are typically for a single semester, about 14 weeks. Faculty can spend years or decades on contract. There is no guarantee of future work or employment status.

Many contract faculty receive less than 2 weeks notice. Some contract faculty have said their contract wasn't signed and they didn't receive any pay until several weeks into the semester, only exacerbating their poor pay.

¹ See Appendix A (Handout provided to the Standing Committee on Finance and Economic Affairs during the July 17, 2017 presentation) p. 1, Appendix B (October 2016 Staffing Survey for Fanshawe College) cover page prepared by Local 110, and Appendix C (College Employer Council Staffing Survey data)

² Refer to Appendix D, Executive Summary and Appendix E, the complete version of Kevin MacKay's 2014 *Report on Education in Ontario Colleges*

³ Appendix A p.2

Contract faculty are only paid for their classroom hours. Most report that because they need to hold down multiple jobs, either in industry or at another college, they are not able to spend as much time supporting students outside the classroom as they'd like.

The current ratio of contract to full-time is not sustainable. We don't know for sure how many would like to stay as contract versus how many are seeking a full-time position, but a survey conducted by Algonquin College management found that 64% were not contract by choice⁴.

There will always be a need for contract faculty in the system, but when they are hired, they must be treated fairly.

Colleges are not covered by the Labour Relations Act (LRA), but rather the *Colleges Collective Bargaining Act (CCBA)*⁵. The classifications for faculty in the CCBA are confusing and lead to discrimination based on employment status⁶.

The current CCBA classifications permit people to work *more* hours for *lower* pay. Under these classifications, precarious contract faculty may be assigned workloads that exceed full-time faculty workloads.

From 1975 to 2008, under the CCBA it was illegal for part-time and sessional faculty to join a union. Joining a union is legal now but it hasn't happened yet. The way the bargaining units are defined and procedural roadblocks make it difficult to organize⁷.

2. Addressing the Issue

Unfortunately, the fiscal priority of colleges has not been on the frontline in the classroom⁸.

We know from college financial information disclosed to the province that this 70% of the teaching (Part-Time, Partial-Load, and Sessional Faculty) represents just under 10% of college budgets⁹.

⁴ <http://www.algonquincollege.com/president/files/2015/06/Part-time-Pay-Task-Force-Final-Report.pdf> p. 4

⁵ <https://www.ontario.ca/laws/statute/08c15>

⁶ See Appendix A p. 3

⁷ See Appendix F (Whitaker Report that recommended the changes in Bill 90, 2008) and Appendix G (OPSEU's response to Bill 90)

⁸ See the first issue of OPSEU's Ontario's Colleges at 50: A Better Plan, *Students and Faculty First*
http://www.collegefaculty.org/students_and_faculty_first

⁹ See Appendix H, OPSEU's analysis of the College Financial Information System (CFIS) 2015-16 data

In fact, the non-union wages (Part-Time and Sessional Faculty), where we have the most serious issues, represent just 5% of college budgets. It is less than \$200 million out of \$4 billion in system expenditures.

One could conceive that roughly doubling these budget lines from a total of \$200 million to \$400 million would bring the system closer to equal pay for equal work. (Consider, that might mean that average part-time pay of \$45 per teaching contact hour at our college would move to \$90/hour which is into the partial-load faculty range.)

Government grants cover about \$1.7 billion of the system's \$4 billion in expenditures. Therefore, government grants are no longer represent the largest component of college revenues and have caused the Ministry of Advanced Education and Skills Development to refer to colleges as "publicly-assisted" as opposed to "publicly-funded." The level of government funding on a per student basis places Ontario as 10th out of 10 provinces¹⁰.

College revenue "per FTE is now below, or at the same level, as in 2005 when [former Premier] Rae called for a significant increase."¹¹

An additional \$200 to \$300 million in government grants for the college system is quite achievable, warranted, and would go some way to lifting Ontario out of "last place". This would be an investment directly focused on enhancing education for students in the classroom.

3. Recommendations to Improve Bill 148

Bill 148 is definitely moving in the right direction. However, gaps exist in addressing precarious employment in the colleges.

Bill 148 includes a number of helpful changes to the LRA but does not carry these over to the CCBA.

We have reviewed the Ontario Confederation of University Faculty Association (OCUFA) submission to the Committee on Bill 148¹². We agree with OCUFA's recommendations. Our recommendations will carry over those concepts to colleges.

¹⁰ Refer to Appendix E (MacKay Report 2014)

¹¹ Refer to Appendix I, *The Rae Report in Retrospect: A View from the College Sector*, Lennon, Skolnik, and Jones 2015, Executive Summary p. 2

¹² Appendix J, OCUFA Submission regarding Bill 148, July 20 2017

➤ Recommendation #1: Capture Contract Faculty work in the interpretation of “Equal Pay for Equal Work” for the *Employment Standards Act (ESA)*

Currently colleges are exempt from most provisions of the *Employment Standards Act (ESA)* and this discriminatory exemption needs to end. Non-union faculty are currently not paid for statutory holidays and must cover missed course work in subsequent classes so their students stay on track.

The proposed “equal pay for equal work” provisions of the *ESA* must apply in the broadest sense to college employees if they are to receive fair and equitable treatment.

Should the definitions of the bargaining units remain in the CCBA, we recommend a clarification that the members of the two different academic bargaining units can be recognized as performing the same work.

We support the section 42.1(1) recommendation from OCUFA with one addition highlighted in yellow:

Amend section 42.1 (1) of the *ESA* to read:
No employer shall pay an employee at a rate of pay less than the rate paid to another employee of the employer because of a difference in employment status when,

- (a) they perform **similar** work in the same establishment;*
- (b) their performance requires **similar** skill, effort and responsibility; and*
- (c) their work is performed under similar working conditions.*

Such pay rate comparison at an employer applies regardless of bargaining unit membership or trade union representation of the employees.

➤ Recommendation #2: Remove the bargaining unit distinctions in the CCBA

The CCBA includes artificial distinctions that result in discrimination based on employment status. The simplest solution is to define just one bargaining unit for academic work. This would give contract faculty immediate access to the benefits of a union:

Amend Schedule 1 of the CCBA to read:

~~Full-time~~ Academic staff bargaining unit

1 The ~~full-time~~ academic staff bargaining unit includes all persons employed by an employer as teachers, counsellors or librarians, but does not include,

- (a) chairs, department heads or directors;
- (b) persons above the rank of chair, department head or director;

- (c) other persons employed in a managerial or confidential capacity within the meaning of section 5 of this Schedule;
- (d) teachers, counsellors and librarians who are included in the part time academic staff bargaining unit;
- (e) a person who is a member of the architectural, dental, engineering, legal or medical profession, entitled to practice in Ontario and employed in a professional capacity; or
- (f) a person employed outside Ontario.

~~Part time academic staff bargaining unit~~

~~2 (1) Subject to subsection (2), the part time academic staff bargaining unit includes all persons employed by an employer as,~~

- ~~(a) teachers who teach for six hours or less per week;~~
- ~~(b) counsellors or librarians employed on a part time basis; and~~
- ~~(c) teachers, counsellors or librarians who are appointed for one or more sessions and who are employed for not more than 12 months in any 24-month period.~~

~~(2) The part time academic staff bargaining unit does not include,~~

- ~~(a) chairs, department heads or directors;~~
- ~~(b) persons above the rank of chair, department head or director;~~
- ~~(c) other persons employed in a managerial or confidential capacity within the meaning of section 5 of this Schedule;~~
- ~~(d) a person who is a member of the architectural, dental, engineering, legal or medical profession, entitled to practise in Ontario and employed in a professional capacity; or~~
- ~~(e) a person employed outside Ontario.~~

➤ Recommendation #3: Add disclosure of employee contact information to the CCBA

Should the Committee not accept Recommendation #2 above, union organizers need access to employee contact information.

Part of the difficulty in organizing is that many contract faculty don't have office space, a phone, or a corporate e-mail address. In the case of online teachers, they may never have stepped foot in the college, and we've found some living in Kitchener-Waterloo, the GTA, and beyond.

We recommend that the Bill 148 language regarding the 20% threshold for disclosing employee contact information proposed for section 6 of the LRA be carried over to section 29 of the CCBA:

Same, notice of disagreement

(7) The following rules apply if the Board receives a notice under subsection (4):

1. The Board shall determine whether the description of the bargaining unit included in the application under subsection (1) could be appropriate for collective bargaining. The determination shall be based only on that description and the notice under subsection (4).

2. If the Board determines that the description of the bargaining unit included in the application under subsection (1) could not be appropriate for collective bargaining, the Board shall dismiss the application.

3. If the Board determines that the description of the bargaining unit included in the application under subsection (1) could be appropriate for collective bargaining, the Board shall determine an estimated number of individuals in the unit as described in the application.

4. After the Board determines the estimated number of individuals in the unit, the Board shall determine the percentage of the individuals in the bargaining unit who appear to be members of the union at the time the application under subsection (1) was filed.

5. If the percentage determined under paragraph 4 is fewer than 20 per cent, the Board shall dismiss the application.

6. If the percentage determined under paragraph 4 is 20 per cent or more, the Board shall direct the employer to provide a list of employees of the employer to the trade union.

No hearing or consultation required

(8) The Board is not required to hold a hearing or to consult with the parties when making a determination under subsection (7) and may make a determination under paragraphs 3 or 4 of subsection (7) based only on the information provided in the application under subsection (1) and the notice under subsection (4).

Content of employee list

(9) If the Board directs an employer to provide a list of employees of the employer to the trade union under subsection (7), the list must include,

- (a) the name of each employee in the proposed bargaining unit; and
- (b) a phone number and personal email for each employee in the proposed bargaining unit, if the employee has provided that information to the employer.

Restriction on use of listed information

(10) If a list of employees of an employer is provided to a trade union in compliance with a direction made by the Board under subsection (7), the use of that list is subject to the following conditions and limits:

1. The list must only be used by the trade union for the purpose of a campaign to establish bargaining rights.
2. The list must be kept confidential and must not be disclosed to anyone other than the appropriate officials of the trade union.
3. If the trade union makes an application for certification in respect of the employer and employees on the list and the application for certification is dismissed less than one year after the Board's direction to provide the list, the list must be destroyed on or before the day the application is dismissed.
4. If the list is not destroyed in accordance with paragraph 3, it must be destroyed on or before the day that is one year after the Board's direction was made.

Deemed compliance FOI Acts

(11) Any disclosure of personal information made by an employer in compliance with a direction made by the Board under subsection (7) shall be deemed to be in compliance with clause 42 (1) (e) of the Freedom of Information and Protection of Privacy Act and clause 32 (e) of the Municipal Freedom of Information and Protection of Privacy Act.

- Recommendation #4: Add related employer and successor employer language to the CCBA

Since the college system was founded 50 years ago, colleges have changed. They now have subsidiary corporations and have spun off corporations.

Fanshawe College has four subsidiaries. The employees of the Canadian Centre for Product Validation have been recognized as college employees, however, the workers at Hot Zone Training Consultants have not.

We recommend carrying over section 68 of the LRA (Successor Rights) to the CCBA.

- Recommendation #5: Card-check certification in the CCBA

Fanshawe College has faculty spread throughout Simcoe, St. Thomas, Woodstock, London, Clinton, and Goderich campuses, plus online teachers potentially living anywhere. This will cause difficulty in conducting a high-turnout certification vote; the CCBA would benefit from card check certification:

Amend section 30 of the CCBA to remove representation votes:

Representation vote-Certification

30 (1) If the Ontario Labour Relations Board determines that 35 per cent or more of the individuals in the bargaining unit referred to in the application for certification appear to be members of the employee organization at the time the application was filed, the Board shall ~~direct that a representation vote be taken among the individuals in the voting constituency.~~ 2008, c. 15, s. 30 (1) **certify an employee organization as the bargaining agent of the members of a bargaining unit.**

Membership in employee organization

(2) The determination under subsection (1) shall be based only on the information provided in the application for certification and the accompanying information provided under subsection 29 (17). 2008, c. 15, s. 30 (2).

No hearing

(3) The Board shall not hold a hearing when making a decision under subsection (1). 2008, c. 15, s. 30 (3).

Timing of vote

~~(4) The representation vote shall be held in a timely manner, within a time period determined by the Board. 2008, c. 15, s. 30 (4).~~

Same

~~(5) In determining the time period under subsection (4), the Board shall ensure that the vote is held during a time period when the persons eligible to participate in the vote are substantially representative of persons likely to be substantially affected by the result of the representation vote. 2008, c. 15, s. 30 (5).~~

Conduct of vote

~~(6) The representation vote shall be a vote by secret ballot conducted under the supervision of and in the manner determined by the Board. 2008, c. 15, s. 30 (6).~~

Sealing of ballot box, etc.

~~(7) The Board may direct that one or more ballots be segregated and that the ballot box containing the ballots be sealed until such time as the Board directs. 2008, c. 15, s. 30 (7).~~

Subsequent hearing

~~(8) After the representation vote has been taken, the Board may hold a hearing if the Board considers it necessary in order to make a decision on the application for certification. 2008, c. 15, s. 30 (8).~~

Exception

~~(9) When making a decision on an application for certification, the Board shall not consider any challenge to the information provided under clause 29 (17) (b). 2008, c. 15, s. 30 (9).~~

Disagreement by Council with employee organization's estimate

~~31 (1) If the Council disagrees with the employee organization's estimate under clause 29 (17) (a) of the number of individuals in the bargaining unit, the Council may give the Ontario Labour Relations Board a notice that it disagrees with that estimate. 2008, c. 15, s. 31 (1).~~

Content of notice

~~(2) A notice under subsection (1) shall include the Council's estimate of the number of individuals in the bargaining unit. 2008, c. 15, s. 31 (2).~~

Deadline for notice

~~(3) A notice under subsection (1) shall be given within two days (excluding Saturdays, Sundays and holidays) after the day on which the Council receives the application for certification. 2008, c. 15, s. 31 (3).~~

Sealing of ballot boxes

~~(4) If the Board receives a notice under subsection (1), the Board shall direct that the ballot boxes from the representation vote be sealed unless the employee organization and the Council agree otherwise. 2008, c. 15, s. 31 (4).~~

~~Certification after representation vote~~

~~32 (1) The Ontario Labour Relations Board shall certify an employee organization as the bargaining agent of the members of a bargaining unit if more than 50 per cent of the ballots cast in the representation vote are cast in favour of the employee organization. 2008, c. 15, s. 32 (1).~~

~~No certification~~

~~(2) The Board shall not certify the employee organization as bargaining agent and shall dismiss the application for certification if 50 per cent or less of the ballots cast in the representation vote are cast in favour of the employee organization. 2008, c. 15, s. 32 (2).~~

➤ **Recommendation #6: Card-check certification**

Prior to 2008 there had been a ban on replacement workers in the CCBA. Its removal contemplates a scenario that benefits no one: only a small minority of students would see some of their classes continue during a strike.

We recommend restoring the ban on replacement workers that existed in the CCBA from 1975 to 2008:

Where employees deemed to take part in strike

59. (2) Where the employee organization gives notice of a lawful strike, all employees in the bargaining unit concerned shall be deemed to be taking part in the strike from the date on which the strike is to commence, as set out in the written notice, to the date on which the employee organization gives written notice to the Council and the employer that the strike is ended, and no employee shall be paid salary or benefits during such period. R.S.O. 1990, c. C.15, s. 59 (2).

Contraventions

Contravention of Act by person

89. (1) Every person who contravenes any provision of this Act is guilty of an offence and on conviction is liable to a fine of not more than \$1,000 for each day upon which the contravention occurs or continues. R.S.O. 1990, c. C.15, s. 89 (1).

Contravention of Act by employer or employee organization

(2) Every employer and every employee organization that contravenes any provision of this Act is guilty of an offence and on conviction is liable to a fine of not more than \$25,000 for each day upon which such contravention occurs or continues. R.S.O. 1990, c. C.15, s. 89 (2).

4. Appendices

- A) Local 110 Handout from July 17, 2017
- B) October 2016 Staffing Survey for Fanshawe College
- C) College Employer Council (CEC) Staffing Survey published results
- D) Report on Education in Ontario's Colleges (Executive Summary), Kevin MacKay, 2014
- E) Report on Education in Ontario's Colleges (Full Report), Kevin MacKay 2014
- F) Kevin Whitaker Report on the Colleges Collective Bargaining Act, 2008
- G) OPSEU Response to Bill 90, Colleges Collective Bargaining Act, Paddy Musson 2008
- H) OPSEU Research Analysis of College Financial Information System (CFIS) 2015-16 data
- I) *The Rae Report in Retrospect: A View from the College Sector*, Lennon, Skolnik, and Jones 2015, Executive Summary
- J) OCUFA Submission on Bill 148