

# **A Review of The Colleges Collective Bargaining Act**

*Report of the Advisor to the Minister of Training, Colleges and  
Universities*

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**Kevin Whitaker, Advisor**

**February 1, 2008**

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The Honourable John Milloy  
Minister of Training, Colleges and Universities

Dear Minister Milloy:

I am very pleased to present my report on the Review of the Colleges Collective Bargaining Act.

This report sets out a number of recommendations which, if adopted by the government will, in my view, facilitate the introduction of collective bargaining for part time college employees, ensure that the colleges can continue to meet their mandate, safeguard the interests of students, employees and the Province, while fostering and enhancing a healthy collective bargaining relationship in the college system.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'K. Whitaker', with a long horizontal flourish extending to the right.

Kevin Whitaker  
Advisor

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***I*****Executive Summary/Overview**

On August 30, 2007 the Ontario Government announced its intention to extend collective bargaining to part time college employees.

Under Terms of Reference, Kevin Whitaker (Chair of the Ontario Labour Relations Board, College Relations Commission, Education Relations Commission, Arbitrator and Mediator) was appointed as Advisor to the Minister of Training, Colleges and Universities for the purpose of conducting a review of the *Colleges Collective Bargaining Act* (CCBA).

**Purpose of the Review**

The Review is to:

- (1) Determine the extent to which the Act provides access to collective bargaining for all college employees;
- (2) Determine the extent to which the Act allows the colleges to meet their mandate, especially the changing needs of their students and the Province;
- (3) Make recommendations on directions which the Ministry and the Province could take to better meet such goals.

The Advisor is to have particular regard to the needs of students and the desire to ensure a healthy set of collective bargaining relationships.

**Consultation Process**

Following informal discussions with principal stakeholders, the Advisor released a public Notice of Consultation setting out a series of eight questions. These eight questions were designed to provide a context for the review and to focus discussion and the responses. Written submissions were invited from interested parties.

Submissions were received from a variety of stakeholders. These included the Colleges Compensation and Appointments Council (CCAC - the "Council"), Colleges Ontario, the Committee of Presidents, the Ontario Public Service Employees Union (OPSEU), the Organization of Part Time and Sessional Employees of Colleges of Applied Arts and Technology (OPSECAAT), the College Student Alliance (CSA), and the Ontario College Administrative Staff Association (OCASA).

OPSEU and OPSECAAT made a joint submission. The CCAC and Colleges Ontario made a joint submission.

Regional public hearings were held to provide interested parties an opportunity to present their views in a public forum.

### **What We Were Told**

All parties consulted, supported the extension of collective bargaining to part time college employees. Beyond that, there was a range of divergent opinion as to the method of extending collective bargaining to part time employees and about what else needed to be done to amend the CCBA to continue to permit the colleges to meet their mandate and the needs and interests of employees and students.

OPSEU suggested that the existing bargaining unit descriptions in the CCBA be amended so that part time employees be rolled into the two existing full time bargaining units. OPSEU submitted that nothing else in the statute should be changed.

The colleges through the Council and Colleges Ontario, proposed that the CCBA be amended to create a four bargaining unit structure that would permit the certification of a union as bargaining agent for the two new part time units, following a representation vote. The colleges recommended that a union representing part time employees be certified following a representation vote where a “double majority” of employees in the bargaining unit voted in favour of union representation.

The colleges stressed the need for work assignment flexibility, particularly in the academic bargaining unit. They suggested that this flexibility could not be achieved at the bargaining table because of the historical bargaining dynamic in the academic bargaining unit.

The colleges suggested that work assignment flexibility be provided by removing the issue of academic classifications from the scope of what can be bargained. In other words, the colleges sought a statutory amendment that would permit them to unilaterally determine the establishment of academic classifications, now currently bargained.

Finally, the colleges recommended that the CCBA be amended in a variety of ways so that the collective bargaining process would more closely resemble what occurs under the *Ontario Labour Relations Act* (OLRA) – the collective bargaining statute that governs most industries and sectors in the province.

Students had two principal concerns. Firstly, they wished to ensure that the current quantity of student work continues when part time employees unionize. Secondly, students proposed that the right to strike or lockout be removed to preclude any disruption to their course of studies.

Aside from discussions with stakeholders and their respective submissions, the other source of information for the Review is the historical record.

The extensive history of collective bargaining in the college sector in Ontario was reviewed, along with the various historical studies and reports undertaken and prepared on this subject. Chief amongst those was the Report of the Colleges Collective Bargaining Commission (the “Gandz” report) prepared by Jeffrey Gandz in January 1988.

College sector collective bargaining models and practices in all other provinces and territories in Canada were also reviewed.

This Report summarizes the CCBA review mandate, goals and principles, provides an overview of the history of college mandates, governance structures and collective bargaining in Ontario, reviews the consultation process and stakeholder responses, sets out findings, conclusions and recommendations for change.

The Review is organized around three broad themes:

- (1) How should collective bargaining be extended to part time employees?
- (2) What are the likely consequences of the extension of collective bargaining to part time employees in terms of college mandate, collective bargaining and student interests?
- (3) What if anything needs to be done to ensure that the colleges can continue to meet their mandate, safeguard the interests of students and employees and to foster and maintain a healthy set of collective bargaining relationships?

## **Conclusions and Findings**

In considering the entirety of the historical record and the information provided during the consultation process, the Advisor draws the following broad conclusions:

- (1) The colleges mandate remains the timely provision of practical and technical, training and education, for post secondary youth and adults, designed to meet the

needs of both local communities and the Province. This requires significant flexibility in course programming;

- (2) The most significant collective bargaining issues that impact on and relate directly to programming flexibility, have arisen in academic bargaining around work assignment, job security and classification;
- (3) The colleges and the academic bargaining unit, remain, chronically dissatisfied with the way in which these issues (work assignment, job security and classification) have been managed in the bargaining process;
- (4) Rather than finding “flexibility” solutions through bargaining with the full time academic unit - the colleges have over time, resorted to significant reliance on inexpensive and flexible part time non unionized labour, unencumbered by collective agreement obligations;
- (5) As a consequence of the colleges’ reliance on significant part time non unionized academic labour, the dynamic in academic bargaining is that OPSEU attempts to obtain job security for its members by bargaining to limit the use of part time employees - while the colleges attempt to maximize their capacity to use part time non union labour;
- (6) The majority of college employees are now part time. There is no justification for excluding these employees from collective bargaining. Part time employees should be immediately granted the right to unionize;
- (7) When part time employees are unionized, the colleges will no longer be able to rely on part time labour as they have in the past with the same degree of flexibility. The colleges will no longer have the capacity to unilaterally determine terms and conditions of employment for part time employees. The “hourly rate” cost of part time labour will increase more rapidly;
- (8) The collective bargaining parties will be faced with new and extremely challenging issues as the colleges will attempt to bargain provisions which will allow them to continue to maintain flexibility in work assignment and course programming;
- (9) Collective bargaining under the CCBA (as compared to the OLRA) provides for significant supervision of the process and intervention by the CRC, third party neutrals and government. The CCBA also expressly and implicitly, limits access to and the consequences of, strike or lockout.
- (10) The CCBA should more closely resemble the OLRA. This would improve the bargaining process and permit the collective bargaining parties to manage bargaining themselves, with less third party intervention. Colleges employees

should be provided with a more complete right to strike in the traditional sense – as are most other employees in Ontario.

- (11) These changes would enhance the ability of the collective bargaining parties to deal successfully with new and increasingly difficult issues and problems. The interests of students and employees and the advancement of the colleges' mandate, are best protected and promoted through a healthy and robust collective bargaining process - where the parties take responsibility themselves for finding and crafting their own solutions to work place challenges.

### **Recommendations**

The seventeen recommendations contained in this report are intended to achieve two broad sets of objectives.

First and foremost, recommendations are made to facilitate the introduction of collective bargaining for part time employees.

Secondly, recommendations are made to provide the collective bargaining parties themselves with more control over - and responsibility for - the collective bargaining process, outcomes and consequences. This is to be done in part by reducing the role of and reliance by the parties, on interventions by third party neutrals and government, in the management and supervision of bargaining.

1. *Continue the existing central bargaining model with an emphasis on the parties taking greater advantage of existing mechanisms to resolve local issues;*
2. *Create two new province wide part time bargaining units, defined in the statute. The part time academic unit should include sessional instructors and the part time support unit should include those workers employed for 24 hours a week or less. Establish a joint application process to have bargaining unit configurations reconsidered by the OLRB;*
3. *Create a separate employer bargaining agency within the exclusive control and direction of the colleges;*
4. *Continue with the existing scope of managerial and confidential exclusions from collective bargaining. Students engaged in co-operative or certification program based work should also continue to be excluded from bargaining;*
5. *The existing CCBA provisions which permit displacement applications should be modified to create a bargaining unit certification process (35% membership support and then a simple majority on a representation vote). The statute should*

- also be amended to formally acknowledge the legitimacy of voluntary recognition agreements;*
6. *Continue with the existing exclusion of superannuation from collective bargaining. No other items or issues should be excluded;*
  7. *Abolish the College Relations Commission (CRC) through deleting Part VII and assign this work to the OLRB and the Ministry consistent with the role of each under the OLRA;*
  8. *Amend Section 4(2) - to remove fixed collective agreement expiry dates on August 31. The parties should be free to negotiate whatever expiry date they wish;*
  9. *Amend Section 4(1)- to provide that notice to bargain be given within the period of 90 days prior to the expiry of the collective agreement;*
  10. *Amend Sections 54(2) and 63- (as under the OLRA) to permit the colleges to unilaterally implement terms and conditions of employment when in a strike or lockout position and following notice to the union;*
  11. *Delete Part III- eliminate the fact finding exercise. The Minister of Labour should be able to appoint a conciliation officer and then mediators as under the OLRA;*
  12. *Delete Sections 59(2) and 63(3)- to remove the deemed strike or lockout provisions;*
  13. *Amend Section 63(2)- the requirement that the colleges seek the approval of the Council to close in the event of a strike or lockout;*
  14. *Delete Part IV- remove the binding arbitration process to settle collective agreements;*
  15. *Delete Part V- remove final offer selection to settle collective agreements;*
  16. *Delete Section 56(h)- the “jeopardy” advice obligation;*
  17. *Amend Section 59(d)- so that the college’s last offer may be put to a vote within 15 days of the expiry of the collective agreement.*

## ***II***

### ***The Colleges – A Brief History***

The terms of reference for this Report direct me to consider the various ways in which the collective bargaining process facilitates the ability of the colleges to meet their mandate. This requires an understanding of the way in which the existing colleges mandate and collective bargaining have evolved over time.

What follows in this section of the Report is a brief history of the college system, covering mandate, governance, collective bargaining and present challenges.

Colleges of applied arts and technology were introduced in Ontario in 1965 as a new form of postsecondary education that could respond to the province's job training and education needs in light of changing economic and social demands.

It was anticipated the colleges would be occupation-oriented, commuter institutions designed to meet the needs of local communities. While opportunities for college/university interface were expected, the intent, in the main, was that the colleges would be unique, non-degree granting, institutions, distinct from the university transfer or feeder model common in the United States.

The mandate of the colleges set out in the founding legislation was to “*offer programmes of instruction in one or more fields of vocational, technological, general and recreational education and training in day or evening courses and for full-time or part-time students.*” This remained the statutory statement of the colleges' mandate for the next 37 years until April 2003 when the *Ontario Colleges of Applied Arts and Technology Act, 2002* (the OCAAT Act) came into force.

Unlike Ontario's universities which were established as autonomous institutions, each with its own statute, colleges were from the outset, to be managed and run as a “system” by the provincial government. The new college-related legislation provided that, subject to the approval of the Lieutenant Governor in Council, the colleges would be established, named, maintained, conducted and governed by the Minister of Education. The statute included broad authority allowing for regulations prescribing almost all aspects of college activity, including the qualifications and conditions of service of members of the college teaching staff.

The Minister of Education (later the Minister of Colleges and Universities) was to be assisted in the planning, establishment and coordination of programs of instruction and services, by a council known as the Ontario Council of Regents (the “Council”). Members of the Council were appointed by the Minister.

Until the first collective agreements were established, all college employees were hired by the college Boards of Governors at the salary and according to terms and conditions established by the Council and approved by the Minister. After the establishment of collective agreements, these provisions continued to apply to non unionized staff.

By 1967, there were 19 colleges of applied arts and technology. Of these, eight had been existing Institutes of Technology and Ontario Vocational Centres which had been administered by the Department of Education. The staff at these institutions had belonged to various unions including the CSAO (the predecessor to OPSEU), and CUPE. These organizations anticipated applying for bargaining rights on behalf of the staff at the individual colleges. There ensued, however, a contest to represent academic staff.<sup>1</sup> (*Appendix 2*)

Despite an uncertainty regarding the legal authority of the Council of Regents to act on behalf of the colleges as employers, the Council and the CSAO proceeded to negotiate collective agreements under the *Public Service Act* (PSA) on behalf of both support and academic staff. Between 1968 and 1974, three support staff agreements were negotiated. Due to the protracted issues relating to representation of academic staff, however, only one academic agreement was reached through binding arbitration.

In late 1972, the PSA was replaced by the *Crown Employees Collective Bargaining Act* (CECBA). At the same time, amendments to the *Ministry of Colleges and Universities Act* were introduced which confirmed that CECBA would apply to college employees, that each college board was the employer of college staff and that the Council of Regents was the bargaining agent for the Colleges.

From the beginning of the establishment of the colleges and over the period of bargaining under the PSA and CECBA, a clear theme was the lack of consensus among the parties over the composition of the bargaining units, the academic unit in particular. (*Appendix 2*)

College bargaining under CECBA was short-lived. In 1975 the *Colleges Collective Bargaining Act, 1975* (CCBA) came into force. As stated by Gandz, this Act "...completely altered the process of collective bargaining in the colleges, allowing the right to strike or lock-out...as well as significantly expanding the scope of bargaining". The Council of Regents continued as the bargaining representative for the colleges. The composition of the academic and support staff bargaining units were set out in Schedules 1 and 2 of the Act, legislatively entrenching the exclusion of part time staff from collective bargaining.

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<sup>1</sup> Chapter 4 of the Gandz Report sets out a comprehensive and instructive history of the evolution of college collective bargaining from 1967 up to the existing system under the *Colleges Collective Bargaining Act* (CCBA). This section draws heavily from there. Readers interested in a more thorough history of college bargaining should refer to the full Gandz report. (CCBA). This section draws heavily from there. Readers interested in a more thorough history of college bargaining should refer to the full Gandz report.

Between 1975 and 1988, when the Gandz report was submitted, there were two strikes of college staff, one by support staff and one by academic staff. The support staff strike occurred in January 1979. This two-week strike was settled with mediation.

The September 1984 strike of academic staff (the first of three academic staff strikes to date) lasted for 18 working days. The core issue was workload. Staff were legislated back to work and all conditions except workload were settled through the Weiler arbitration award (a workload settlement was mediated).

In the first two decades of operation, the college system grew rapidly. By 1985, there were 22 colleges with a combined enrolment of over 110,000 full-time students in a wide range of postsecondary, adult training and apprenticeship programs.

By 1986, there were indications that the tri-party relationship among the college boards, the Council and the Minister of Education (later the Minister of Colleges of Universities) had resulted in tensions about the parties' respective roles and responsibilities.

Though the Minister had ultimate responsibility for the colleges, and the individual college boards of governors were accountable for the administration of their college, there was considerable ambiguity about who was directing the colleges - the Minister or the Council. This growing ambiguity was occurring in an environment of increasingly difficult and protracted collective bargaining relations between the colleges and the union representing full time academic and support staff. Academic bargaining in particular, was becoming increasingly difficult.

In March, 1985, the Instructional Assignment Review Committee chaired by Professor Michael Skolnick was established by the Minister to review and make recommendations with respect to faculty workload at the colleges. The committee's report (the Skolnick Report), released in July 1985, identified workload as a continuing unresolved set of issues. Poor faculty morale and the deterioration of effective communication between faculty and college administration, were described as contributing factors. The committee concluded that the "industrial model" of college organization and management, contributed to the contentious issues relating to academic work assignments.

The government's response to the identification of the college management issues was the Pitman governance review. A review of collective bargaining issues was deferred pending completion of bargaining negotiations then in progress.

In December 1985, the Minister appointed Walter Pitman to review and assess the effectiveness of the existing college governance structure, consider the

communication requirements among the government, the Council and college boards of governors and address the executive role of the Council.

The underlying thrust of the Pitman recommendations was the need for a collegial college governance model in which faculty, students and other college staff played a formal role in the decision-making process. Specific recommendations included establishing college academic councils and expanding board membership to include employee and student representation. Pitman recommended that the Council should relinquish executive and operational powers and responsibilities, so as to focus on longer term strategic planning.

In early 1987, major amendments to Regulation 640 under the *Ministry of Colleges and Universities Act* were introduced to address the college governance issues identified in the Skolnik and Pitman reports.

In January 1987, upon completion of negotiations, the Minister established the College Collective Bargaining Commission (the Gandz review) to examine the effectiveness of the CCBA, including the question of bargaining rights for part time college employees. A brief review of the Gandz recommendations is set out below in the “Analysis” section of this Report.

In 1989, following consideration of the Gandz report, the Minister announced the government’s intent to introduce legislative amendments that would: retain central bargaining but allow for variation by local agreements; transfer the Council of Regents bargaining responsibilities to a mandatory employer association and give bargaining rights to certain part-time employees through the establishment of separate part time bargaining units.

In October 1989, five years after the first academic strike, the second strike of academic staff occurred. This 20-day strike arose predominately over the issues of wages and sick leave. The collective agreement was settled on agreement, by binding arbitration.

A change of government occurred in 1991. In May 1991 the new Minister of Colleges and Universities announced the government’s plans to introduce legislation to extend bargaining rights to part time employees and to establish an employers’ association.

In May, 1992, Bill 23 (An Act to Amend the Colleges Collective Bargaining Act and the Ministry of Colleges and Universities Act) was introduced for first reading and brought forward for second reading in June 1992. The Bill proposed to:

- establish an employers’ association under the *Ministry of Colleges and Universities Act* as a non share corporation composed of the chairs and presidents of each college;

- transfer responsibility for bargaining on behalf of the colleges from the Council of Regents to the association and give the association the authority to assess colleges with respect to the association's expenses and expenditures;
- retain the Council of Regents' responsibility for the administration of the college employee pension plan; and
- repeal the existing schedules setting out the bargaining unit descriptions, provide regulatory authority to prescribe the membership of the bargaining units and authorize the OLRB to combine bargaining units;

The Compendium accompanying the Bill indicated that the two existing full time bargaining units would be continued in regulation but would be expanded. The support staff unit would include staff employed for more than seven hours a week. The academic unit would include sessional teachers and part time counsellors and librarians.

Additionally, the regulations would specify the composition of two new part time bargaining units though the units would not be established unless the employees so chose. The part time support unit would consist of support staff employed on a regular and continuing basis for seven hours a week or less. The part time academic unit would consist of teachers who work on a regular and continuing basis and teach for six hours or less a week.

The Bill did not proceed for third reading. Other than minor housekeeping amendments consequential to the enactment of the OCAATA and the replacement of Council of Regents with the CCAC, the CCBA has remained unchanged since it came into force in 1975.

The issue of the bargaining rights of college part time employees, has remained a continuing source of concern to OPSEU. The public profile of the issue has been promoted and maintained by OPSEU through a number of fronts:

- In 2004, OPSEU included the issue in its submission to the Rae Review;
- In 2005, the National Union of Public and General Employees filed a complaint on behalf of OPSEU with the International Labour Organization (ILO) alleging that the CCBA violates principles of freedom of association and collective bargaining in Conventions 87 and 98 by denying part-time employees the right to engage in collective bargaining. The ILO ruled in November 2006 that while the particular circumstances of college part time employees may call for differentiated treatment in terms of bargaining units and terms and conditions of work, there was no basis for denying collective bargaining rights to part time employees;

- In October 2005, a private members Bill was introduced to amend the CCBA to extend the existing bargaining units to include part time employees and sessionals. The Bill did not proceed beyond first reading;
- In 2006, OPSEU supported the establishment of a provincial association for part time academic and support staff. The Organization of Part time and Sessional Employees of Colleges of Applied Arts and Technology (OPSECAAT) was established in November 2006.

A third strike of college academic staff occurred in 2006. The strike lasted 20 days. On the agreement of the parties, I acted as mediator. The strike ended with the parties agreeing to settle their outstanding differences by arbitration before Arbitrator Kaplan.

Recognition that colleges play a pivotal role in contributing to the social and economic well-being of the province is reflected in the continuous series of advisors, commissions and task forces established over the fifteen years or so following the 1988 release of the Gandz report. In different ways, all have been asked to consider how Ontario's postsecondary education system in general and the colleges in particular, could best meet the challenges of a changing and increasingly complex social and economic environment. (*Appendix 3*)

In 2000, the first new legislative initiative to directly impact the role and mandate of colleges was introduced through the *Post-Secondary Education Choice and Excellence Act, 2000*. This Act, which came into force in October, 2001 and replaced the *Degree Granting Act*, authorizes the Minister of Training, Colleges and Universities to grant consent to public and private entities without their own degree-granting legislation to grant degrees or hold themselves out as a university.

A more substantive expansion and validation of the increasingly diverse roles being played by colleges was to follow. In April 2001, following the release of the Investing in Students Task Force report, the Minister announced that legislation would be introduced to establish a new "charter" for colleges. This would reform the college governance model to allow them to become more flexible, entrepreneurial, responsive and market-driven. An underlying theme of the proposed changes was that governance of the colleges should no longer follow a "one size fits all" model.

In December 2001, Bill 147 was introduced for first reading.<sup>2</sup> The first ever comprehensive, college-specific legislation, the OCAAT Act (the “OCAATA”), came into force on April 1, 2003.

The revised mandate of the colleges was set out in subsections 2(2) and (3) of the OCAATA:

*2(2) The objects of the colleges are to offer a comprehensive program of career-oriented, post-secondary education and training to assist individuals in finding and keeping employment, to meet the needs of employers and the changing work environment and to support the economic and social development of their local and diverse communities.*

*2(3) In carrying out its objects, a college may undertake a range of education-related and training-related activities, including but not limited to,*

- (a) entering into partnerships with business, industry and other educational institutions;*
- (b) offering its courses in the French language where the college is authorized to do so by regulation;*
- (c) adult vocational education and training;*
- (d) basic skills and literacy training;*
- (e) apprenticeship in-school training; and*
- (f) applied research.*

The OCAATA establishes that overall authority for the colleges lies with the Minister of Training, Colleges and Universities and the colleges are ultimately accountable to the Minister. Within these parameters, however, the legislation provides colleges with significant flexibility and scope to differentiate and specialize according to their identified goals and strategic directions.

While continuing the general powers and responsibilities of the Minister to supervise and direct the work of the colleges, the legislation increases the opportunities for local college decision-making and determination. The OCAATA reinforces accountability for college outcomes with respect to meeting local, regional and provincial needs and student employment success.

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<sup>2</sup> In fact, this proposed Act was introduced two more times, once as a schedule to Bill 65 (an omnibus bill titled the *Post Secondary Education Student Opportunity Act, 2002*) and once in June 2002 as a schedule to Bill 109 (*Keeping the Promise for Growth and Prosperity Act (2002 Budget) 2002*, S.O. 2002, c.8 Bill 109). The OCAAT Act received Royal Assent on June 27, 2002 as a schedule to Bill 109.

Major changes in the governance structure of the colleges reflected in O. Reg. 34/03, the general regulation governing the colleges, includes, amongst other responsibilities, assuming responsibility for establishing terms and conditions of employment, other than insured benefits and pensions, for non unionized administrative staff.

The regulation also establishes the College Compensation and Appointments Council (the CCAC) whose members are appointed by the Lieutenant Governor in Council. The CCAC, which replaced the Council of Regents:

- performs the collective bargaining duties assigned to it under the CCBA;
- appoints the members of the college boards of governors (excepting the president);
- reviews a board decision to remove a person from the board, if requested by the person, such review being limited however, to whether the board followed its by-law procedure;
- is the policy holder of insured benefit plans for college employees and establishes the terms and conditions of such plans in consultation with college boards;
- establishes in consultation with boards, terms and conditions of employment for non unionized administrative staff, until the Minister accepts a recommendation from a college that the college establish the terms and conditions.

The responsibility for setting compensation and terms and conditions of employment for administrative staff and college presidents was devolved to college boards of governors in 2002. The Colleges Compensation Committee, a committee comprised of representatives from the colleges and accountable to college boards, prepares voluntary guidelines for the colleges, with research and staff support from the CCAC.

### **Present Challenges**

In 1965, Ontario's colleges of applied arts and technology were established to provide a new avenue of postsecondary education that would help the province respond to its changing job training and education needs. More than 40 years later they are commonly accepted as a vital key to the province's economic growth and social stability.

This is evidenced in part by the enormous diversity in the programs and services offered by the 24 colleges with campuses in more than 100 locations across the province

and the diversity in the students, employers and other stakeholders served by them.  
(Appendix 4)

It is evident that the colleges will continue to face even greater challenges in adapting and accommodating to increasingly complex social, economic and technological demands and expectations of the province.

Furthermore, the colleges are central to a number of key government strategies and priorities. These are aimed at ensuring economic growth and stability through the provision of current, flexible, timely, high quality and focused educational and vocational programming.

### ***III***

## ***The Consultation Process***

Consultations were undertaken with stakeholders and interested parties to help inform the findings and recommendations contained in this Report.

The current Review is undertaken in compressed circumstances and with a focused purpose. The Gandz Report was a notional starting point from which I formulated a series of questions to pose to stakeholders for comment. In drafting these questions, I wished to avoid simply a remaking of the Gandz “wheel”. It was my intention to concentrate on what if anything was different or new since the Gandz review. I also wanted to avoid a ‘blue sky’ exercise about an “ideal” college model.

Consequently, my inquiries and discussions with those consulted focused quite practically on what was possible – or not – given where the colleges presently are in their development. I was interested in what is “do-able” and realistic, given where we are now with the existing college system.

The questions used to solicit comment in this consultation attempt to address all of the issues in response to the Terms of Reference.

A three-stage approach was developed to ensure an open, focused and inclusive consultation process, including:

- Preliminary, informal meetings with key stakeholders;
- A public invitation to respond to a Notice of Consultation through written submission;
- A series of regional public hearings.

Eight questions were developed to provide a context for the review and to focus discussions and responses during all consultation stages. These questions were:

1. *What is the appropriate collective bargaining model (central, local, two-tier)?*
2. *What are the appropriate bargaining unit descriptions?*

3. *Who should represent the colleges in bargaining?*
4. *Should any categories of employees be excluded from collective bargaining?*
5. *What is the appropriate bargaining agent certification process?*
6. *Should any items or issues be excluded from collective bargaining?*
7. *What should the role of the College Relations Commission be?*
8. *Are there possible amendments to the CCBA that would enhance the collective bargaining process and permit the colleges to achieve their goals and mandate?*

### **Preliminary Consultations**

From September through November 2007, I met and informally consulted with institutional stakeholders as well as Ministries of Labour and Training, Colleges and Universities representatives. I spoke with a cross section of college Presidents to help inform the identification of issues to be considered within the scope of the review.

Early discussions provided an opportunity to gain insight into the preliminary views of stakeholders on the formal consultation approach and subject matter content. In particular, the institutional stakeholders agreed that the eight questions adequately canvassed the issues appropriately addressed in the course of the Review.

Key Institutional stakeholders consulted included:

- ***College Compensation and Appointments Council (CCAC)***

The CCAC (the “Council”) is the statutorily designated bargaining agent for the colleges in negotiating collective agreements with academic and support staff. Members are appointed by the Lieutenant Governor in Council. Bargaining mandates are established through the CCAC’s Human Resources Steering Committee which includes representatives from college presidents, boards of governors and council members. The Mandate is reviewed by College Ontario’s Committee of Presidents (COP) to ensure system wide support.

The CCAC is also responsible under regulation for appointing members of college Boards of Governors and is the deemed administrator for staff insured benefits plans.

- ***Ontario Public Service Employees Union (OPSEU)***

OPSEU represents over 125,000 workers in many areas of public service throughout the province. Within the college sector, OPSEU represents 17,000 full time college workers, both academic and support staff in the 24 colleges. OPSEU also has a long, well established history of pursuing bargaining rights for currently excluded part time staff. OPSEU assisted in the formation in 2006 of the Organization of Part-time, and Sessional Employees of Colleges of Applied Arts and Technology (OPSECAAT) and has recently embarked on a campaign to organize these employees.

- ***Colleges Ontario***

Colleges Ontario is an outreach and advocacy organization, serving the colleges. It represents the broad interests of all colleges in the province. Colleges Ontario is closely linked with the CCAC for collective bargaining purposes.

- ***Committee of Presidents (COP)***

The COP is a Committee of Colleges Ontario, consisting of the Presidents of all 24 colleges.

- ***Organization of Part-Time and Sessional Employees of Colleges of Applied Arts and Technology ( OPSECAAT)***

OPSECAAT is a staff association that informally represents the interests of part time (excluded) employees in the colleges.

- ***College Student Alliance (CSA)***

The CSA is an advocacy and services association that has represented college students since 1975. The CSA currently represents the interests of over 109,000 full time students including those in 16 colleges, of which over 5,100 are students working part time on campus. This group of students is part of the larger group of 17,000 part time excluded workers in the college system.

- ***Ontario College Administrative Staff Association (OCASA)***

OCASA is a voluntary association that promotes the interests and needs of the province's college administrators. College administrators oversee support staff and faculty members.

### **Notice of Consultation and Written Submissions**

On November 1, 2007 a Notice of Consultation (*Appendix 5*) was released to all institutional stakeholders and the broader union community. The Notice was posted on the Ministry of Training, Colleges and Universities website and distributed to all colleges for local posting. The Notice was published in local newspapers in proposed public hearing sites. The Notice contained website links to further reference material, including the Gandz Report.

Written submissions addressing the eight questions were invited by November 16, 2007. Those interested in participating in one of four regional public hearings were asked to identify their interest in their written submissions.

A total of 20 submissions were received, of which nine substantially addressed all of the questions posed. The balance, including those from the Ontario Federation of Labour, Canadian Auto Workers', Canadian Federation of Students, Ontario Confederation of University Faculty Associations, Toronto and York Region Labour Council, and individual college staff, offered general comments or support for other submissions.

All of the institutional stakeholders provided complete submissions. The Council and Colleges Ontario provided a joint submission, as did OPSEU and OPSECAAT. Other substantive submissions were received from OPSEU Locals 110, 417, 560, 655/656 (joint), the Sudbury and District Labour Council and the Sudbury Marxist Leninist Party Club.

Seven submissions identified an interest in participating in regional public hearings.

### **Regional Public Hearings**

A series of four regional public hearings were scheduled across the province to provide an opportunity for interested parties to present their views in a public forum.

Participants were selected based on a review of the relevance of their written submissions to the project Terms of Reference and the questions raised in the Notice of Consultation.

Hearings were to be held in colleges and the sites were chosen based on their central proximity to other colleges in the Region.

The hearing sites included Algonquin College (Ottawa, November 20, 2007), Fanshawe College (London, November 27, 2007), Centennial College (Toronto, November 28, 2007) and Cambrian College (Sudbury, November 30, 2007). Public notices of the hearings were published in local newspapers in each of the sites and posted on the MTCU website.

Hearings scheduled for Algonquin and Fanshawe were subsequently cancelled due to a lack of participant interest. One party participated in a teleconference hearing instead. Hearings at Centennial and Cambrian Colleges proceeded as scheduled.

## **Summary of Principal Submissions**

The submissions of the parties are discussed in more detail later in this report as they relate to each of the eight questions posed in the Notice of Consultation. Nonetheless, it is useful at this point to describe generally the broader issues and concerns raised in the submissions and the extent to which they reflect the three broad themes of how collective bargaining is to be extended to part time employees, what challenges will flow from this and what in the CCBA needs to be changed to accommodate any new challenges.

### **The Colleges**

The Council and Colleges Ontario provided a joint written submission on behalf of all 24 colleges. This is the principle “employer” perspective submission and I will refer to it simply as the “colleges” submission.

The colleges expressly support the extension of collective bargaining for part time employees and referred to the recent direction from the Supreme Court of Canada in *Health Services and Support – Facilities Subsector Bargaining Association v. British Columbia*, [2007] S.C.J. No. 27 ( the “*B.C. Health Employers’ case*”).

On the issue of how collective bargaining should be extended to part time employees, the colleges emphasized that the process should permit for the expression of

employee choice and the continuation of a strong centralized model of bargaining. The colleges suggested that part time employees should be free to choose their own bargaining agent and then free to negotiate their own collective agreement that would be responsive to their distinct needs.

On the issue of how the colleges might be affected by the extension of collective bargaining to part time employees, the colleges were most concerned about their continuing need for flexibility in the provision of instructional programming.

The principal submission designed to protect existing flexibility was a change to the CCBA to remove the establishment of classifications from bargaining in the academic bargaining unit. It was suggested that this would permit the colleges to use the classification system as a tool in retaining the requisite degree of work assignment flexibility. The colleges also supported a greater role for local bargaining.

In terms of changes to the CCBA broadly speaking, the colleges suggested a number of amendments which would have the effect of moving the collective bargaining model closer to that under the OLRA. These suggestions would reduce reliance on third party neutrals and permit the employer to do the same sorts of things in bargaining that might occur in the private sector – such as implement their final offer once in a strike or lockout position.

### **The Committee of Presidents**

While endorsing the submission from the Council and Colleges Ontario, the COP addressed only one discrete issue and that is the question of who should bargain on behalf of the colleges. The COP suggested that there be a new employer bargaining agent, controlled and directed by the colleges themselves.

### **OCASA**

OCASA supports the rights of part time college employees to unionize. The need for flexibility as a critical tool for college administrators was put front and centre. OCASA is also concerned that what they characterize as current inadequate college funding will only become more inadequate as the unionization of part time employees will increase administrative costs. Finally, the needs of students are as important as the needs of employees and the consequences to students must be given significant priority.

## **OPSEU**

OPSEU made a comprehensive submission on its own behalf (as well as on behalf of OPSECAAT) and there were a number of submissions that were made by OPSEU local unions directly. For the most part these were consistent in terms of both general principles and discrete proposals.

On the issue of how collective bargaining should be extended to part time employees, OPSEU argues that “but for” the historical wrong of having excluded part time employees from collective bargaining, part time employees would now already be included in the two full time bargaining units prescribed in the CCBA. The remedy then is to simply remove the statutory exclusion with the effect of placing part time employees in the full time units now.

In terms of the consequences of extending collective bargaining to part time employees, OPSEU suggests that this should not be done at the expense of existing full time employee rights and entitlements. In other words, full time employees should not in any way be put into a worse position as a result of part time employees being unionized. As one presenter put it at a public hearing session, part time employees should not be given the right to bargain collectively “on the backs” of full time employees.

As to any changes to the CCBA that might be required to accommodate the parties’ needs once part time employees are unionized, OPSEU took a strong principled position that no changes should be made as the parties have worked since 1975 to construct a delicate bargaining balance that ensures that the statute “works”. Any change will affect that balance both in terms of the contents of collective agreements or the dynamic of the bargaining process itself.

## **Students**

The College Student Alliance and the Canadian Federation of Students made written submissions on behalf of college students. The former represents the vast majority of college students at 16 of the 24 colleges and the latter represents students across the country and particularly in 1 of the 24 colleges (George Brown).

The CFS submission simply supported the right of part time college employees to bargain collectively and the ability of OPSEU to act on their behalf as bargaining agent.

The CSA had a more detailed submission with two principal points of focus. Firstly, that there should be no ability of either side to invoke a work stoppage and it was suggested that the right to strike or lockout should be removed from the CCBA. The second significant concern was about the ability to continue to ensure that students have access to the levels of part time employment that exist currently.

### **Points of Convergence**

Significantly, there was a high degree of consistency in the responses of most stakeholders. More particularly there was limited divergence of views and positions as between the two (principal) institutional bargaining parties, OPSEU and the CCAC on fundamental issues around the appropriate collective bargaining model, appropriate bargaining unit descriptions, categories of employees to be excluded from bargaining, and with one main exception, items or issues to be excluded from bargaining.

Sections 7 through 12 of this Report set out the views, positions, and reasoning relied upon by the principal parties for each of the eight questions under review.

A summary table of key stakeholder responses to the 8 questions can be found at *Appendix 6*

## *IV*

### **Terms of Reference**

The Terms of Reference which set out my tasks and responsibilities are included in the Report at *Appendix 1*. These Terms direct me to do the following three things:

- (1) make findings on the extent to which the CCBA appropriately provides access to collective bargaining for all college employees (including part time employees presently excluded from collective bargaining);
- (2) make findings on the extent to which the CCBA allows the Colleges to meet their mandate (including the changing needs of students and Ontario generally);
- (3) make recommendations on directions that the Ministry of Training Colleges and Universities and Ontario could take to better meet both goals (the provision of access to collective bargaining and the ability of the Colleges to meet their mandates).

In formulating my findings and conclusions on these three points, the Terms of Reference further direct me to consider the extent to which the CCBA fosters good collective bargaining, and meets the particular needs of Ontario students. More particularly, I am asked to consider what would be a viable model of collective bargaining for part time employees and to identify the consequences of adopting such a model.

Finally, the Terms of Reference direct me to consult with all interested stakeholders in order to obtain their views on the questions posed and the tasks I am asked to undertake.

### **Three Broad Themes**

Throughout the course of this Review, three broad themes have emerged, both in discussions with those consulted and in my deliberations.

The first theme addresses the “how do we do it” set of questions. What are the appropriate mechanisms to facilitate the introduction of collective bargaining for part time college employees? These include the issues of the location of bargaining (central versus local), the description of the bargaining unit and the process used to obtain collective bargaining (certification).

The second theme deals with the consequences of introducing collective bargaining for part time employees. This includes an analysis of the past and current use of part time labour in the colleges, and how the unionization of this labour will create particular consequences for the colleges, their employees, students and the collective bargaining process.

The third theme deals with the ways in which the CCBA should either remain as is - or be changed. The question here is; what is needed to ensure that the consequences of collective bargaining support the work of the colleges, the interests of students and employees - and a healthy and viable collective bargaining relationship?

## V

**The Gandz Report**

In 1987, Jeffrey Gandz was appointed by the government to conduct an extensive and comprehensive review of collective bargaining in the colleges. The terms of reference for the Gandz Commission were broader than those which direct the current Review but included all of the issues I have been asked to consider.

The Gandz report is widely accepted as the most comprehensive and thorough examination yet undertaken, of collective bargaining in the colleges. The parties who have participated in the present Review do not uniformly agree on which of the Gandz recommendations are to be adopted or endorsed.

Gandz submitted a report to the government which included a lengthy list of recommendations, many of which touch directly on the issues that I have been asked to examine. Of particular note, Gandz recommended that part time college employees be permitted to bargain collectively under the CCBA in a four bargaining unit structure, defined in the statute. He also recommended a variety of other changes to the CCBA that would affect the way in which bargaining occurs.

Gandz made 38 discrete recommendations of which the following bear most directly on the questions posed in this Review:

- That the CCBA continue as there is an ongoing need for special legislation governing collective bargaining in the college system;
- That government should limit its involvement in the bargaining process;
- That bargaining should remain at the provincial level with local bargaining protected and encouraged;
- That the colleges should have their own employer bargaining agent separate from both the Council and government;
- That part time academic and support staff be given access to collective bargaining through a certification process which would include the requirement for a “double majority” representation vote;
- That part time academic and support staff have their own statutorily defined bargaining units;

- That a variety of changes be made to the rules governing bargaining which would bring college bargaining more into line with the regime under the OLRA, including the timing of the notice to bargain, and a vote on the employer's final offer;
- That system wide grievances be processed and dealt with at the provincial level;
- That the College Relations Commission be provided with increased resources so as to better support the parties in bargaining.

In particular (and as noted earlier), Gandz was quite critical of the bargaining process and relationship for the full time academic bargaining unit. In his view, academic bargaining had been consistently unsuccessful and had not permitted the parties to successfully deal with and resolve the most significant and difficult issues, requiring solutions.

Gandz concluded that the academic bargaining had been and remained, dysfunctional. He described the academic bargaining process as one characterized by "extreme conflicts of positions and personalities, excruciatingly protracted negotiations, excessive reliance on third parties to resolve problems and issues, and escalating frustration on the part of all those involved in negotiations"<sup>3</sup>.

By contrast, Gandz described the support staff collective bargaining process as "highly constructive". He notes that "Everyone involved with those negotiations – the parties themselves and the third parties who have been appointed as mediators and fact finders- has commented on the professionalism of the negotiators, their preparedness to deal with common problems, and their willingness to compromise, after tough bargaining, on issues where they could not have a meeting of the minds"<sup>4</sup>.

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<sup>3</sup> Gandz page 100

<sup>4</sup> Gandz page 99

## VI

### Findings

#### The Colleges' Mandate

*The colleges mandate remains the timely provision of practical and technical, training and education, for post secondary youth and adults, designed to meet the needs of both local communities and the Province. This requires significant flexibility in course programming.*

The mandate of the college system has been refined and extended over time. Today, the college system offers a vast array of training and education that would have exceeded the most creative predictions of those present at its inception in 1965.

Despite this growth and expansion, in many significant ways, the colleges' "mandate" remains faithful to its origins in the *Department of Education Amendment Act* of 1965. That mandate at core is the provision of practical and technical, training and education, for post secondary youth and adults, designed to meet the needs of both local communities and the Province.

The colleges' mandate includes the obligation to work with local partners in industry and government in the provision of flexible, timely, high quality and focused educational and vocational programming. Programming is to be offered on both full time and part time bases.

The ability to create educational and training programs in conjunction with experts and practitioners from industry and local communities, designed for local application and on a rapid turn around time - has played a central role in the work of the colleges. The colleges have excelled at being able to identify and then quickly satisfy, local community vocational and training needs. This in essence, is the college "brand".

The colleges' abilities to meet local industry and community demands, has been dependent on their capacity to quickly retain local expert labour and as quickly, to be able to bring assignments to an end when no longer required by community needs.

## **Collective Bargaining Issues that Impact on Programming**

*The most significant collective bargaining issues that impact on and relate directly to programming flexibility have arisen in academic bargaining around work assignment, job security and classification.*

The ways in which the bargaining parties deal with and resolve issues and disputes around work assignment and job security, will directly affect the ability of the colleges to provide flexible course programming. The ways in which the academic collective agreement determines the method of work assignment and the measurement of workload for academic staff in particular is a critically significant factor in course programming.

Workload and work assignment are governed by current Article 11 of the academic collective agreement. Job security is dealt with in Article 27. Classification is referred to in various places, significantly in the Classification Plans at the end of the collective agreement.

## **The Dynamic of Academic Bargaining**

*The colleges and the academic bargaining unit, remain, chronically dissatisfied with the way in which these issues (work assignment, job security and classification) have been managed in the bargaining process.*

Most would agree that the history of bargaining in the full time academic bargaining unit has been characterized by frustration on both sides of the table. This was a significant focus in the Gandz review. Gandz attributed this to the “personalities” involved in the process.

The colleges and full time academic staff have historically been unable to get the other side’s attention for what they understand to be many of their primary bargaining concerns and goals. More often than not, these issues deal with workload and job security.

As both parties have acknowledged (and as Gandz was quick to point out), the colleges and the full time academic employees have historically been frustrated at the bargaining table. Both sides perceive that they have chronically been unable to get the

other side to respond to and engage with their short list of priority items for bargaining. Both sides have at various times, unsuccessfully attempted to open up issues of workload, job security and classification.

The most challenging labour relations issues have arisen in the context of the academic bargaining. This will continue to be the case.

Full time academic labour is the most costly in the college system. Current academic collective agreement provisions around work load and classifications are likely to factor significantly in future discussions about programming flexibility.

Gandz attributed this sense of chronic joint frustration to the continuing presence of the same “personalities” in the bargaining process. He contrasted this with the bargaining that occurs between the colleges and the full time support employees - who would by all accounts seem to have an open and productive bargaining relationship.

### **The Use of Non Unionized Labour**

*Rather than finding “flexibility” solutions through bargaining with the full time academic unit - the colleges have over time, resorted to significant reliance on inexpensive and flexible part time non unionized labour, unencumbered by collective agreement obligations.*

It is apparent that the colleges have for some time now, continued to provide flexible and timely programming in large part by relying heavily on part time non unionized labour. Unlike the case with full time unionized employees, the colleges can (subject to minimum labour standards ) unilaterally determine all of the terms and conditions of work for part time non unionized employees. Part time labour is inexpensive (relative to unionized labour), quickly obtained and may be as quickly, brought to an end.

Readily available part time non unionized labour currently permits colleges to construct focused and relevant local programming on a very short turn around time and then to end the programming the moment that the need is gone – all with minimal notice, job security or compensation obligations.

## **The Consequences of Using Part Time Labour**

*As a consequence of the colleges' reliance on significant part time non unionized academic labour, the dynamic in academic bargaining is that OPSEU attempts to obtain job security for its members by bargaining to limit the use of part time employees - while the colleges attempt to maximize their capacity to use part time non union labour.*

These issues have driven much of the academic bargaining. It is apparent from the academic collective agreement provisions that deal with job security and workload that the colleges' capacity to use part time labour has been the "elephant in the room". In response to the significant use by the colleges of part time non unionized academic labour, OPSEU has attempted in various ways to protect the work of their members by negotiating limits on the use of part time employees. On the other side, the colleges have attempted to preserve this capacity.

It is probably the case that if part time employees had been able to participate in collective bargaining when the CCBA was first introduced, much of what is now in the full time collective agreement dealing with job security would be unnecessary – or at least different.

## **The Exclusion of Part Time Employees**

*The majority of college employees are now part time. There is no justification for excluding these employees from collective bargaining. Part time employees should be immediately granted the right to unionize.*

Part time college employees have been precluded from collective bargaining since the CCBA was first introduced in 1975. At that time part time college employees were scarce. Few persons were practically affected by this exclusion.

Those circumstances have changed significantly over time. Over the last twenty years the proportion of part time to full time employees has steadily increased to the point where the majority of college employees whether academic or support, are now part time.

The original decision to preclude part time employees from the CCBA probably seemed at the time an innocuous practical strategy. Excluding part time employees from

otherwise full time bargaining units was consistent with then current industrial relations thinking. This was the pattern in most other sectors and industries, public and private.

In determining bargaining unit composition under the *Ontario Labour Relations Act* (“OLRA”), the Ontario Labour Relations Board (“OLRB”) would in the normal course, exclude part time employees from any full time bargaining unit on the theory that part time employees had a different “community of interest” than full time employees.

Today, it would seem to be accepted that the exclusion of employees from collective bargaining in the college sector is without justification. Most likely this exclusion is contrary to the *Canadian Charter of Rights and Freedoms*.

All who were consulted in the process of this review – including the colleges – supported the right of part time college employees to have access to collective bargaining.

### **The Use of Part Time Unionized Labour**

*When part time employees are unionized, the colleges will no longer be able to rely on part time labour as they have in the past – with the same degree of flexibility. The colleges will no longer have the capacity to unilaterally determine terms and conditions of employment for part time employees. The “hourly rate” cost of part time labour will increase more rapidly.*

It is clear that the college system will be significantly challenged by the introduction of collective bargaining for part time employees. This is because the colleges will no longer be able to use and assign part time employees as they have in the past.

There should be no doubt that the colleges will lose some of their now unfettered discretion to hire and direct part time employees as they choose. Again, this is quite appropriately part of the exercise of collective bargaining where unions on behalf of their members play a role in determining and structuring the working terms and conditions in the workplace.

By its very nature, collective bargaining is and should be about, employees negotiating appropriate limits on the free exercise of managements rights and employer discretion to direct how and when work is to be done. Collective agreements are essentially codified restraints and obligations that apply to the exercise of managerial control.

There is also little doubt that on a “per unit” or hourly rate basis, the labour of unionized part time employees will likely and over time, be more expensive than the labour of part time non unionized employees. This should come as no surprise and indeed, redistributive change is quite appropriately one of the attractions and anticipated outcomes of collective bargaining.

While the per unit costs of part time labour may increase, this does not necessarily mean that global compensation costs will rise. Whether global compensation increases or not will be determined by what happens in bargaining.

### **New Challenges in Bargaining**

*The collective bargaining parties will be faced with new and extremely challenging issues as the colleges will attempt to bargain provisions which will allow them to continue to maintain flexibility in work course programming.*

Notwithstanding the anticipated consequences of the extension of collective bargaining to part time employees, the colleges mandate remains the same. Even without the same degree of control over the direction and assignment of part time labour, and with a possible increase in the per unit cost of that labour, the colleges will still be required to provide timely, flexible, high quality community focused programming.

Given the newer set of challenges as a result of government policy in the colleges sector, and the types of changes in the way in which colleges now work, the need for flexibility in course of studies programming is only likely to increase.

Colleges are more than ever before in competition with other providers of educational and vocational services – both from the private and public sectors. The survival of the college system as we know it will depend on the degree to which it can continue to respond at a high level to community and provincial needs.

Without being able to rely on their past unfettered ability to direct and use inexpensive part time labour, the colleges will have only one place now to turn, in order to get the flexibility that they will continue to need. That place is the bargaining table where they will (eventually) find themselves sitting across from both part time and full time employees – support and academic.

As a result of part time unionization, both sides will likely be raising difficult and new issues in the bargaining process. These may include compensation, the scope of

the bargaining unit, classifications, workload, issues of notice and job security and the assignment and direction of work.

Bargaining is only going to get more challenging and difficult once part time employees unionize. The traditional bargaining dynamic in the academic unit will have to change if the colleges and the union are to successfully grapple with the changes that lie ahead.

### **Bargaining under the CCBA**

*Collective bargaining under the CCBA (as compared to the OLRA) provides for significant supervision of the process and intervention by the CRC, third party neutrals and government. The CCBA also expressly and implicitly, limits access to and the consequences of, a strike or lockout.*

Aside from the very significant exclusion of part time employees, the CCBA also reflects the industrial relations thinking of the 1970's in two other important respects. This thinking is apparent when one contrasts the provisions of the CCBA with those of the OLRA, the labour relations statute that applies generally to the vast majority of Ontario employees, both in the private and public sector.

Firstly, there is an underlying assumption in the CCBA that public sector employers and employees (such as these) lack the knowledge, experience and capacity to engage in full blown collective bargaining on their own. For this reason, they need a variety of collective bargaining "training wheels" to prop them up and keep them moving in a safe manner, in the right direction. These include such features as the designation of the Council of Regents (appointed by government) as the employer bargaining agent, fact finding, information collection by the College Relations Commission (CRC), extended periods for the giving of notice to bargain, fixed collective agreement expiry dates, detailed schemes for interest arbitration and final offer selection.

Most of these provisions are unique to the CCBA and do not appear in the OLRA or in any of the other statutes that provide self contained provincial labour relations schemes. These features of the CCBA are designed to permit the CRC, the government and third party neutrals to "chaperone" and supervise the collective bargaining process. Presumably, this is for the benefit of the parties who would otherwise be lost along the way, if left to themselves, and unable to manage on their own.

The second way in which the thinking of the 70's is reflected is in the various ways in which either access to, or the consequences of strike or lockout are limited and

constrained. While there is certainly a “right” to strike under the CCBA, many hoops must be jumped through, many delays and conditions precedent to overcome – before the parties get to a position where they can in fact engage in work stoppage.

On the rare occasion when the union is able to get to a strike position, the full extent of potential damage to the employer is mitigated (when compared to a strike under the OLRA). There is a fair degree of certainty that the CRC and the government will see that the strike will not be permitted to last very long and that a third party neutral will determine the issues in dispute through arbitration.

On the other side, there has never been a lockout under this legislation and it is certainly the perception of the parties that the colleges could never for practical reasons – ever get to the position where they could lock out.

In many ways then and as a result of a variety of features of the CCBA, the full ability to strike – in the traditional industrial relations sense – is not permitted under the CCBA. This begs the question, why should college employees not in practical terms have the same real ability to strike, as do the vast majority of employees in Ontario?

Under the CCBA there is certainly implicitly, a sense that the public interest in avoiding a strike or lockout must be significantly protected by making it difficult to ever get to a work stoppage - and if one gets there, to mitigate the damage and end it as quickly as possible. This thinking underlies the jeopardy function of the CRC and the “deemed” strike or lockout provisions amongst others.

In my view, these assumptions about the inability of the parties to be trusted with traditional bargaining and the need to protect the public (and their expression in a variety of statutory provisions), have worked in combination to prevent the colleges and OPSEU from assuming full control over the bargaining process. The present collective bargaining model does not require or oblige the parties to take full responsibility for choices made or not made at the bargaining table.

If the parties are secure in the knowledge that a strike or lockout is extremely unlikely, and that if it does occur, will be ended quickly by someone else with interest arbitration, there is little to require them to listen or focus on something that the other side wishes to remedy and push - but they wish to ignore.

Successful collective bargaining is very much about listening to what is coming from the other side of the table – especially when you don’t want to hear it. Collective bargaining “works” only because it is at the end of the day, preferable to the alternative – which is the social and economic damage that flows from strike or lockout.

If the threatened or actual “damage” from work stoppages is reduced, constrained or mitigated, then the pressure on the parties to hear each other out and to

think hard about what they really need and want out of the process – is greatly diminished.

### **Bargaining under an OLRA Model**

*The CCBA should more closely resemble the OLRA. This would improve the bargaining process and permit the collective bargaining parties to manage bargaining themselves, with less third party intervention. Colleges employees should be provided with a more complete right to strike in the traditional sense – as are most other employees in Ontario.*

The main reason that private sector bargaining is so successful in Ontario is that strikes or lockouts can potentially end in catastrophe for employers and unions. When the stakes are this high, parties are prepared to remain at the bargaining table, pay attention and respond thoughtfully to what they would rather not hear or talk about. This reality fundamentally contours and directs the way in which the bargaining process plays itself out.

It is the destructiveness of what happens if the parties cannot get agreement, that forces and pushes them to compromise and bend in order to settle a collective agreement. This reality – the prospect of potentially irreparable social and economic damage - is what requires and forces the parties to be disciplined and focused at the bargaining table.

### **Consequences of an OLRA Model**

*These changes would enhance the ability of the collective bargaining parties to deal successfully with new and increasingly difficult issues and problems. The interests of students and the mandate of the colleges, are best protected and promoted through a healthy and robust collective bargaining process - where the parties take responsibility themselves for finding and crafting their own solutions to work place challenges.*

Unlike Gandz, I do not see the “dysfunctionalism” in the full time academic bargaining as flowing from the personalities involved. Rather, I understand that these are on both sides, experienced, sophisticated bargainers who have developed what they believe to be effective “defensive” strategies to protect what they have gained (or held onto), much of it through third party intervention.

It is the framework of the CCBA which permits these protective strategies on both sides while undercutting any incentive to deal with the very tough issues that need to be solved on a creative and mutual basis. With the introduction of collective bargaining for part time employees, these issues will only get tougher.

The collective bargaining parties have been and will always be in a better position to know and understand the real dynamic of the workplace than third party neutrals or the government. Whatever measures may become necessary, whatever solutions are required in the future to protect and safeguard the interests of employees, students and the ability of the college system to continue to meet its mandate are best identified and agreed to by the parties themselves, through bargaining. Solutions imposed from outside are likely to lack the refinement necessary to succeed on the “ground”.

Colleges, their employees and their unions will more successfully manage the transition to the unionization of part time employees if they are entrusted with the full array of tools and levers, usually available in the collective bargaining process. This means the removal of significant third party oversight or management of the bargaining process. This means the extension of the full ability to strike and lockout (like employees and employers under the OLRA) and the ability of the parties themselves to control the timing and the manner of work stoppage.

If the union wishes to invoke rotating strikes for example because this method will best serve their strategic interests, then this should be their choice, to use as they see fit, with responsibility for the consequences.

Bargaining in the long term will be enhanced if the CCBA is amended to remove those features of the statute which oblige third parties or the government to oversee the collective bargaining process. The colleges and OPSEU are sophisticated parties who know how collective bargaining works. They are capable at this point in their bargaining relationship to take full responsibility for their conduct and choice of bargaining strategies. If both parties can exercise the full array of levers and implements in the collective bargaining tool kit, they will be better equipped to meet the very difficult challenges that will flow from the unionization of part time college employees.

In the absence of these types of changes, the parties will most likely continue on as they have now for decades, unable to engage each other in the difficult issues that each side will bring forward for different reasons, once part time employees unionize.

It is time for the government and neutral third parties to step back and permit the collective bargaining parties to take complete control of the bargaining process, including the threat and consequences of work stoppages. While there will inevitably be a period of transition and uncertainty, these changes will eventually permit the parties to truly negotiate with each other, those issues that at present, neither side wishes to hear from the other, across the bargaining table.

## VII

### *What is the Appropriate Collective Bargaining Model?*

One of the most significant issues to be addressed in this review is whether bargaining should occur centrally or locally. The consequences which flow from the choice of model are significant as different constituencies, with different issues and agendas, may control bargaining, depending on the choice of model.

The question to be answered is whether the significant focus of collective bargaining should be at the individual college level, or alternatively, centrally at the level of the college “system”.

There are typically three principal models available to balance local and central issues. These are:

- (1) “central” bargaining, where bargaining only occurs at the provincial level;
- (2) “local” bargaining where bargaining only occurs at the individual college level;  
and
- (3) “two tier” bargaining where issues are identified as either central or local and dealt with at the appropriate level, concurrently.

#### **Existing Practice**

From the beginning, bargaining under the CCBA has occurred centrally – at the provincial level. This means that in every past round of bargaining, the Council on behalf of all of the colleges has bargained directly with OPSEU, on behalf of all local unions (with local unions at each college).

Some minor local bargaining does occur. This varies significantly between colleges. There is no formalized integration of central and local bargaining. There are no issues which are expressly understood to be within the scope of local bargaining and for this reason cannot be described as two tier. Over time, the degree and significance of local bargaining has diminished.

The CCBA does not expressly require that bargaining be conducted centrally. Many features of the statute however, including the fact that the Council is the employer bargaining agent - implicitly support a central model.

Although it is not necessarily a good “fit” with the statute, the parties could (and in some cases, do) agree to deal with some issues locally. Although extremely rare, a small number of individual colleges and their local OPSEU unions have written local agreements. Less rare are “unwritten” local agreements which embody local “understandings” as to how some issues are to be managed and administered.

Various provisions of the CCBA, including defined province wide bargaining units, very clearly facilitate a central bargaining structure. In the absence of an agreement to deal with local issues locally, the default process is central bargaining.

### **Other Sectors in Ontario**

Most collective bargaining in Ontario occurs at the local level. This includes bargaining in the private sector under the OLRA and in the public sector under a variety of sector specific statutes.

School boards and universities bargain locally, although school board bargaining has increasingly assumed some of the characteristics of central bargaining.

The only significant exception in the private sector is in the construction industry where designated employer and union bargaining agents bargain centrally on a province wide basis.

Voluntary central bargaining occurs in the health care sector where employers can elect to participate in a provincial process, or choose to bargain on their own behalf.

Bargaining in the Ontario public service is by agreement, two tier. In this sector, OPSEU and the Crown have agreed to identify particular issues as local and leave them to local bargaining. The majority of significant bargaining however occurs in this sector, at the provincial level and is done centrally. Like most two tier bargaining, local agreements are subject to the central agreements.

### **Other Canadian Jurisdictions**

Central bargaining (or two tiered) is the predominant model for colleges in other Canadian jurisdictions, with P.E.I and Alberta being the only provinces to exclusively employ a local bargaining model.

Many permit some form of local bargaining within a central bargaining framework.

## **Gandz Report**

The Gandz Report recommended the continuation of a central bargaining model with amendments to enhance the role of local bargaining within a provincial framework.

Bill 23 did not contain any amendments which would have necessarily altered the balance as between central and local bargaining.

## **Stakeholder Responses**

There was a clear and uniform consensus on this issue from all parties who participated in the consultation process. Without exception, all have suggested that central bargaining should continue to be the primary bargaining framework both for those presently covered by the CCBA and for those part time employees who would fall within an expanded statutory scheme.

Although there are views as to how local bargaining might be used in conjunction with central bargaining, no one has recommended a move to adopt a local or formal two tiered bargaining model.

More particularly, the colleges and students suggest that the CCBA should be amended to permit and encourage a greater level of local bargaining, while retaining the central model overall. OPSEU on the other hand, resists this suggestion on the basis that any such encouragement may over time, jeopardize or weaken the central bargaining framework.

Submissions made in support of central bargaining stressed the fact that this model has been successfully administered for over thirty years. Central bargaining has produced stable (if not always successful) collective bargaining with very few work stoppages.

It was suggested that the continuation of a strong provincial bargaining mechanism is necessary in order to both ensure a central funding structure and the appropriate administration of a provincial “system” of colleges -rather than a collection of individual colleges.

The Gandz Report sets out the various strengths and weaknesses of both central and local bargaining frameworks<sup>5</sup>. Similar analyses and reasoning were relied upon by those who participated in the consultation process, in support of the central model as the system of choice.

Significantly, most consulted suggested that central bargaining is the most efficient and cost effective way to negotiate. The collective bargaining process, from demand setting through to negotiation and ratification, consumes significant resources, both financial and emotional.

A multiplicity of parallel processes would demand that a much higher level of resources be committed to the broader exercise. Depending on the number of bargaining units, local bargaining would require at the very least (and likely more), some forty eight different sets of bargaining.

A central bargaining model also eliminates the problem of whip-sawing and leapfrogging over salaries and benefits. Both the Colleges and OPSEU have suggested that these are consequences to be avoided.

Central bargaining is consistent with the funding structure for the bargaining process and would best assist the parties in the assessment and costing of collective bargaining. Central bargaining has and will continue to provide for uniform salaries and working conditions across the province.

A central province wide bargaining process reduces the likelihood that colleges will be tailoring their own terms of employment to compete with each other for staff, particularly in south central Ontario where a large number of colleges operate concurrently.

Central bargaining is much more likely to produce a stable collective bargaining environment with fewer work stoppages.

There are some disadvantages to central bargaining. There may be a tendency to ignore or fail to deal with important issues that are not uniformly shared across the college system. Where there are significant disputes and/or work stoppages during the bargaining process, they are more likely to be politicized in ways that may render resolution more difficult. There may very well be legitimate reasons as to why some types of working conditions or employer obligations may need to vary across the province.

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<sup>5</sup> Gandz page 145.

The principal shortcoming of formalized two tier bargaining is that it may often be difficult to know where a particular issue should be dealt with. There is also the risk that over time, local bargaining may undermine or jeopardize the integrity of the central process.

The colleges and OPSEU have created mechanisms which mitigate some of the potential disadvantages of central bargaining. The Council's Human Resources Management Steering Committee and the prominent role played by the Committee of Presidents, ensures that local issues can be appropriately raised and advanced in the central process.

It is also clear that the colleges can in their central process, agree to formalize a number of different forums for the discussion and resolution of issues by the local parties. The current full time academic collective agreement for example, refers to a number of standing local committees and processes that are dedicated to the management of local issues by the local parties themselves.

There are certainly differences of opinion as to whether the parties are in fact taking advantage of these various mechanisms to deal effectively with local issues. There is no doubt however that the parties could do more with the existing local processes, if they so chose.

It would also appear that since the Gandz Report, the parties have attempted to deal with what were at the time, recognized shortcomings and concerns with the central bargaining process. The colleges generally find that the central bargaining process is now much better able to accommodate local issues, than during the period studied by Gandz.

### **The Extension of Collective Bargaining to Part Time Employees**

The perceived advantages of the central bargaining model are likely to assist in permitting the college "system" as a whole, to adjust to the eventual participation in collective bargaining by part time employees.

There will be significant policy issues, challenges and concerns common to all colleges that will flow from collective bargaining of part time employees. The integration of part time employees will be facilitated by the continuation of a central bargaining model.

## **Impact on Students**

Students currently comprise a majority of support part time employees. Although existing student work currently varies in some ways as between colleges, the significant challenges which will be faced by students participating in collective bargaining are common to all colleges.

The most critical issues for students are their ability to maintain the level of work currently directed their way, and to reduce the likelihood of work stoppages that will interfere with their program of study.

Both of these concerns would be best dealt with on a province wide central basis that will permit the deployment of student influence which will follow the critical mass of student membership within a part time support bargaining unit.

## **Costing Implications**

There are certainly no negative costing implications of central over local bargaining. On the contrary, central bargaining aimed at the construction of standard province wide terms and conditions of employment will significantly facilitate cost forecasting. This enhanced certainty around labour costs should assist the colleges in long term planning.

## **Recommendation 1**

*Continue the existing central bargaining model with an emphasis on the parties taking greater advantage of existing mechanisms to resolve local issues.*

There is a long history to what is now a very sophisticated and nuanced central bargaining process. The consultation participants are unanimous in the suggestion that central, province wide bargaining should continue. While there are advantages and disadvantages of a central process, it would appear that the former outweigh the latter given the particular issues that will arise with the introduction of collective bargaining for part time employees.

For these reasons, the continuation of the existing central bargaining model is recommended. The parties should also do more to take advantage of existing mechanisms for the resolution of local issues.

A continuation of the existing central bargaining model and likely future refinements will best ensure that the Colleges are able to achieve their mandates, protect the common province wide interests of students, and provide for stable collective bargaining.

## ***VIII***

### ***What are the Appropriate Bargaining Unit Descriptions?***

The issue to be addressed in this portion of the Report is the appropriate bargaining unit framework. The Terms of Reference for this Review expressly indicate that consideration should be given to the appropriate bargaining unit description for college employees “including part time employees...”. In other words, what is the appropriate set of bargaining unit descriptions that will best permit part time employees to have access to collective bargaining, while ensuring that the Colleges are appropriately able to meet their mandate.

#### **Existing Practice**

From the outset, the CCBA has defined two bargaining units in two Schedules that appear at the end of the statute. One unit is comprised of “academic” staff and the other “support” staff.

Significantly, the academic unit excludes “teachers who teach for six hours or less per week”, “counsellors and librarians employed on a part-time basis”, and “teachers, counsellors or librarians who are appointed for one or more sessions and who are employed for not more than twelve months in any twenty-four month period”.

The support unit similarly excludes persons who would otherwise perform support work but are “regularly employed for not more than twenty-four hours a week.

The existing academic bargaining unit exclusions essentially preclude any person employed as a part time teacher, from collective bargaining. The majority of these fall into two categories, continuing education instructors and sessional instructors.

It would appear that at this point, excluded part time and sessional teachers outnumber full time academic bargaining unit staff, system wide and in most colleges. These percentages will vary from college to college with some full time academic staff being outnumbered by a factor of two to one.

Similarly, the existing part time support bargaining unit exclusions preclude any person employed to perform support work on a part time basis – that is not more than twenty-four hours per week. The majority of these persons are students who are employed performing work that would otherwise fall within the support bargaining unit. Again, the numbers of part time excluded support staff are greater than those support staff in the full time bargaining unit.

Taking the two existing bargaining units together, it is estimated that the number of part time employees both academic and support exceeds seventeen thousand. The number of full time academic and support employees exceeds fifteen thousand (excluding partial load).

In 1975 when the CCBA was first introduced, the general practice in all sectors public and private was to exclude part time employees from the bargaining unit of full time employees. It was also the case that there were few part time employees of the colleges in 1975. For these reasons, the original exclusions were likely seen as simply reflecting standard industrial relations practice.

What must have been unforeseen at the time was the rapid growth in part time college employment. By the time of the Gandz report in 1988, the majority of college employees were likely part time. The size of that majority has increased to the present.

As Gandz noted, part time unorganized labour, both academic and support, is inexpensive and flexible. It is apparent from the growth curve of part time employment that these two attractions have proven irresistible to the colleges. The corollary of this observation is that once part time employees choose to bargain collectively, the colleges as employers will lose the opportunity to take advantage of their primary source of inexpensive flexible labour. There will be only one place left for them to go – and that will be to the bargaining table.

### **Other Sectors in Ontario**

It is unusual for bargaining unit descriptions to be determined by statute. Outside of the colleges, this only occurs in the Ontario Public Service and in a very small number of sectors in the broader public sector. Where bargaining units are defined by statute, there is generally no exclusion for part time workers.

In other sectors governed by the OLRA, bargaining units are determined by the OLRB in the context of each individual certification application. In the middle to distant past, the OLRB would determine bargaining unit structures that best represented a coherent community of interest. As noted earlier, at the time of the enactment of the CCBA, it was not unusual for full and part time employees to be placed in separate bargaining units on the theory that they did not share a sufficient degree of common interests.

In the middle to recent past, the OLRB has rejected the community of interest analysis as a tool in defining bargaining unit structures. The present approach is to ask whether a bargaining unit proposed by a union in a certification application “is appropriate for collective bargaining”.

The most significant concerns centre on the two questions of whether a proposed bargaining unit could be organized and secondly, whether it would permit viable collective bargaining. The trend is to larger rather than smaller units. Part time employees are generally placed in the same bargaining units as full time employees.

Part time teachers are generally not in the same unit as full time teachers in universities or school boards in Ontario. Part time support workers are usually in the same unit as full time support workers in universities and school boards in Ontario.

### **Other Canadian Jurisdictions**

With the exception of Saskatchewan, part time college employees whether academic or support, are included in the same bargaining units as full time college workers. In the majority of provincial jurisdictions, academic and support workers are in different bargaining units.

### **Gandz Report**

Gandz recommended that the existing exclusion of part time college employees under the CCBA be removed. He concluded that there was no policy justification for excluding part time workers from having access to collective bargaining.

Gandz recommended a four bargaining unit structure. This would continue the two academic and support full time bargaining units and provide for two new additional part time bargaining units. In addition to the two full time units which relate to both academic and support staff, Gandz proposed that a part time academic unit include any teacher, counselor or librarian who usually worked six or less hours per week including supply work. He recommended for the part time support unit, any person working usually seven or less hours per week<sup>6</sup>.

Under the Gandz recommendations, students would generally be included in the part time support unit. Sessional instructors would be included in the full time academic unit as they would usually work more than six hours per week.

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6. Gandz page 237

Bill 23 proposed that the two Schedules in the CCBA which define the full time bargaining units be repealed and further that Regulations made under the Bill would implement the four bargaining units proposed by Gandz.

### **Stakeholder Responses**

We received three different types of proposals during the consultation process:

- (1) That part time employees be rolled into the existing two full time bargaining units;
- (2) That the Gandz model be recommended with some minor variation: sessional instructors be placed in the part time academic unit rather than the full time academic unit and part time support staff would include those working 24 hours or less in a week; and
- (3) That part time employees be permitted to recommend a bargaining unit structure through a certification process.

OPSEU suggested the first option – that part time college employees be rolled into the two existing full time units. OPSEU argues that there has never been a legitimate justification for precluding part time college employees from being able to bargain collectively. If one accepts that this historical exclusion has been “wrongful”, then the only appropriate solution is to put part time employees in the position that they should have been, but for this wrong.

OPSEU described five advantages favoring their proposed outcome. Firstly; that two province wide sets of negotiations would be more efficient than four. Secondly; that the exercise of achieving common terms of employment for part time employees in a rational and systematic way would be accelerated by simply being able to build upon the existing full time collective agreement terms. Thirdly; that two units rather than four would eliminate potential jurisdictional disputes that would arise over which bargaining unit covered which type and form of work. Fourthly; that the potential for “whipsawing” in bargaining would be reduced in a two bargaining unit structure. Fifthly; that one bargaining unit each for support and academic workers would permit greater latitude for career trajectories, unencumbered by barriers to the movement between different types of employment opportunities.

OPSEU suggests as an alternative argument in the event that their first recommendation is not accepted, that the Gandz model of four bargaining units be recommended with the variation that sessional instructors be placed in the part time academic unit.

Further, OPSEU suggested that even if there were to be four bargaining units initially, that over time the parties would together see the advantage of being able to reconfigure the bargaining unit structure and should be able to invoke some form of review for that purpose.

OPSEU recommended that there be some form of statutory mechanism which would permit a review of the entire bargaining unit structure - to be triggered if necessary at some point in the future.

The colleges and students suggested that the Gandz model be adopted with the modification that sessional instructors be included in the part time academic unit and that part time support employees working 24 hours or less a week be placed in a part time support bargaining unit.

The colleges and students proposed that students (with a few particular exceptions) be included in the part time support unit. They argued that in the absence of having the ability to participate and influence the bargaining process, students would eventually see their work opportunities decline as other part time non student employees would seek enhanced job security.

A variety of other consultation participants, including a number of OPSEU local unions, suggested that part time employees be permitted to suggest appropriate bargaining units at the time of certification following the process used to certify trade union bargaining agents under the OLRA.

### **The Extension of Collective Bargaining to Part Time Employees**

The Supreme Court of Canada in the *B.C. Health Employers'* case, recently confirmed that the ability to access collective bargaining is a protected component of the right of freedom of association in section 2(d) of the *Canadian Charter of Rights and Freedoms*.

The government of Ontario has announced that it will extend the right to collective bargaining to part time college employees.

All parties consulted expressly supported the extension of collective bargaining to part time college employees.

Whether there are two or four bargaining units, part time college employees will under either model, be able to access collective bargaining. If OPSEU's principal

submission is adopted, then part time college employees would immediately have access to collective bargaining.

### **Impact on Students**

Students are principally concerned with the maintenance of existing levels of student employment and the avoidance of any disruption to their training and studies. Students will have a greater ability to advance their interests if they are included and participate in the collective bargaining process.

If students are not “at the bargaining table” then their interests may go unrepresented during what will inevitably be significant bargaining about work assignment and job security issues.

If students are in a part time support bargaining unit, they will form the majority of members in each local union in most individual colleges and certainly a majority in the bargaining unit province wide. If students were to be placed initially in a single full and part time support bargaining unit, their ability to influence the direction of collective bargaining would be diminished as a direct result of their diluted strength within a larger bargaining unit.

### **Costing Implications**

It is apparent that the extension of collective bargaining to part time employees generally is likely to result over time in increased “per unit” labour cost increases and a reduction in the degree to which this labour can be used by the colleges with the existing degree of flexibility.

Indeed, two of the hallmarks of collective bargaining are that it permits employees through their union to exercise more control over the terms and conditions of work assignment and obtain wage and benefit increases over those of unorganized workers. Increased compensation and the reduction of employer discretion in work assignment are quite appropriately traditional trade union bargaining objectives.

Quite plainly, it is apparent that the extension of collective bargaining to part time employees means that the colleges may be required over time, to pay more for their flexible labour. While this much may be fairly certain, it is not possible to accurately or reliably cost these consequences.

Aside from the issue of the extension of collective bargaining to part time employees generally, there would seem to be little if no cost consequences that turn on particular bargaining unit configurations other than the cost of negotiations themselves.

Obviously, the fewer number of negotiations means fewer employee resources committed to bargaining. Two sets of negotiations are likely to cost less than four.

What can also be observed is that bargaining with two new part time units may possibly resemble “first contract” bargaining, than being an exercise in adapting existing full time provisions to part time circumstances. This bargaining “character” is likely to result in a wider scope of options available to the parties so as to be able to effectively deal with the particular and unique features of part time employment in the college system.

## **Recommendation 2**

*Create two new province wide part time bargaining units, defined in the statute. The part time academic unit should include sessional instructors and the part time support unit should include those workers employed for 24 hours a week or less. Establish a joint application process to have bargaining unit configurations reconsidered by the OLRB.*

The present government has announced that it will permit part time college employees to have access to collective bargaining.

The Supreme Court of Canada has quite dramatically reversed its own jurisprudence to firmly entrench the ability to bargain collectively as “Charter protected” activity under the freedom of association in section 2(d) of the Charter.

The International Labour Organization has determined that part time college employees in Ontario are unjustly deprived of the right to bargain collectively, contrary to international conventions which bind Canada.

All consulted parties expressly and unanimously endorsed the extension of collective bargaining to part time college teachers.

There is no policy rationale advanced at this point by any party, suggesting a justification for precluding part time employees from collective bargaining.

It is recommended that part time college employees should with certainty be provided the right to choose to bargain collectively.

Once part time employees choose to bargain collectively, there will be a number of unique issues that relate to their historical exclusion from collective bargaining. The starting point for the redress of this exclusion will be the decades of built up practices around how their terms and conditions of employment have been determined.

This will be a detailed and complex bargaining exercise. It will be managed more effectively if at the beginning, the parties are unencumbered by having to work within the framework of the two existing full time collective agreements. For this reason, it makes sense at least initially, to place part time workers in their own two bargaining units, one academic and one support, to be defined in the statute.

Although this is not the principal position put forward by OPSEU, both the colleges and OPSEU agree on the definitions of these two part time units (OPSEU as an alternative position).

It is recommended that the part time academic unit should include sessional instructors and that the part time support unit should include those workers employed for 24 hours a week or less and shall with a number of exceptions, include most students.

The suggestion that the OLRA model be adopted and that part time college employees be able to propose their own bargaining unit descriptions will render the overall bargaining structure uncertain at this point. Given the objective of facilitating the introduction of access to collective bargaining for employees who have been excluded for decades, more certainty is required around how this is to be done.

The four bargaining unit structure at the outset will advantage students in that it will permit them as a group to use and rely on their numerical strength within the part time support bargaining unit. This should be reflected in the ability of students to participate in and affect the collective bargaining process to their advantage – particularly in the crucial first few rounds of bargaining. This is the best way for students to ensure that their unique interests in work assignment and work disruption are properly protected.

Finally, it may very well be that after one or two rounds of bargaining, the colleges and union bargaining agents will wish to revisit the issue of bargaining unit configuration. The ability to trigger this mechanism should not be used as a lever in bargaining and for this reason, it is recommended that the parties may make a joint application to the OLRB to have the bargaining unit configurations reconsidered with the OLRB retaining the authority to exercise its discretion to deal with the request.

## ***IX***

### ***Who Should Represent the Colleges in Bargaining?***

The issue to be addressed in this section of the Report is the question of who is the appropriate employer bargaining agent.

#### **Existing Practice**

The Council is designated in the CCBA as the statutorily mandated bargaining agent for the colleges. The composition of the council is controlled by the Province and determined by Order in Council appointment.

The Council is responsible for bargaining on behalf of the colleges, owes no express statutory responsibility to the colleges for the way in which bargaining is done and has no responsibility for collective agreement administration.

Colleges Ontario and the Committee of Presidents have combined and in the absence of any prescribed role in the CCBA, developed a series of mechanisms and relationships which permit them to supervise and direct the work of the Council with respect to the collective bargaining process

#### **Other Sectors in Ontario**

There are other sectors in the province where employer bargaining agents are entitled under law to represent a group of employer entities. Under the OLRA an “employer organization” can with the agreement of its members, bargain with trade unions as an employer bargaining agent.

In the construction industry, employer bargaining agents may on application to the OLRB be accredited to act in this capacity or may be designated by the Minister of Labour. Upon being accredited or designated, these employer bargaining agents owe particular statutorily defined obligations to their member employers which govern their conduct in bargaining.

Members who are dissatisfied with their bargaining agents may bring their complaints before the OLRB for hearing and adjudication.

## **Other Canadian Jurisdictions**

British Columbia is the only other jurisdiction with a designated employer bargaining agent that conducts bargaining on behalf of the colleges.

In all other provinces, either the individual college bargains directly on their own behalf or the Crown in Right of the Province conducts bargaining on behalf of the colleges.

## **Gandz Report**

Gandz recommended that an employer bargaining agency be created that would legally and formally be controlled by the colleges (the Colleges Employee Relations Association)<sup>7</sup>. This is in contrast to the existing (and then existing) model whereby the Province holds formal control over the work of the employer bargaining agent – the Council.

Gandz was concerned that the existing framework did not permit the colleges to exercise adequate control over the Council, that it was not formally accountable to the colleges and had no ongoing responsibility for collective agreement administration between rounds of bargaining.

In Gandz' view, the existing model did not permit or require the colleges to "own" the collective agreement. His recommendation was directed to the assignment of both responsibility and control for bargaining, directly to the colleges and free of any role for the Province.

Bill 23 proposed to establish a Colleges Employers' Association in keeping with the Gandz recommendation. Further, this association would be controlled by the Colleges and not by the Province.

All responsibility for bargaining was to be transferred from the Council to the Association.

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<sup>7</sup> Recommendation 8 page 179

## **Stakeholder Responses**

The colleges took no formal position on this issue.

There is widespread satisfaction within the colleges about the ability of the Council to satisfy its mandate in a way that accords with the goals and objectives of the colleges.

It was also apparent that Colleges Ontario and the Committee of Presidents have developed a variety of methods which ensure that the Council does the will of the colleges in collective bargaining .

Students suggest that the Council be continued in its present form.

OPSEU is content to continue to see the Council perform the role of employer bargaining agent. It does suggest however that the role of the Council be expanded to include some responsibility for collective agreement administration between rounds of bargaining.

OPSEU points to difficulties which arise where the Council negotiates provisions which are in turn administered in different ways as between different colleges. In their view, the integrity of the central bargaining process requires consistent application of the collective agreements across the college system and further that this is a role that can only be fulfilled with council participation in collective agreement administration.

The Committee of Presidents has made a submission that endorses the creation of a new employer bargaining agent that would be entirely a creation of the colleges and with no role played in either the administration of the entity or bargaining, by the province. This is consistent with the Gandz recommendation.

The COP recommendation would really see the Council relinquishing the responsibility for bargaining and continuing on with its other tasks, as assigned by statute.

## **The Extension of Collective Bargaining to Part Time Employees**

Whether the Council continues in its role or is replaced by an employer bargaining agent under the sole and direct control of the colleges will have no

ascertainable impact on the extension of collective bargaining to part time college employees.

### **Impact on Students**

Any change will have no impact on students.

### **Costing Implications**

While there may be some preliminary start up costs associated with establishing a separate employer agency, a more fundamental question to be addressed is whether, and how the employer's collective bargaining and council administration costs will be transferred to a new bargaining agency.

### **Recommendation 3**

***Create a separate employer bargaining agency within the exclusive control and direction of the colleges***

Despite the fact that the colleges seem satisfied with the present performance of Council, it is recommended that a separate employer bargaining agency be created that would be within the exclusive control and direction of the colleges without any responsibility for or by government, subject to addressing the funding structure for the new agency.

This is not only a more normative bargaining model where those who are the actual parties to the collective agreement "own" and control the bargaining process, but it ensures that those parties will be obliged to take complete responsibility for their agreement in the administration of the collective agreement and during its term.

The parties themselves will best understand the challenges and the range of viable solutions – to collective bargaining problems.

**X****Should any Categories of Employees Be Excluded from  
Collective Bargaining?**

The issue to be addressed in this portion of the Report is whether there continue to be appropriate exclusions from collective bargaining where part time employees are permitted access to collective bargaining.

**Existing Practice**

The CCBA defines “employees” under the Act as those persons in positions or classifications in the two Schedules to the Act which describe the two current full time bargaining units. By implication, any work which falls outside of the positions or classifications expressly described in the Schedules is excluded from collective bargaining under the CCBA.

Consistent with most other labour relations statutes including the OLRA, persons who work in a managerial or confidential capacity are excluded. The CCBA also includes in section 1, a definition of “managerial and confidential”.

The CCBA definition of management and confidential has over time, been considered and interpreted in some detail by the OLRB.

The CCBA also excludes students who are employed in a co-operative program or as part of a certification process where the work is part of an overall educational requirement.

**Other Sectors in Ontario**

Other labour relations statutes, the OLRA and CECBA in particular, contain exemptions for persons employed in managerial or confidential labour relations capacities. Of note is that CCBA appears to exclude “confidential” generally, as opposed to “confidential” in labour relations or budgetary matters.

It is generally acknowledged that the breadth of this exclusion under the CCBA, exceeds the comparable range of exclusions under the OLRA or CECBA. In other words, the range of excluded management and confidential functions under the CCBA is greater than the range of management and confidential under the OLRA or CECBA.

## **Other Canadian Jurisdictions**

The majority of other Provinces exclude persons employed in managerial or confidential capacities in regard to labour relations. In some cases, this is not stated in the statute but left to provincial labour relations Boards to define as a matter of discretion.

## **Gandz Report**

Gandz found no justification for excluding employees from collective bargaining who did not work with confidential information that related to labour relations. He recommended that the scope of the managerial and confidential exclusion be more restricted, consistent with the OLRA<sup>8</sup>.

Gandz recommended the continuation of exclusions for students involved in co-operative or certification education.

Bill 23 did not amend the description of the managerial and confidential description in the CCBA, or the continuing exclusion of co-operative students or those involved in work related to a certification or licensing program of education.

## **Stakeholder Responses**

OPSEU and the colleges both suggested that the present scope of managerial and confidential exclusions be retained. It was argued that this would provide for the greatest degree of certainty going forward and avoid litigation which would otherwise occur before the OLRB in order to clarify where any new boundary lines would be drawn.

OPSEU was particularly concerned about the impact on the full time bargaining unit if long term senior confidential excluded employees were to be now rolled into the bargaining unit. Issues of seniority and potential position displacement would create instability and uncertainty around long standing work assignments.

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<sup>8</sup> Gandz, page 235 and Recommendation 24.

While OPSEU recognized that the existing scope of confidential exclusion is probably broader than required, decades of practice and experience with the present understanding of the exclusion has led to significant institutional entrenchment. This reality would make it difficult to transition to a narrower notion of the exclusion.

A number of OPSEU locals suggested that there be no managerial or confidential exclusions, or that if they were retained, that the scope of exclusion be confined to that currently found in the OLRA or CECBA.

### **The Extension of Collective Bargaining to Part Time Employees**

The scope of the management and confidential exclusion does not affect the ability of part time employees generally to access collective bargaining. To the extent that there are part time employees who would fall within the exclusion as presently understood, they would be affected in a way which is no different from the consequences to comparable full time employees.

### **Impact on Students**

The continuation of the exclusion for work performed in co-operative or certification programs would obviously preclude students so engaged from participating in collective bargaining.

Due to the nature of other student employment, it is very unlikely that many would fall under the existing broad definition of managerial and confidential.

### **Costing Implication**

There would be costing implications as a consequence of amending the current scope of managerial and confidential exclusion. Affected employees who would no longer be excluded would likely be granted seniority upon being moved into the bargaining unit. This could result in bumping and displacement of other less senior bargaining unit employees. This in turn would generate litigation and uncertainty arising from job security disputes.

It is difficult to predict if there would be costing implications if students on co-operative or licensing programs were to be included in the bargaining unit for purposes of this work. Certainly any terms and conditions of employment would have to reflect the educational requirements of the work.

## **Recommendation 4**

*Continue with the existing scope of managerial and confidential exclusions from collective bargaining. Students engaged in co-operative or certification program based work should also continue to be excluded from bargaining.*

In the absence of significant justification, there should be the fewest possible restrictions on the ability to access collective bargaining. Here, the parties have over the last few decades with respect to full time staff, negotiated extensive collective bargaining provisions around the existing notions of confidential and management exclusions.

In the course of this exercise, the parties have been able to generate a high degree of certainty around the boundaries of these exclusions. Further, it would appear to be the case that the terms and conditions of employment for those so restricted remain in line with comparable collective agreement terms.

It is also important to note that OCASA, while not a formally certified bargaining agent is none the less a voluntary association representing the collective interests of college Administrators.

In these circumstances, there is no need for change. It is recommended that the existing scope of restriction for confidential and managerial be continued.

With respect to co-operative and licensing based student work, similarly, it would seem that the institutional parties, including the students, view the existing restrictions to be appropriate in the context of the work. No change in these exclusions is recommended.

## *XI*

### **What is the Appropriate Bargaining Agent Certification Process?**

#### **Existing Practice**

Part IX of the CCBA currently permits an application by an employee organization for certification to displace OPSEU as bargaining agent for two existing full time bargaining units. There is no “stand alone” certification process other than this displacement process.

Any displacement application must be made in December, in the last or third year (which ever is sooner) of a collective agreement term, and in each year after that for terms longer than three years.

An applicant in a displacement application must satisfy the OLRB that it has as membership, at least 35% of the employees in the bargaining unit. If this occurs a representation vote is held by the OLRB.

The displacing employee organization is granted representation rights if more than 50 % of the ballots cast are in favour of the employee organization.

The CCBA also contains provisions which permit for the termination of bargaining rights in the absence of a displacement application. Such an application may be made by an employee during an “open period” described in the statute. On such an application, if the OLRB is satisfied that a majority of employees in the bargaining unit have signified in writing that they no longer wish to be represented by the employee association, the OLRB is to conduct a representation vote. If more than 50 % of the ballots cast are in opposition to the employee association, the Board will terminate the bargaining rights.

Neither of these provisions have been used since the introduction of the CCBA.

#### **Other Sectors in Ontario**

Most other sectors in Ontario are governed by the OLRA. The Ontario public service is governed by CECBA, but relies on the provisions of the OLRA for certification.

The OLRA process outside of the construction industry requires that the OLRB be satisfied that at least 40 % of employees in the appropriate bargaining unit “appear” to be members of the trade union applying for bargaining rights. If that occurs then a representation vote is held usually within five days of the application. Representation rights are granted to the union if more than 50 % of the ballots are cast in the union’s favour.

In the construction industry, a trade union may be certified without a representation vote if the Board is satisfied that more than 55% of employees in the bargaining unit are members of the trade union.

The OLRB may also “remedially” certify a trade union, or dismiss an application for certification, as a consequence of an unfair labour practice.

The OLRA contains a provision to permit the termination of bargaining rights. If the OLRB is satisfied that more than 40 % of employees in the bargaining unit no longer wish to be represented by the trade union, a representation vote is held. Bargaining rights will be terminated if more than 50% of the ballots are cast against the union.

### **Other Canadian Jurisdictions**

Each province has its own unique statutory scheme and bargaining agent certification process.

### **Gandz Report**

Gandz recommended that the CCBA be amended to include a certification process which would permit part time employees to become represented by an employee association.

The proposed process would require that a representation vote be held upon the demonstration of adequate membership support and that bargaining rights would only be granted where a “double majority” of votes are cast in favour of the employee organization. A double majority is where more than 50 % of the ballots cast are in favour of the employee organization and that this occurs in more than 50% of the individual colleges.

Gandz recommended the double majority device in order to ensure that support for the proposed bargaining agent was apparent throughout the college system and not confined only to select colleges.

Gandz' double majority recommendation was not proposed in Bill 23. The Bill did not include any amendments to the way in which certifications, displacement or termination applications are to be brought and managed under the CCBA.

### **Stakeholder Responses**

The colleges and the students suggest that the double majority mandatory vote process suggested by Gandz be adopted. The colleges also argue that the threshold of membership support needed to obtain a representation vote be raised to 40% and be consistent with the OLRA.

The colleges also suggest that any application for certification be made between September and April so as to ensure that the process occurs when employees are both employed and present at work.

OPSEU takes the position that part time employees should be rolled into the two existing full time units, but that there should in any event be a certification process in the CCBA.

OPSEU recommends a "card check" process similar to that used in the construction industry under the OLRA where certification is granted where the applying union can demonstrate membership support (by membership cards) amongst at least 55% of the employees in the bargaining unit.

OPSEU also suggests that the appropriate unit for certification be statutorily defined so that there is no risk of fragmented bargaining amongst different bargaining units at different colleges.

OPSEU suggests that a vote should be held at the request of the applying union on the demonstration of 35% membership support. Further, it is recommended that the statute expressly recognize the legitimacy of voluntary recognition, with the ability to test membership support as in the OLRA.

A number of OPSEU locals suggested that the existing CCBA process for the displacement and termination of bargaining rights be modified to deal with initial certification. This would mean the establishment of a 35% membership threshold, followed by a majority of ballots cast in a representation vote held in the bargaining unit.

## **The Extension of Bargaining to Part Time Employees**

The relative ease or difficulty inherent in the certification process will determine the practical degree to which part time employees have access to collective bargaining. The other significant consideration is the degree to which the process confirms employee interest and support for the particular employee organization applying for bargaining rights.

The higher the hurdle which is set for either the demonstration of membership, or the consequences of the vote results, the greater the certainty that the process represents and reflects the true wishes of affected employees. At the same time, a higher hurdle will mean that employee organizations will experience greater resource challenges in the mounting of certification applications. If the hurdle is unnecessarily high, then access to collective bargaining may be inappropriately impeded. If the hurdle is set too low, there may be uncertainty about the true wishes of those who will be affected.

The need to appropriately balance the ability to test for the true wishes of employees as against the difficulty inherent in organizing will impact greatly on the practical ability of part time employees to access collective bargaining.

It is recognized generally that part time employees are more difficult to organize than full time employees. The reasons for this are obvious. Part time employees will generally have less of a commitment to their work place and will spend significantly less time entering, exiting and in the work place where much organizing activity occurs.

It is particularly important in these circumstances to ensure that unjustified barriers in the guise of certification procedures are not erected as practical impediments to organizing part time employees.

## **Costing Implications**

The most significant costing implications are that administrative time and financial resources will be required on the part of the colleges to monitor, deal with, manage and respond to the consequences of organizing drives within the college system. Whether in private industry or in the public sector, increasingly, employers are engaged at a number of levels during organizing drives.

## **Recommendation 5**

*The existing CCBA provisions which permit displacement applications should be modified to create a bargaining unit certification process (35% membership support and then a simple majority on a representation vote). The statute should also be amended to formally acknowledge the legitimacy of voluntary recognition agreements.*

The existing CCBA provisions which permit displacement applications upon the demonstration of 35% membership support and then following a majority of support on a representation vote reflect an appropriate balancing of the need to test true employee wishes without unnecessarily creating barriers to collective bargaining.

It is recommended that these existing provisions be modified to create a certification process with the certainty that the appropriate bargaining units are the four units proposed earlier in this report. Certification should require the demonstration of membership support in at least 35% of the bargaining unit, followed by a simple majority of ballots cast in support of the trade union in a province wide representation vote.

There is no justifiable need for a double majority. It is an extremely unusual provision, not seen anywhere else in any other sector or jurisdiction. It is highly unlikely that any union seeking representation rights would not attempt to generate membership support throughout the province. It is also apparent for example that all strike and ratification votes held in the full time units under CCBA have met the double majority test even without such a statutory requirement.

It is also recommended that the statute be amended to formally acknowledge the legitimacy of voluntary recognition agreements, so long as there is an ability to test the membership support as exists under the OLRA. If a union can persuade the employer that it truly speaks on behalf of a majority of employees, the parties should be free to enter into a voluntary recognition agreement if they so choose.

## ***XII***

### ***Should Any Items or Issues Be Excluded From Collective Bargaining?***

#### **Existing Practice**

The only issue currently excluded from collective bargaining by the CCBA is the issue of superannuation, or pensions.

#### **Other Sectors in Ontario**

No issues are precluded by statute from collective bargaining in the private sector.

Although this has varied over time, there are no issues which are consistently excluded from bargaining in the public and broader public sector.

#### **Other Canadian Jurisdictions**

Although there are a mixture of practices, there are no issues which are routinely excluded from collective bargaining. The overwhelming trend in all jurisdictions is to place no statutory restrictions on the scope of collective bargaining.  
Gandz Report

Gandz found no justification for the statutory restriction to preclude bargaining pension matters. Gandz recommended that this provision be repealed<sup>9</sup>.

Bill 23 did not remove the restriction on bargaining pension matters.

#### **Stakeholder Responses**

OPSEU and the colleges both recommend that the CCBA continue to preclude bargaining on pension issues. Each take the position that over time, the parties have managed the jointly trusteed existing pension plan and that this current arrangement

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<sup>9</sup> Gandz page 278 Recommendation 31.

should continue in the interest of certainty. Both suggest that to open the plan and its administration now to bargaining would inject considerable uncertainty which is to be avoided.

Essentially, the institutional parties favour the status quo and take the joint position that they have managed to create a pension process that works to their mutual advantage. They wish to have the certainty of knowing that their model will continue to apply.

Various OPSEU locals took positions consistent with the positions of the colleges and OPSEU.

No stakeholder suggested that pensions should be subject to collective bargaining.

The colleges suggest that the CCBA be amended to preclude bargaining on the academic classification system. It is argued that this would be the most critical change that would permit the colleges to be sufficiently flexible around issues of work assignment and the ability to deliver the type of programming to meet its mandate.

OPSEU strongly opposes this suggestion. In OPSEU's view, the existing classification system is fundamentally intertwined with the workload formula in the academic bargaining unit, which is perhaps the most significant recurring and critical issue in bargaining. OPSEU's position is that the removal of their ability to bargain a classification system would essentially strip their negotiated provisions around work assignment from the collective agreement.

OPSEU argues that if the colleges wish to change the academic classification system, that this be accomplished through the bargaining process.

### **The Extension of Collective Bargaining to Part Time Employees**

Whether or not pensions can be bargained will have no impact on the ability of part time employees to have access to collective bargaining.

If the academic classification system were removed from collective bargaining it is likely that significant consequences in the area of work assignment will follow for the academic unit. It is not possible to predict how this will impact on the ability of part time employees to access collective bargaining.

### **Impact on Students**

The issue of pensions will have no impact on students, nor would the exclusion of the academic classification system. Alternatively, broader classification system exclusions may have a significant impact on the way in which work assignments can be structured and tailored to meet the needs of students.

### **Costing Implications**

There are no apparent costing implications which arise from either the ability or lack of ability to bargain pensions. On the other hand, the ability to unilaterally determine classification systems may significantly enhance the college's ability to control and determine program delivery.

### **Recommendation 6**

*Continue with the existing exclusion of superannuation from collective bargaining. No other items or issues should be excluded.*

It is recommended that no changes be made to those issues excluded from collective bargaining. In other words, pensions should remain as not within the scope of bargaining. It is not recommended that the academic classification system be removed from the scope of bargaining.

To do so now at this point in the development of the bargaining relationship would be seen by OPSEU as an act of bad faith on the part of the government. This is because the existing classification system and OPSEU's ability to deal with any proposed changes to the system in bargaining form a fundamental part of the collective agreement.

If the colleges need to adapt and amend the existing classification system to meet their future needs - the place to do this is at the bargaining table.

### ***XIII***

## **What Should the Role of the Colleges Relations Commission Be?**

### **Existing Practice**

Section 56 of the CCBA describes the various roles and responsibilities of the CRC. Most significantly, these are to monitor collective bargaining in the college sector, to compile statistical information to support and to be used in, collective bargaining, to deal with bad faith bargaining complaints, to appoint third party neutrals in various circumstances and to advise the Lieutenant Governor in Council if a strike or lockout will place an otherwise successful year of study in jeopardy. It is this latter responsibility which is understood to be the one of the most significant and critical functions of the CRC.

For much of its history, the CRC functioned as a stand alone entity with dedicated staff and resources. Over the last decade, the CRC has for administrative purposes been integrated into the OLRB. Currently the Chair of the OLRB is also the Chair of the CRC. The Registrar/Director of the OLRB is also the Registrar/Director of the CRC. The OLRB provides all legal and administrative support to the CRC. The task of monitoring college bargaining and the compilation of information and statistics in support of bargaining, is performed by Ministry of Labour staff.

For purposes of both form and function, the CRC has essentially disappeared into the OLRB.

### **Other Sectors in Ontario**

The education sector in Ontario is served by the Education Relations Commission, which mirrors the roles and responsibilities of the CRC, but applies, to school board bargaining. Traditionally, and with few exceptions, the same persons (including the Chair) appointed to the CRC, have also been appointed to the ERC.

As with the current CRC, the current ERC has been completely integrated into the OLRB and has no independent existence outside of this context.

For all other sectors in Ontario, both private and public, the OLRB and the Ministry of Labour perform the types of roles allocated under the CCBA to the CRC.

### **Other Jurisdictions**

Typically in other Canadian jurisdictions, the provincial labour relations board will perform many if not most of the current functions of the CRC. In other words, most jurisdictions do not have a separate entity dedicated to the supervision and management of bargaining in the college sector.

### **Gandz Report**

Gandz recommended that the mandate of the CRC be broadened to include all the judicial and quasi-judicial functions relating to the College Sector<sup>10</sup>.

Gandz discussed and was attracted to the suggestion that the work of the CRC might appropriately be moved to the OLRB but was persuaded by then Chair (now Supreme Court Justice) Abella, that the OLRB lacked the resources to undertake the additional responsibilities.

### **Stakeholder Responses**

The colleges suggested that the current functions and roles of the CRC be moved to both the OLRB and the Ministry of Labour.

OPSEU and a variety of its local unions suggested that the CRC retain its current role and that it increase its research and support functions.

The CSA suggested that the CRC jeopardy declaration role be maintained as fundamental to protecting the academic year.

### **Extension of Collective Bargaining to Part Time Employees**

This issue will have no impact on the extension of collective bargaining to part time employees.

### **Impact on Students**

As long as there is a statutory body such as the OLRB, who can deal with the same range of responsibilities currently performed by the CRC, there will be no impact on students.

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<sup>10</sup> Gandz pg 284, Recommendation 33

### **Costing Implications**

If the role of the CRC is expanded, there will be increased administrative costs. Leaving the CRC as it is or moving the responsibilities to the OLRB will have no costing implications.

### **Recommendation 7**

***Abolish the College Relations Commission (CRC) through deleting Part VII of the CCBA and assign this work to the OLRB and the Ministry of Labour consistent with the role of each under the OLRA.***

It is recommended that the CRC be abolished and that the work currently performed by the CRC be divided between the OLRB and the Ministry of Labour. This is already *de facto*, the circumstances under which the CRC operates. It is consistent with other sectors and other jurisdictions and will have no impact on the degree to which the current CRC responsibilities are performed

## *XIV*

### ***Are There Possible Amendments to the CCBA That Would Enhance the Collective Bargaining Process and Permit the Colleges to Achieve their Goals Mandate?***

#### **Stakeholder Responses**

The most significant submissions were from OPSEU and the Colleges. Various OPSEU local unions supported the OPSEU positions on most issues.

OPSEU takes the position that the two existing full time collective agreements represent decades of work by the parties – all directed at making the CCBA in its entirety, work . This work it is argued, takes an otherwise awkward statute and makes it functional.

In OPSEU’s view, while it may be tempting to tinker with the legislation, any addition or deletion will undermine a much nuanced balance which forms the basis for the existing collective agreements.

Even though OPSEU could for example, suggest modifications to the statute which might in the short term, provide it a strategic advantage, they suggest that this would undermine the long established understandings and agreements between the parties which currently define the way in which the two full time collective agreements are administered.

On this basis, OPSEU recommends that no changes be made to the statute, other than the removal of the exclusion for part time employees.

The colleges on the other hand, have a list of amendments that they suggest, would either improve and/or modernize the statute. Of these, Gandz recommended that the expiry dates for collective agreements be left to the parties to determine, that notice to bargain be given within 90 days of the expiry of the collective agreement and that the employer’s final offer be put to a vote at the employer’s option up to five days before a strike is to occur.

Some of the amendments suggested by the colleges have already been addressed earlier in this Report such as the “double majority” vote in certification matters. Those not yet discussed are as follows:

*(1) The elimination of voluntary binding collective agreement arbitration while retaining final offer selection (Parts IV and V of the CCBA);*

Part IV of the CCBA sets out a method for voluntary binding arbitration where the parties cannot agree on a collective agreement. This process has been invoked on two occasions involving a work stoppage. Part V of the CCBA sets out a method of final offer selection. This latter provision has not been used by the parties.

The colleges suggest that the final offer method should be the only one referenced in the statute as that is more likely to require the parties to be disciplined and focused in bargaining. The rationale is that the risk of “losing” in the final offer process is substantially greater than the risk of losing in an interest arbitration. This increased level of risk is thought to be an incentive to persist in bargaining and a disincentive to engage in the final offer selection process.

*(2) That the employer’s final offer be voted on no earlier than 15 days prior to the expiry of the collective agreement (sections 59(1)(d) of the CCBA);*

The purpose of this provision is to permit employees to assess themselves, the employer’s bargaining proposal. The colleges suggest that the current statutory language regarding the obligation to put the employer’s “last received” offer means in practice that the union will put an early employer offer to a vote, long before the parties are even close to a discussion of the true employer last offer. In the colleges’ view, this frustrates the purpose of the provision as employees truly do not have an opportunity to vote on the employer’s actual position during the critical phase of bargaining.

The colleges propose that an offer be put to a vote at the employer’s option, during the last 15 days prior to the expiry of the collective agreement. This will ensure that the offer put to vote more closely resembles the real position from the employer that will emerge from bargaining just prior to a potential work stoppage.

*(3) That a collective agreement may expire on any date to be agreed upon by the parties and notice to bargain be given within 90 days of the expiry of the collective agreement ( section 4 of the CCBA);*

Section 4(1) of the CCBA requires that notice to bargain be given in January of the year in which the collective agreement is to expire. Section 4(2) of the statute provides for the expiry of the collective agreement on August 31. This means that notice to bargain is always given at least seven months before the expiry of the collective agreement.

The colleges suggest that the parties should have the flexibility (as in other sectors) to determine the expiry date of the collective agreement. It is argued that there is no need for such an extended period between the giving of notice and the expiry of the agreement and that both should be rendered consistent with the OLRA which provides for a maximum of ninety days notice.

*(4) Remove the “notice to lock out” requirement prior to colleges being able to alter terms and conditions (sec 54(2) and( 63);*

Section 54(2) precludes the employer from unilaterally changing terms and conditions of employment unless there is a right to strike or lockout in accordance with section 63 which requires the employer to give notice of intention to lock out. Under the OLRA, an employer may give a union notice that it intends to implement its last offer in the absence of agreement on a collective agreement. The colleges suggest that this tool is a useful one in bargaining and should be permitted under the CCBA

*(5) Bring OPSEU Academic bargaining team leave provisions in line with support team leave (academic collective agreement);*

Following the strike in the academic unit in 1984, Arbitrator Paul Weiler in an interest arbitration awarded that the colleges pay the academic bargaining team all wages and benefits from the point that notice to bargain is given, until the settlement of a collective agreement.

The colleges argue that this provides the academic bargaining team with an incentive to prolong bargaining (as they are relieved from their home positions on full compensation) and results in inordinate costs quite significantly out of line with the comparable cost in the support bargaining unit and in other sectors generally.

The colleges seek a statutory amendment to remove this provision from the collective agreement.

*(6) Eliminate fact finding process (Part III of the CCBA);*

Part III of the CCBA deals with the appointment of a fact finder during the bargaining process. The fact finder is responsible for consultation with the parties and the production of a report detailing the matters agreed to and the matters which remain in dispute. Sections 59(1) and 63(1) preclude a strike or lockout unless (amongst other things) 15 days have elapsed since the report of the fact finder has been made public.

The colleges suggest that this process is unhelpful, that it unduly delays the bargaining process and in some cases, only serves to entrench the parties' positions.

The colleges suggest this provision be removed from the statute.

*(7) Remove "deemed strike or lockout"(sections 59(2) and 63(3) of the CCBA);*

Sections 59(2) and 63(3) deem all employees to be either on strike or locked out on the date set for the commencement of the strike or lockout. It is further provided that no employee shall be paid salary and benefits for this period.

The colleges suggest that this is an unusual provision not found in any other sector or industry. They assert that the comparable provisions of the OLRA should apply which would permit rotating or partial strikes, rotating or partial lockouts, and employees to return to work of their own choice regardless of strike or lockout.

The colleges suggest these provisions be removed from the statute.

*(8) Remove obligation to obtain permission to close and replace with obligation to notify of closure (section 63(2)of the CCBA);*

Section 63(2) requires individual colleges to obtain the approval of Council before closing a college or any portion of a college during a strike or lockout. The colleges suggest that approval is not necessary, that the choice of remaining open or closing should reside with the individual college and that the giving of notice by the college to the Council is sufficient.

The colleges seek to amend the section to provide for notice of closure from the college to Council.

### **Analysis**

The CCBA was introduced in 1975 and has remained virtually unchanged to the present day. In three principal respects, the statute is an historical artifact that reflects then current labour relations thinking.

This is the case firstly with respect to the exclusion of part time employees. In 1975, it was common to exclude part time employees from bargaining units and it would appear that there was little thought put into this feature of the legislation.

Secondly, there are a variety of statutory features that reflect the notion that public sector parties (these ones in particular) need special help and support to bargain. The underlying assumption is that the type of full and open bargaining that occurs in the private sector (and now elsewhere in the public sector), is not possible in the colleges sector. For this reason the parties need supervision and oversight by the CRC, the government and other neutral third parties to provide them with information, to provide fact finding, to appoint mediators to assist, to expressly offer third party assistance through interest arbitration or final offer selection.

Thirdly and finally, there are the “safety nets” designed to protect the public interest by either making it very difficult for the parties to actually engage in a strike or lockout and if they do get there, to minimize the damage that they can do to each other or the public - and to limit the length of the work stoppage in any event.

The underlying assumption here is that the public cannot tolerate a work stoppage, so the parties are essentially precluded from engaging in what might be the more typically destructive behavior of strike or lockout. The statute implies that the public needs special protection against the potential damage from the consequences of poorly managed bargaining.

Examples of statutory features which are designed to act as either special supports or “public safety nets” are:

- (1) Order In Council appointees as employer bargaining agent (the Council – so that government can manage bargaining for the colleges);
- (2) Fixed expiry dates for collective agreements;
- (3) Mandatory fact finding;
- (4) Specified time of year for giving notice to bargain;
- (5) The need to obtain permission to close;
- (6) The obligation of notice in advance of strike or lockout;
- (7) The deemed strike and lock out provisions;
- (8) Express provisions for final offer or binding arbitration;
- (9) A special entity (the CRC) to monitor and supervise the bargaining relationship, including the requirement to bargain in good faith;
- (10) The CRC to provide the government with the jeopardy advice.

While these features may provide for some degree of third party protection against the adverse consequences of bargaining, at the same time they reduce the responsibility of the parties for the choices and consequences of their bargaining conduct. To that extent, these features dilute the real ability of the parties to either threaten or invoke a strike or lockout.

It is widely acknowledged that the ability to credibly threaten and then to engage in industrial action, is the most effective driver in support of healthy and successful collective bargaining. In the absence of this real threat or set of consequences, bargaining will lack the necessary focus and discipline needed to deal with the very difficult issues.

OPSEU and the Colleges have now been engaged in bargaining under the CCBA for 32 years. In his report, Gandz identified the differences in the character of bargaining, over time, in the two units, support and academic.

It is fair to say that the features of the bargaining relationship which led Gandz to conclude that the academic bargaining was dysfunctional – persist to the present. Those on both sides of the table would now say that they have been chronically unable to get the other side to pay attention to their critical demands.

There are few significant ‘big’ issues that have been resolved to the satisfaction of both parties. The central issue of workload and the issue of classifications have been tackled unsuccessfully by both sides at different points in their history. Neither union nor employer remain satisfied with either the dynamic of their bargaining or the gains made towards the solution of significant and ongoing issues and challenges.

The issue of the availability of part time labour – particularly teaching labour has played a role in this dynamic. Clearly the colleges have gone to labour markets and “bought” teaching labour that is part time, inexpensive (compared to the full time rates) and flexible. Rather than deal with the tough issues of cost or flexibility in work assignment and workload at the bargaining table, the colleges have turned to a different (and in the past – easier) solution – hence their significant reliance on part time labour.

The college’s ability to use inexpensive and flexible academic labour in the same manner as in the past, will be diminished when part time employees can bargain collectively. It is for this reason that the colleges have in their submission to this review, suggested that classifications now be removed from the scope of bargaining in the academic unit. The colleges seek to be able to control and determine classifications as another mechanism to obtain what they had but will now likely lose, with the unionization of part time employees.

If this were to happen, the colleges could create a new academic classification system unilaterally that would in some ways, attempt to preserve existing part time flexibilities around workload and work assignment.

The colleges will still require the use of flexible labour in order to meet their historical mandates. Once part time employees are unionized, the colleges will be required to seek their needed flexibility at the bargaining table. This in turn will create extremely challenging issues for both parties. Both sides will continue to have a strong interest in finding solutions to these challenges that are to their mutual benefit. If they are to be successful, they will require a collective bargaining structure that provides every incentive for them to remain at the task of bargaining until they can agree on what those solutions will be.

What will not work in the long term is a bargaining framework which permits either party to decline to deal with each other's issues, or resort easily to third party or government intervention.

In these circumstances it is recommended that the CCBA be amended to remove those provisions which either permit readily available resort to third party assistance, or restrict access to work stoppages or operate to lessen or mitigate the consequences of strike or lock out.

The removal of these types of provisions will strengthen the bargaining process to better enable the parties themselves to solve the tough questions which will inevitably follow the introduction of collective bargaining for part time employees.

It is also the case that issues affecting students will be best solved at the bargaining table rather than by direct statutory amendment or some other form of government intervention. The issues which will most greatly affect students – the potential for work stoppages that interfere with their studies, or the degree to which part time employment remains available to them - are issues that require solutions from the bargaining parties themselves.

A healthy and functional bargaining process is the best way to ensure that the issues that matter most to students, are resolved in ways that can be executed appropriately. Students should be able to play a major and direct role (due to their numerical predominance) in the bargaining process itself.

The bargaining process needs to be changed so as to enhance the degree to which the parties are free to structure and govern the process themselves. There is a need to minimize the degree to which the process can be influenced and managed by government and/or third party neutrals.

These recommended changes are intended to increase the likelihood that there will be an improved willingness on both sides to "stick" to the bargaining table, to grapple and deal with

the very tough issues that will most likely flow from the extension of collective bargaining to part time employees.

Significantly, I am not recommending any changes to the CCBA which might affect the ways in which the parties have negotiated the administration or content of the collective agreements. On this, I accept the suggestion by OPSEU that the current collective agreements represent decades of work by the parties in an attempt to make the CCBA “work” and that any alteration of the way in which the “content” of the collective agreement is determined, or in the administration of the collective agreement, will upset that delicate historical balance.

### **Recommendation 8**

*Amend Section 4(2)- to remove fixed collective agreement expiry dates on August 31. The parties should be free to negotiate whatever expiry date they wish.*

The parties should be free to negotiate whatever expiry date they wish. There may be a range of reasons why one side or the other may wish to have a different expiry date and this interest (or opposition) for change should be resolved by the parties in bargaining. To as great an extent as possible, the parties should be able to create and control all aspects of the bargaining process. The expiry date can be a significant and strategic feature of the process.

### **Recommendation 9**

*Amend Section 4(1)- to provide that notice to bargain be given within the period of 90 days prior to the expiry of the collective agreement.*

Adopt the OLRA provision that notice to bargain must be given within the period of 90 days before the expiry of the collective agreement. Again, the timing of notice to bargain is a significant feature of the bargaining framework. There is no need for an extended notice of January to August and it would seem that little gets done in the initial period following the giving of notice.

### **Recommendation 10**

*Amend Sections 54(2) and 63- (as under the OLRA) to permit the colleges to unilaterally implement terms and conditions of employment when in a strike or lockout position and following notice to the union.*

This is a statutory feature in the OLRA which is but one more disincentive to strike or lockout and an incentive to arrive at an agreement at the bargaining table.

### **Recommendation 11**

*Delete Part III- eliminate the fact finding exercise. The Minister of Labour should be able to appoint a conciliation officer and then mediators as under the OLRA.*

The Minister of Labour should be able to appoint a conciliation officer and then mediators as under the OLRA. There has been long standing criticism of the fact finding exercise. It would seem to serve no useful purpose and at worst, it serves to entrench the positions of the parties. The Minister of Labour has in fact for many rounds of bargaining now, appointed mediators as is done under the OLRA.

### **Recommendation 12**

*Delete Sections 59(2) and 63(3)- to remove the deemed strike or lockout provisions.*

The deemed strike and lockout provisions of the CCBA are unusual and are not features of other collective bargaining schemes in other jurisdictions, sectors, or in the OLRA. The uncertainty that may flow from a strike or lockout is heightened if there is no constraint on the ability of unions to choose where and how to strike, on employees to choose for themselves whether to strike or work, or the ability of individual colleges to decide when and how to lock out.

The removal of this provision will create a much broader range of adverse strike consequences that both sides will be motivated to avoid. This change will significantly enhance the incentives to remain at the bargaining table.

### **Recommendation 13**

*Amend Section 63(2)- the requirement that the colleges seek the approval of the Council to close in the event of a strike or lockout.*

The decision to close can be a strategic tool in the collective bargaining process. This amendment would place control over a strategic decision in the hands of the employer - who is responsible for the bargaining. This would also remove a further degree of government control over an event which will impact on the bargaining process.

### **Recommendation 14**

*Delete Part IV- remove the binding arbitration process to settle collective agreements.*

The parties can always if they wish, agree to settle issues in bargaining by arbitration. Although this is a feature of the OLRA, the CCBA should reflect the thinking that this is not a preferred route for dispute resolution. If it does become necessary, then the agreement of the parties or back to work legislation can provide for a mechanism of binding interest arbitration.

### **Recommendation 15**

*Delete Part V- remove final offer selection to settle collective agreements.*

Final offer selection is not a feature of the OLRA and has not been used under the CCBA. Again, it is one more example of a method by which the parties could defer to and rely on third party assistance – rather than doing it themselves.

### **Recommendation 16**

*Delete Section 56(h)- the “jeopardy” advice obligation.*

The jeopardy function of the CRC permits the CRC to advise the government when in its opinion, strike or lockout may place the educational year in jeopardy. It has never been used in the colleges sector and in any event, if it were to be used, the government would still need to introduce back to work legislation in order to end the work stoppage.

It was intended to be a “safety net” to protect the public interest in avoiding a work stoppage – but as indicated earlier, has never been invoked. It is an example of yet one further provision which suggests that the parties cannot engage in a full blown strike of lockout without outside intervention occurring to end the work stoppage. The absence of this “safety net” will be one more thing which may serve to keep the parties at the bargaining table.

### **Recommendation 17**

*Amend Section 59(d)- so that the college’s last offer may be put to a vote within 15 days of the expiry of the collective agreement.*

The purpose behind this statutory feature is to permit the employer to test the attractiveness of its bargaining proposal directly with employees. The purpose is frustrated when the package put to a vote does not represent the actual employer position at the most critical phase of bargaining which is in the days leading to the expiry of the collective agreement and the possibility of strike or lockout.

By requiring that this vote be held at the employer’s option within 15 days of the expiry of the collective agreement, it is more likely that employees will have an opportunity to truly assess the employer’s actual bargaining proposal and at a more relevant stage of the process.

## XV

### Concluding Comments

This Review has been driven by the policy choice announced by the government to extend collective bargaining to part time college employees.

My recommendations are in their entirety, intended to facilitate the introduction of collective bargaining for part time college employees. Various amendments to the CCBA are recommended to ensure that this very significant change in the college system, can be managed in a fashion which serves the best interests of all employees, students, and the colleges.

It is clear that the colleges have been greatly dependent on the use of flexible and low cost, non-unionized part time labour. The removal of access to this type of labour will have significant consequences in terms of the issues that will have to be dealt with at the bargaining table.

The colleges must continue to provide flexible and focused educational and vocational programming if they are to continue to meet their mandate. These challenges for a variety of other reasons, will only become greater.

Students seek the continuation of their existing levels of employment and to avoid any disruption to their studies. The best way to achieve these goals is to permit students to belong to trade unions who will bargain on their behalf.

In a part time support bargaining unit, students will be in the majority. Students should be able to use their majority status to influence the course of bargaining in a way which protects and advances their unique interests. The colleges will also likely wish to see significant work directed to students as this is a draw and incentive in the recruitment of students.

By all accounts, the parties have each been historically dissatisfied with the way in which bargaining has been conducted in the full time academic unit. Both the colleges and OPSEU have been unable to get the other side interested in or engaged in, their agendas. Many of the most significant collective agreement provisions have been obtained and then defended through third party intervention.

The CCBA reflects the thinking of the 1970's that the parties are not to be trusted to bargain responsibly and maturely. The statute presently assumes that the parties, if left to themselves, will mismanage collective bargaining to the detriment of the public interest.

The CCBA contains a range of provisions which ensure that bargaining will be closely monitored, supported and even managed by government and/or third parties.

If and when the parties ever manage to get to a strike or lockout situation, the CCBA operates to ensure that the potential economic and social damage of a strike will be diminished and mitigated. This in turn removes pressure on the parties to deal with and resolve tough issues in bargaining – for the purpose of avoiding a work stoppage.

This report recommends a series of mechanisms for the extension of collective bargaining to part time college employees. While it is certainly not the case that the organization of part time employees will be ‘on the backs’ of full time employees, there is little doubt that a series of difficult bargaining issues will arise for full and part time employees once part time employees are unionized.

Changes to the CCBA must be made which will change the bargaining dynamic and permit the parties themselves to take full responsibility for the choices made in bargaining and the consequences of those choices. For this reason, I have recommended a number of amendments which will have the effect of moving college bargaining closer to the OLRA model, where the consequences of not reaching a collective agreement may be more severe than currently under the CCBA.

It must be remembered that collective bargaining “works” when agreement is strongly preferable to the consequences of strike or lockout. It is the desire to avoid the destructive consequences of work stoppage, which forces parties to listen to what is being said from the other side of the table. It is the potential damage from the “hammer” of strike or lockout which requires each side to pay attention and then respond to things that they would otherwise not wish to hear.

The extension of collective bargaining to part time employees in the colleges will not occur in a vacuum. This will not be a “greenfield” operation. Rather, it will happen within the very complex existing bargaining structure built up over decades. For this reason, it is not possible to separate out the introduction of part time collective bargaining from its consequences and a plan for dealing with those consequences. It is all of one piece.

I look forward to a time where the interests of employees, students and the colleges are safeguarded by a healthy, respectful and productive set of collective bargaining relationships.

While the views, findings and recommendations expressed in this report are mine only, I would like to thank all of the institutional parties and individuals who participated in the consultation process. I would also like to thank the Ministry of

Training, Colleges and Universities, and the Ministry of Labour for their support and assistance. I would particularly like to thank Elisabeth Scarff for her invaluable help in providing me with a longer term historical perspective. Finally, I wish to thank Michael Uhlmann who flawlessly managed, organized and directed all aspects of this Report and Review.

## **Appendices**

## **Terms of Reference**

### **For the Advisor to the Minister of Training, Colleges and Universities**

#### **Background**

Ontario's 24 colleges of applied arts and technology employ more than 35,000 academic and support staff and serve approximately 250,000 students; 150,000 postsecondary students and about 100,000 students enrolled in programs such as apprenticeships, co-op apprenticeship diploma programs, literacy & basic skills programs and international students. Collective bargaining for about 17,000 college academic and support staff is governed by the *Colleges Collective Bargaining Act* (the Act).

There has not been a major review of the Act, which came into force in 1975, since the 1988 review by the Colleges Collective Bargaining Commission (the Gandz report), nearly twenty years ago. Since then, colleges and their programs and services have grown dramatically as colleges respond to the diverse and complex challenges and opportunities required to meet their legislative mandate, namely to: offer comprehensive programs of career-oriented, post-secondary education and training to assist individuals in finding and keeping employment; to meet the needs of employers and the changing work environment; and to support the economic and social development of their local and diverse communities.

Within a changing environment, the Minister of Training, Colleges and Universities has a responsibility to ensure that the Act fully supports the educational needs of Ontario's learners today, and into the future. This includes supporting fair collective bargaining and facilitating good labour relations while ensuring the ability of colleges to meet their mandate in a creative, flexible, efficient and effective manner.

#### **Mandate of Advisor**

Accordingly, an Advisor shall be appointed to conduct a review of the Act and to submit a report to the Minister of Training, Colleges and Universities setting out:

- The Advisor's findings on the extent to which the Act appropriately provides access to collective bargaining for all college employees;
- The Advisor's findings on the extent to which the Act allows colleges to meet their mandate, especially the changing needs of their students and the Province; and
- The Advisor's recommendations on directions which the Ministry and the Province could take to better meet such goals.

In conducting the review and developing the recommendations, the Advisor shall:

1. Take into account the extent to which the Act supports fair, respectful and harmonious labour relations, specifically the extent to which it:
  - a) facilitates the ability of colleges to establish and maintain mature, fair and harmonious labour relations with their employees and reflects the public interest in having a balanced, effective college collective bargaining framework which is predicated on accountability, responsibility and respect for and by the parties;
  - b) supports these goals in relation to those excluded by the Act from collective bargaining; and
  - c) supports a reasonable expectation of continuity and peaceful college sector labour negotiations.
2. Take into account the extent to which the Act supports the educational and learning needs of Ontario and its students, specifically the extent to which it:
  - a) reflects the public interest in ensuring that colleges have the ability, in a changing environment, to enhance the educational and training opportunities available to students and to otherwise meet their mandate; and
  - b) supports, in particular, the ability of colleges to:
    - i) deliver relevant, timely and high quality programs and services by a range of methods, including full or part-time programs and continuing education courses offered during the week, in the evening or on week-ends, and in classroom/placement settings or through distance education, and
    - ii) be accessible to students of diverse ages, cultural and educational backgrounds and learning needs and with diverse expectations and demands;
3. Consider what would be an appropriate collective bargaining model or models for college employees, including part-time employees, bearing in mind the factors identified in points 1 and 2 above.
4. Identify major operational implications of implementing any recommendations to amend the Act or other related legislation, and provide options on how to best address such implications.
5. Consult with interested stakeholders including the College Compensation and Appointments Council, the Ontario Public Service Employees Union, Colleges Ontario and the Committee of Presidents, the Organization of Part-time and Sessional Employees of Colleges of Applied Arts and Technology and any other

organizations or individuals as the Advisor considers appropriate and reasonable taking into account the review timeframe.

In developing the recommendations the Advisor is not expected to provide or obtain any legal opinion on the constitutional implications of the recommendations.

All work (including research) produced by the Advisor as part of the mandate will be the property of the Crown in Right of Ontario.

### **Ministry Support**

The Ministry of Training, Colleges and Universities shall provide such administrative support to the Advisor as agreed upon by the Advisor and the Ministry.

### **Work Plans and Status Reports**

The Advisor shall:

- Work with the Ministry to develop a mutually acceptable work plan and timetable which shall include a communication protocol and a stakeholder consultation plan;
- Provide regular progress reports to a Ministry representative to be identified, such reports to include planned stakeholder consultation activities and any Ministry support matters;
- Meet with the Minister at the discretion of the Minister, or as mutually agreed, to discuss the progress of the review and emerging issues and ideas.

### **Report on Findings and Recommendations**

The Advisor shall submit a draft of the final report to the identified Ministry representative by January 4, 2008 to enable the Ministry to provide any factual or editorial comments or corrections. The Ministry and the Minister shall not require any changes to the Advisor's proposed recommendations.

The Advisor shall submit a final report to the Minister of Training, Colleges and Universities by January 31, 2008 unless the Minister agrees in writing to extend the deadline for submission of the report. Such extension shall be to no later than February 28, 2008.

### **Amendment of Terms of Reference**

These terms of reference may be amended in writing, dated and signed by the Minister and the Advisor.

### **Release of Report**

The Advisor shall not disclose any findings or proposed or final recommendations without prior written authorization of the Ministry. The publication or disclosure of the final report shall be determined by the Minister.

August 27, 2007

### History of Representation Challenges Appendix 2

1967	CSAO applied to the Ontario Labour Relations Board pursuant to the <i>Labour Relations Act</i> , R.S.O. 1960, c.202 (LRA) to represent non academic staff at Fanshawe College in London. The Board held it did not have jurisdiction because the college was a Crown agency and made similar findings with respect to applications by a number of other colleges.
1968	The CSAO approached the Council of Regents as the representative of support and academic staff under the <i>Public Service Act</i> , (PSA) which governed bargaining for Crown agencies. Notwithstanding that the Council's authority to represent colleges for bargaining purposes was unclear, it recognized the CSAO as representative of support staff. The right of the CSAO to represent academic staff, however, was challenged by a newly formed faculty association, the Ontario Federation of Community College Faculty Associations (CCFA).
1969	The CCFA obtained an injunction precluding the CSAO from representing faculty under the PSA. The Council of Regents continued to act as if it had responsibility for bargaining on behalf of employers and proceeded on the basis that bargaining would be province-wide rather than local.
1970	CSAO and CCFA, likely due to government advocacy, agreed to hold a representation vote pursuant to procedures under the LRA.
1971	The CCFA failed to obtain the required 35% support of faculty required to get its name placed on the ballot. The CSAO won by 51% of votes.

### History of Bargaining Unit Composition

1970	Council and CSAO agreed early on that the support staff unit would consist of all full-time employees but, that consistent with the practice of the day, part-time staff would be excluded. The determination of the composition of academic staff took longer but as part of the 1970 CSAO, CCFA and Council of Regents agreement on the representation vote, the parties agreed that the voting list would exclude chairmen, sessional employees and various part-time employees.
1972 – Support Staff negotiations	In negotiating the 1972-74 support staff agreement, the parties agreed to the exclusion of cooperative education students, recent college graduates employed during the 12 months following completion of program and persons working on non-recurring projects. The final agreement was only reached after binding arbitration and the arbitrator added persons employed on a casual/temporary basis unless continuously employed for six months or more.
1972-73 academic negotiations - Academic staff exclusions	The arbitration board excluded chairmen, department head and directors, persons above rank of chairman, department head of directors, teachers, counsellors and librarians employed on a part-time basis (persons teaching 25% or less of accepted teaching load) and sessionals (persons who had appointment of not more than 12 months duration in any 24-month period); persons who taught less than 6 hours a week. Partial loan load employees (who taught 6-12 hours a week) had different terms and conditions.
1973-75 academic negotiations	CSAO wanted no distinction between full and part-time employees. Arbitration board ruled it was matter to be determined by Labour Relations Board.

**Post Gandz Reviews****Appendix 3**

1990 – Council of Regents’ Report – Vision 2000	In 1988, as part of the Council of Regent’s new focus on long-term strategic issues, the Minister of Colleges and Universities, Lyn McLeod, asked the Council to review the college system mandate to develop a vision of the system in the year 2000. The Council’s report, titled “Vision 2000: Quality and Opportunity”, released in May 1990 set out 40 recommendations. Central themes were assuring the quality of college programs and services and enhancing access and opportunities to diverse groups. Specific recommendations included the need to renew the mandate of the colleges, and a need to establish mechanism to ensure academic standards and accreditation.
1996 – Smith Report – Excellence, Accessibility, Responsibility	This December 1996 report prepared by the Advisory Panel on Future Directions for Postsecondary Education, chaired by David Smith, argued for: <ul style="list-style-type: none"> <li>• less regulation of the college environment to encourage institutional differentiation and specialization</li> <li>• allowing some colleges to transform into polytechnics</li> <li>• allowing greater flexibility at the institutional level in human resource management to allow compensation increases to be awarded in recognition of excellence in teaching;</li> <li>• improved credit transfer among colleges and universities, and more collaborative college-university programming; and</li> <li>• establishing a supportive environment for partnerships with the private sector.</li> </ul>
1999 – Report of Ontario Jobs and Investment Board	The Ontario Jobs and Investment Board, chaired by David Lindsay was established by the then Premier, Mr. Harris with a one year mandate to develop an action plan for future jobs and economic prosperity. Its report, submitted in March 1999, emphasized quality education and training as a top priority for sustainable economic prosperity. The Board called for a new “charter” for colleges for the 21 <sup>st</sup> century to allow them to take greater advantage of their potential as significant contributors to the economy, by allowing them to be more market-driven and more flexible and to facilitate: more private sector partnerships; increased community college/university cooperation to provide for collaborative partnerships, and easier movement between colleges and universities; meeting the need of students seeking both theoretical and applied education, including improved credit recognition, and applied degrees.
2000 – Report of Investing in Students Task Force – Portals and Pathways	In September 2000 the Investing in Students Task Force was established by Diane Cunningham, the Minister of Training, Colleges and Universities, to advise on ways to ensure that public funds were directed at providing the highest quality education for students while ensuring access, affordability and accountability. The Task Force’s report “Portals and Pathways”, released in February 2001, identified a vision for postsecondary education in Ontario that would reflect the elements of

	<p>excellence, a student-centred focus, accessibility, affordability, community, accountability, global orientation and collaboration.</p> <p>The Task Force’s 31 recommendations centred on meeting student needs, addressing the challenges facing institutions; and transforming the postsecondary education system, e.g., through increased collaboration and information sharing. Specific recommendations included government recognition of institutions with differentiated missions, considering the polytechnic model, establishing a new “college charter” based on a governance model of a not-for-profit corporation; removing the restriction on colleges requiring them to limit their activities to specific geographic catchment areas, and eliminating Council of Regents as part of the recognition of the independent accountability of college boards of governors.</p>
<p>2005 – Report of Rae review, Higher Expectations for Higher Education – “Ontario: A Leader in Learning”</p>	<p>In 2004, the government announced a review of the design and funding of postsecondary education and appointed the Honourable Bob Rae to conduct the review with a 7-member Advisory Panel. The report, titled “Ontario: A Leader in Learning” was submitted to Premier McGuinty in February 2005. The Advisory Panel explored five themes: accessibility; quality, system design, funding and accountability and identified a number of wide-ranging strategies and recommended actions. These included recommendations that the government:</p> <ul style="list-style-type: none"> <li>• encourage the distinct evolution of individual institutions of higher education and promote differentiation through tuition, accountability arrangements and funding measures;</li> <li>• reaffirm the mandate of the colleges to focus on occupational education and labour market needs while continuing to allow applied degrees and institutional evolution.</li> <li>• Mandate colleges to reach out to the 50% of high school students not going on to further studies and to lead the formation of K-16 Councils to promote learning and facilitate the transition to higher education;</li> <li>• recognize apprenticeship as a postsecondary destination and treat the apprenticeship programming delivered by colleges as a core business;</li> <li>• assign to colleges the government’s role in administration and outreach to employers for apprenticeship programs for which colleges deliver in-school training;</li> <li>• working with the institutions, establish quality standards and measures to ensure improvements at the sector, institution, program and student level; and</li> <li>• promote marketing to international students.</li> </ul>

**A Snapshot of the Ontario's Colleges Today****Appendix 4**

Students Served	<input type="checkbox"/> 150,000 full-time enrolments <input type="checkbox"/> 350,000 part-time enrolments <input type="checkbox"/> 500,000+ continuing education course registrations <input type="checkbox"/> 11,000 enrolments in literacy and basic skills training <input type="checkbox"/> 6,700 international students <input type="checkbox"/> Annually, colleges: <ul style="list-style-type: none"> <li>○ graduate over 60,000 students from 1-4 year postsecondary programs</li> <li>○ serve 25,000 apprentices</li> <li>○ place 27,000 young people in jobs through Job Connect</li> <li>○ operate 50 bridging and language training programs for internationally trained persons</li> </ul> <input type="checkbox"/> 51% more students served than in 1989-90 <input type="checkbox"/> 44% increase in college enrolment from 1990 to 2005
College size	<input type="checkbox"/> Smallest college - 1,500 full-time students <input type="checkbox"/> Largest college - 14,000 full-time students
Programs	<input type="checkbox"/> Offer more than 600 different programs <ul style="list-style-type: none"> <li>○ health sciences, business, technology, communications, human services; preparatory programs; joint college-university programs; contract training; literacy and basic skills; apprenticeship</li> </ul> <input type="checkbox"/> Provide 85% of the in-school portion of apprenticeship programs <input type="checkbox"/> Contract with more than 1,000 major employers to provide customized and training programs
Available Credentials	<input type="checkbox"/> Certificates, diplomas and advanced diplomas <input type="checkbox"/> Graduate certificates <input type="checkbox"/> Applied degrees
Student Profile	<input type="checkbox"/> 42% directly from secondary school <input type="checkbox"/> More than one-third have previous postsecondary experience <input type="checkbox"/> 10% over 30 in 2005-06, <input type="checkbox"/> 18% of applicants born outside Canada; 13% are first generation Canadians <input type="checkbox"/> 11% reported use of Special Needs/Disability Services
Employees	<input type="checkbox"/> 19,000 full-time staff (including administration) <ul style="list-style-type: none"> <li>○ 9,248 full-time faculty in 2006-07 (including 2,408 partial load)</li> </ul> <input type="checkbox"/> 17,600 part-time staff <ul style="list-style-type: none"> <li>○ 8,900 part-time faculty in 2004-05</li> <li>○ 8,746 part-time support staff</li> </ul>
Graduates	<input type="checkbox"/> 33% of Ontario's workforce have college qualification <input type="checkbox"/> 11,000 individuals graduate annually from technology programs <input type="checkbox"/> 7,000 individuals graduate annually from health science programs

Sources of Data: MTCU 05/06 employment profile; Colleges Ontario Facts Sheets - "Ontario's Colleges: An Overview", "Technology Graduates and the economy"; "Producing a Strong Healthcare Workforce", Colleges Ontario Website, December 2007; Colleges Ontario 2007 Environmental Scan  
Ministry of Training, College and Universities – Key Performance indicator results for Ontario's 24 colleges, March 2006 – February 2007

## Review of the *Colleges Collective Bargaining Act* Notice of Consultation

On August 30 the Ontario government announced its intention to extend collective bargaining rights to part-time college workers.

In preparation for this task, I have been appointed to conduct a review of the *Colleges Collective Bargaining Act (CCBA)*. The Terms of Reference for this review are available at [www.ontario.ca/ccba](http://www.ontario.ca/ccba)

The review will examine the extent to which the CCBA provides access to collective bargaining and enables Ontario's colleges to meet their mandate. A final report will be provided to the government with recommendations for legislative reform.

A number of studies and reviews have dealt with similar issues – most importantly the Gandz report of 1988. The Gandz Report is also available at [www.ontario.ca/ccba](http://www.ontario.ca/ccba)

I wish to invite written submissions which address the following questions:

1. What is the appropriate collective bargaining model (central, local, two-tier)?
2. What are the appropriate bargaining unit descriptions?
3. Who should represent the Colleges in bargaining?
4. Should any categories of employees be excluded from collective bargaining?
5. What is the appropriate bargaining agent certification process?
6. Should any items or issues be excluded from collective bargaining?
7. What should the role of the College Relations Commission be?
8. Are there possible amendments to CCBA that would enhance the collective bargaining process and permit the Colleges to achieve their goals and mandate?

Responses and proposals should be explained with supporting justification, research and reference to current data, costing estimates and financial impacts.

I invite you to send your submissions via e-mail to Mike Uhlmann, Senior Project Consultant at [michael.uhlmann99@ontario.ca](mailto:michael.uhlmann99@ontario.ca), or by mail to 505 University Ave., 11<sup>th</sup> Floor, Toronto ON, M5G 2P1, no later than **Friday, November 16, 2007**. Please feel free to e-mail Mike or call (416) 326-7510 with any questions related to this document.

I will also be holding a series of 4 regional public hearings in Ottawa (November 20), London (November 27), Toronto (November 28) and Sudbury (November 30). If interested in being considered for participation in one of these, identify your interest in your submission.

I thank you in advance for participating in this important consultation phase of the project.

Kevin Whitaker  
Advisor

## Key Stakeholder Submission Summary

## Appendix 6

	<b>OPSEU</b>	<b>CCAC/COP</b>	<b>OCASA</b>	<b>CSA</b>
<b>1. Bargaining Model</b>	Central	Central Limited local	Central	Central
<b>2. Unit Descriptions</b>	PT units into FT units  (Alternate) new PT academic and support units with statutory review process	New PT academic and support units  Students in support unit	No position	New PT academic and support units  Students in support unit
<b>3. Colleges Representative</b>	No position, though expand role	No position	No position	CCAC
<b>4. Category Exclusions</b>	Current CCBA management/confidential  Schedule 2 vii, viii students	Current CCBA management/confidential  Schedule 2 vii, viii students	No position	No position other than students included in PT support unit
<b>5. Certification Process</b>	Provincial level  Voluntary recognition or card check/vote model per construction industry	Provincial level  OLRA threshold  Double majority vote	No position	Double majority vote
<b>6. Excluded Items</b>	Superannuation	Superannuation  Academic classification system	No position	No position
<b>7. CRC Role</b>	No change	Transfer to OLRB / MOL	No Position	Oversee bargaining  Impasse intervention
<b>8. CCBA Amendments</b>	Schedule 1&2 (exclusions) only	Double majority vote  90 day notice to bargain, 15 day last offer vote  Remove lock out notice, deemed strike, Aug. 31 contract expiry, fact finding, voluntary arbitration  Local Bargaining  Exclude academic classification system	Changes must consider student needs  Maintain college flexibility  Include funding	Replace right to strike with binding arbitration  Include funding

## Appendix 7

## Summary of Other Provinces - College Sector

	<b>ALBERTA</b>	<b>BRITISH COLUMBIA</b>	<b>MANITOBA</b>
<b>Collective Bargaining Model (Central, Local, Two-Tier)</b>	All bargaining takes place at the local level	Two-Tier bargaining. Provincial level voluntary common tables for academic and support (monetary items).	The three colleges bargain together at one table for separate collective agreements which are generally the same – some unique local issues
<b>Bargaining Unit Descriptions</b>	Separate units for academic and support staff	Separate units for faculty and support. Some faculty split again between academic and technical instruction. Part time included in full time units.	Each college has one bargaining unit that includes academic and support staff, both full and part- time
<b>Employer Representative in Collective Bargaining</b>	Each institution bargains separately	Public Sector Employers Assoc'n. (PSEA) for central table. Must be ratified by PSEA Board. Local bargaining by local employer reps. Must be ratified by PSEA Board	Colleges bargain for themselves
<b>Excluded Categories of Employees</b>	No academic exclusions. Support exclusions include managerial, employees engaged in personnel admin, grievance admin. or collective bargaining matters.	Exclusions only as found under BC Labour Relations Code ( managers and employees working in a confidential capacity)	Continuing and Distance Education Instructors excluded. Labour Relations Act otherwise governs (managerial or confidential to labour relations)
<b>Bargaining Agent / Union Representative</b>	Academic staff association represents faculty at each institution. Support staff represented by AUPE (14 agreements), CUPE ( four agreements), support staff associations (five agreements)	Faculty represented by either Federation of Post Secondary Educators or BC Government and Services Employee Union (BCGEU) Support staff represented by either BCGEU or CUPE	All bargaining units are represented by Manitoba Government Employees Union (MGEU)
<b>Items Excluded from Collective Bargaining</b>	No exclusions. Organization of work and pensions cannot be arbitrated for support staff under PSERA. No right to strike or lockout – binding arbitration	Public Education and Choice Act and College and Institution Act regulate or restrict scope on pensions, class size, hours of operation, terms/semesters, professional development and vacation time, faculty support etc.	No items excluded from collective bargaining
<b>Statutory Framework for Collective Bargaining</b>	Post-Secondary Learning Act covers academic. Public Service Employee Relations Act covers support in colleges, universities, technical institutes, Banff Centre)	Labour Relations Code governs college bargaining. Public Sector Employers Act establishes PSEA. Public Education Flexibility and Choice Act overrides for certain items. College an Institute Act impacts on operational matters	Labour Relations Act

### Summary of Other Provinces - College Sector

	<b>NEW BRUNSWICK</b>	<b>NEW FOUNDLAND / LAB.</b>	<b>NUNAVUT</b>
<b>Collective Bargaining Model (Central, Local, Two-Tier)</b>	Central Bargaining covering 11 campuses of the New Brunswick Community College	Central bargaining. One set of negotiations for each bargaining unit, covering all campuses.	Territorial – wide collective bargaining
<b>Bargaining Unit Descriptions</b>	Instructors and Education Program Officers (deans, department heads, counselors) are in two separate units. Support workers are in bargaining units with other government employees.	Two bargaining units. One for faculty and one for support.	Single bargaining unit
<b>Employer Representative in Collective Bargaining</b>	The Office of Human Resources leads all collective bargaining for public service employees	Collective Bargaining Division of the Public Service Secretariat and representatives from college's management team negotiate on behalf of the college	The Government of Nunavut as the employer
<b>Excluded Categories of Employees</b>	Casual or temporary employees unless continuously employed for 6 months or more  Persons working up to 1/3 of full time	No. The PSCBA covers all college workers (full and part-time). The College can hire contract staff if needed.	Directors, Human Resource Administrators, Executive/Divisional/Campus Secretaries, President
<b>Bargaining Agent / Union Representative</b>	New Brunswick Union of Private and Public Employees  CUPE (custodians, maintenance, food service)	The Newfoundland and Labrador Association of Public and Private Employees represents all staff in both units	The Nunavut Employees Union (NEU) represents all college workers
<b>Items Excluded from Collective Bargaining</b>	No exclusions	No exclusions	Housing is the only non-negotiable item
<b>Statutory Framework for Collective Bargaining</b>	Public Service Labour Relations Act	The Public Service Collective Bargaining Act governs collective bargaining for the College of the North Atlantic (one college, 17 campuses)	The Nunavut Public Service Act and Regulations

### Summary of Other Provinces - College Sector

	<b>PRINCE EDWARD ISLAND</b>	<b>QUEBEC</b>	<b>SASKATCHEWAN</b>
<b>Collective Bargaining Model (Central, Local, Two-Tier)</b>	Collective Bargaining takes place at the local level	Two-tier bargaining. Negotiations are centralized and agreements reached at the provincial level for normative issues and those that have financial impact. Some items (e.g. union dues, disciplinary measures) can be negotiated at local or regional levels	Two-tier bargaining
<b>Bargaining Unit Descriptions</b>	Academic and support staff are in separate units	Three bargaining units: teaching staff, non-teaching professional staff, support staff.	Separate units
<b>Employer Representative in Collective Bargaining</b>	Colleges bargain directly	The Management Negotiating Committee for colleges negotiates on behalf of colleges except for local or regional matters. In practice the Gov. (through Treasury Board) negotiates directly with central labour unions on major monetary items	Colleges bargain directly
<b>Excluded Categories of Employees</b>	No employees are excluded by legislation	No statutory exclusions. Agreements may stipulate that certain provisions don't apply to some workers	All classifications deemed part of the bargaining unit are entitled to bargain
<b>Bargaining Agent / Union Representative</b>	Separate unions represent academic, support and maintenance staff	Teaching staff have two unions Non-teaching professional staff have one union Support staff have three unions	Multiple unions represent college employees – Faculty Associations, CUPE, Saskatchewan Government Employees Union
<b>Items Excluded from Collective Bargaining</b>	No items are excluded from bargaining	No items are excluded from bargaining.	No items are excluded from bargaining.
<b>Statutory Framework for Collective Bargaining</b>	The Labour Act	The Act respecting the process of negotiation of the collective agreements in the public and parapublic sectors governs bargaining in the general and vocational college sector (cecgep)	The Trade Union Act

### Summary of Other Provinces - College Sector

	<b>YUKON</b>	<b>ONTARIO</b>	
<b>Collective Bargaining Model (Central, Local, Two-Tier)</b>	There is only one college and bargaining takes place at the local level.	Central bargaining model	
<b>Bargaining Unit Descriptions</b>	Single bargaining unit	Two separate units. One for full-time academic and one for full-time support	
<b>Employer Representative in Collective Bargaining</b>	College Board of Governors oversees bargaining and approves tentative agreements. Excluded college employees bargain on behalf of the colleges	The Colleges Compensation and Appointments Council bargains on behalf of all colleges	
<b>Excluded Categories of Employees</b>	Management, confidential and casual employees are excluded	Managerial, confidential and professional exclusions  Part-time Academic and part-time support staff currently excluded	
<b>Bargaining Agent / Union Representative</b>	All bargaining unit members are represented by the Yukon College Employees Union, local Y011- part of the Yukon Employees Union and affiliated with public Service Alliance of Canada	Both the full-time academic and full-time support units are represented by the Ontario Public Service Employees Union	
<b>Items Excluded from Collective Bargaining</b>	Some limitations in Yukon College Act	Superannuation (Pension plan) is excluded from bargaining	
<b>Statutory Framework for Collective Bargaining</b>	Yukon College Act, and Canada Labour Code	Colleges Collective Bargaining Act	

## Summary of Recommendations

1. Continue the existing central bargaining model with an emphasis on the parties taking greater advantage of existing mechanisms to resolve local issues
2. Create two new province wide part-time bargaining units, defined in the statute. The part-time academic unit should include sessional instructors and the part-time support unit should include those workers employed for 24 hours a week or less. Establish a joint application process to have bargaining unit configurations reconsidered by the OLRB
3. Create a separate employer bargaining agency within the exclusive control and direction of the colleges
4. Continue with the existing scope of managerial and confidential exclusions from collective bargaining. Students engaged in co-operative or certification program based work should also continue to be excluded from bargaining
5. The existing CCBA provisions which permit displacement applications should be modified to create a bargaining unit certification process (35% membership support and then a simple majority on a representation vote). The statute should also be amended to formally acknowledge the legitimacy of voluntary recognition agreements
6. Continue with the existing exclusion of superannuation from collective bargaining. No other items or issues should be excluded
7. Abolish the College Relations Commission (CRC) through deleting Part VII and assign this work to the OLRB and the Ministry consistent with the role of each under the OLRA
8. Amend Section 4(2)- to remove fixed collective agreement expiry dates on August 31. The parties should be free to negotiate whatever expiry date they wish
9. Amend Section 4(1)- to provide that notice to bargain be given within the period of 90 days prior to the expiry of the collective agreement
10. Amend Sections 54(2) and 63- (as under the OLRA) to permit the colleges to unilaterally implement terms and conditions of employment when in a strike or lockout position and following notice to the union
11. Part III- eliminate the fact finding exercise. The Minister of Labour should be able to appoint a conciliation officer and then mediators as under the OLRA
12. Delete Sections 59(2) and 63(3)- to remove the deemed strike or lockout provisions
13. Amend Section 63(2)- the requirement that the colleges seek the approval of the Council to close in the event of a strike or lockout
14. Part IV- remove the binding arbitration process to settle collective agreements
15. Part V- remove final offer selection to settle collective agreements
16. Delete section 56(h)- the “jeopardy” advice obligation
17. Amend Section 59(d)- so that the college’s last offer may be put to a vote within 15 days of the expiry of the collective agreement