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The Ford government's proposed wage-cap legislation: Debunking the myths, outlining the facts

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Ontario Confederation of University Faculty Associations (OCUFA)

The Ford government has introduced sweeping wage legislation that will undermine free and fair collective bargaining under the pretense of a fiscal crisis.

The reality is that Ontario faces a revenue problem and not a spending problem, as Ford continues to falsely claim. According to the Financial Accountability Office of Ontario (FAO), the Ontario government has the lowest per capita program spending in the country. This includes spending on essential public services such as long-term care, childcare, education, transit, water, and infrastructure. In addition, since 2011, Ontario's program spending has grown at less than half the rate of other provinces.

In the postsecondary education sector, Ontario's per capita funding is 21 per cent lower than the rest of Canada.

In addition, the Ontario government's expenditures as a portion of GDP have shrunk over the past 15 years, according to the line-by-line review commissioned by the Ford government. This means that the economy is growing at a much faster pace than government expenditure in the province.1

Ontario also has the lowest revenue per person in Canada. In 2017, Ontario's per person revenue was almost 16 per cent lower than the national average. According to the FAO, Ontario's personal income tax revenue is equivalent to 9.9 per cent of labour income, which is significantly below the 11.7 per cent share in the rest of Canada. At 11.8 per cent, Ontario's corporate income tax rate (tax revenue as a share of corporate profits) is also below the ratio for the rest of Canada, which is 12.2 per cent.

The Ford government continues to ignore the facts and expert economic advice. Amidst this manufactured fiscal crisis, the government is proposing legislated wage caps for all public sector bargaining, without any evidence or data showing how this will impact Ontario's finances.

Proposed wage-cap legislation at universities

Universities in Ontario are autonomous bodies that engage in free collective bargaining directly with their employees. As such, the Ontario government is not the direct employer of university faculty. Moreover, the provincial government currently provides only 35 per cent of university operating funding. This means that changes to faculty compensation, as one of many components of university operating budgets, will have no impact on the provincial budget. The government has yet to clarify why it is proposing this interference in the operations of Ontario's universities or how this will impact Ontario's finances. It is also clear that the government will have to change several long-standing laws to force universities to comply with the legislation.

Undermining university autonomy

This legislation is just the latest attack on the postsecondary sector by the Ford government, and the overarching theme is undermining the autonomy and independence of Ontario universities. The government has already:

- Introduced needless directives on free speech for postsecondary institutions and threatened funding for universities that do not comply.
- Cut the student assistance budget by $671 million dollars and reduced tuition fees by 10 per cent without offering matching public funding, which will cut over $350 million from university operating budgets.
- Introduced, through the Ontario Budget, the tying of university funding to so called performance-based measures. By 2024-25, 60 per cent – an estimated $2.2 billion – of core university funding will be linked to a number of arbitrary metrics set by the government. Universities flourish when they are independent, self-governing, and attract the very best national and international talent. The right of academics to have a meaningful say in how universities are run is not a management prerogative or the province of any partisan government but rather the intellectual and cultural lifeblood of a modern university. It is the distinguishing feature that sets universities apart from all other social institutions and provides a unique space for academics to tackle the most vexing social, economic, cultural, and environmental problems of our time. The right to free and fair collective bargaining is vital to protecting and enhancing the unique pedagogic, regional, service, and research mandates of Ontario's universities. The proposed legislation will serve to micromanage bargaining in a complex sector that relies on dynamic, local, and collaboratively bargained conditions of employment.

The right to free and fair collective bargaining

Several recent Supreme Court of Canada judgements enshrine the right to free and fair collective bargaining as part of the Canadian Charter of Rights and Freedoms' protection of freedom of association.

Unions, and the process of collective bargaining, play an important societal role in reducing income inequality and improving workplace conditions. Academic research has demonstrated that unions also play a beneficial role in enhancing organizational effectiveness and governance by giving workers a collective voice through the bargaining relationship, to the benefit of both the individual employer and society in general.2

Unions across the province, including faculty associations, have embraced collective bargaining in order to solve workplace problems, end injustices, and achieve fair compensation. The capacity to set goals

and trade off employer issues against worker demands creates broad scope for making a deal in the process of collective bargaining. 2

Beyond compensation, faculty have made significant gains in collective bargaining concerning academic freedom and collegial governance, hiring processes that foreground equity and fairness, strong anti-discrimination and harassment protections, course-based security for contract faculty, and a host of other improved terms and conditions of employment.

Every collective agreement is locally crafted to fit the unique culture and needs of the faculty and administration at each university. These win-win solutions can only be achieved through unfettered, free and fair collective bargaining.

Legislated wage caps circumvent the bargaining process and are, by definition, bad faith attempts to skew labour relations in favour of employers. Historically, politically, and legally, the power of unions has been acknowledged as a necessary corrective to employer and state power.

This proposed wage-cap legislation will undermine the right to free and fair collective bargaining. It will undermine mature bargaining relationships, which will serve to destabilize labour relations and undermine flexibility, collaboration, and creativity in collective bargaining. Imposing the proposed wage-cap legislation on arbitration awards in addition to collective bargaining will further destabilize labour relations, as it removes a vital safety net available when collective bargaining reaches an impasse. This may lead to increasing labour disputes and interruptions across the broader Ontario public sector.

A continued attack on workers' rights and the most marginalized

The Ford government's contrived fiscal crisis rhetoric is being used to introduce devastating cuts to Ontario's public spending that will have negative, long-term economic and social consequences for the public services all Ontarians rely on.

Blaming public sector workers for Ontario's fiscal challenges is fact-free scapegoating, especially since public sector wage increases have barely kept up with inflation and have been consistently lower then private sector wage increases.

Annual average wage increases in Ontario collective bargaining

2017	Public sector - 1.9%	Private sector - 2.1%
2016	Public sector - 1.4%	Private sector - 1.9%
2015	Public sector - 0.8%	Private sector - 1.7%
2014	Public sector - 1.4%	Private sector - 1.9%
2013	Public sector - 0.5%	Private sector - 2.3%

The government's financial fear mongering obscures the differential impact of wage restraint on more vulnerable sub-groups within the university system. If passed, this new legislation would have serious equity implications for university workers, especially for precariously employed contract faculty who teach a majority of courses at Ontario's universities. Further, this legislation would make it more challenging to close systemic pay gaps for women-identified, Indigenous, and racialized faculty and staff.

The groups hit hardest by wage restraint are always those that can least afford it – faculty in small and northern universities, women and other equity-seeking groups whose salaries are lower due to wage

discrimination, young faculty for whom wage restraint will compound over a lifetime, and precariously employed contract faculty. Despite a regulated system of grants and tuition that is relatively uniform across the system, faculty at small institutions are paid significantly less than those at larger Ontario institutions.

Sub-groups within universities also face unjustifiable salary inequities. A number of recent salary gap studies have shown that female faculty continue to experience gender-based discrimination in income. In 2015, McMaster University paid out $3,515, and the University of Waterloo paid out $2,905 to individual female faculty members to help close the gender wage gap at those institutions.

It is clear across jurisdictions that legislated wage caps and wage freezes exacerbate inequity and interrupt the important work of rectifying historical economic injustice on the basis of gender, race, and geography. It is also important to note that, although all faculty suffer a loss in living standards when salaries fail to keep up with expectations, wage restraint has the biggest impact on faculty at the beginning of their careers, as the gap compounds over many years and substantially erodes lifetime earnings.

As noted, the most egregious effects of the proposed wage-cap legislation will be felt by contract faculty, who are paid low stipends that leave many of them struggling every month, who have precarious jobs and volatile incomes, and who have waited too long already for fair pay and just working conditions.

An OCUFA review of salary data at universities across the province reveals a pay gap of about 40 per cent. While sessional faculty are paid an average per-course stipend of $7,500, full-time faculty are paid an average of $12,800 for the equivalent portion of their work. This is an unacceptable pay gap – one that once again disproportionately impacts women who make up the majority of sessional faculty at Ontario universities.

Conclusion

This legislation is clearly driven by ideology and not sound public policy. Bill 124 strips Ontario faculty of fundamental democratic rights. This entire exercise has been justified based on a manufactured crisis and a farcical set of public consultations. The costly consultation was led by external legal counsel and not civil servants or elected officials and were clearly a sham to justify legislation that was almost certainly written well before the consultations began.

It is reckless for the government to introduce this disruptive measure in the public sector without a shred of evidence of its economic or other purported impacts.

OCUFA is also deeply concerned about the sweeping powers granted to the President of the Treasury Board in the proposed legislation. Empowering the minister, in their “sole discretion,” to make orders about collective agreements and arbitral awards is at best contrary to democratic principles.

There are thousands of collective agreements that expire in Ontario every year. The provincial government has yet to inform tax payers of the costs associated with implementing the Minister’s new sweeping powers over all collective agreements and arbitral awards. Surely, policing collective agreements in Ontario is costly and is bound to create more red tape and unnecessary expenses.
The legislation was introduced on June 5, and, although the legislature has now risen until October 28, the bill will be retroactive to June 5 once passed. The introduction of the bill raises a number of technical issues that are dealt with in an FAQ that can be found here:

https://ocufa.on.ca/assets/OCUFA-Wage-cap-legislation-FAQ-EN.pdf

Next steps:

1. OCUFA calls on the Government of Ontario to:

a) Respect the right to free and fair collective bargaining that is protected by the Canadian Charter of Rights and Freedoms and several Supreme Court rulings.

b) Withdraw the proposed legislation to impose a wage-cap on the broader public sector, as it will further marginalize those who are already disadvantaged and directly interferes in the right to free and fair collective bargaining.

c) Address Ontario's revenue problem by ensuring that the province's corporations and most wealthy are paying their fair share.

2. OCUFA calls on opposition parties to oppose this harmful legislation and to commit to repealing it when elected into office.

3. OCUFA continues to collaborate with our partners in the labour movement and sector stakeholders to oppose this legislation and to explore a possible legal challenge.

4. OCUFA encourages faculty associations to set-up meetings with their local MPPs and pressure them to withdraw this legislation due to its interference in the right to free and fair collective bargaining.

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[1] Managing Transformation A Modernization Action Plan for Ontario. EY, 2018. https://files.ontario.ca/ey_report_2018_en.pdf

[2] Freeman, Richard, and James Medoff. What Do Unions Do. N.Y. Basic Books, 1984.

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