

Brief

OECTA Submission to the Standing Committee on Social Policy

Bill 115, An Act to Implement Restraint Measures in the Education Sector

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September 2012

www.oecta.on.ca

ONTARIO ENGLISH
Catholic
Teachers
ASSOCIATION



The Ontario English Catholic Teachers' Association (OECTA) represents 45,000 women and men who have chosen teaching careers in the Catholic schools in Ontario. These teachers are found in the elementary panel from junior kindergarten to Grade eight, in the secondary panel from Grade nine through Grade twelve, and occasional teachers in both panels, in publicly funded schools.

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1. INTRODUCTION

- 1.01** The Ontario English Catholic Teachers' Association (OECTA) appreciates the opportunity to present issues that we believe are important, as you consider Bill 115, *An Act to implement restraint measures in the education sector*.
- 1.02** The proposed legislation is wide-reaching and will have a significant impact on many aspects of compensation for OECTA members in both the short- and long-term.
- 1.03** In February, OECTA along with other education stakeholder groups were invited by the Minister of Education to participate in the Provincial Discussion Table (PDT) talks. Our Association approached those discussions with the full knowledge that, given the current socio-economic climate in Ontario, it would not be easy to reach an agreement. We spent more than five months working to reach an agreement that would protect the classroom experience for our students and mitigate the impact of the government's original parameters on our members.
- 1.04** As difficult as it was to achieve that balance, we demonstrated that it was possible.
- 1.05** We remained at the table when others chose not to because we believed that the government was serious in stating it was prepared to legislate its original parameters. Today, we know that the government was prepared to act on its predilection to legislate where negotiated settlements could not be reached.
- 1.06** OECTA supports the right of all employee bargaining groups without a negotiated Memorandum of Understanding (MoU) to be afforded their full bargaining rights under the OLRA. The government should refrain from imposing any form of legislation which limits any other employee agents' rights under the OLRA, including but not limited to, their right to free collective bargaining and right to strike.
- 1.07** OECTA believes that certain specific amendments, of a narrow scope but significant importance, are necessary to improve the proposed legislation. Our recommendations for those changes follow.

2. EMPLOYMENT CONTRACT TO PROVIDE FOR TERMS (SECTION 2)

- 2.01** Section 2 sets out the terms to be included in individual contracts of employment for non-unionized workers. For clarity, OECTA's comments regarding this section are not applicable to any other employee bargaining agent.
- 2.02** This section governs the compensation of non-unionized workers and is silent with respect to post-retirement benefits being unlawful in individual contracts of employments. As set out in the MoU, unionized teachers are not entitled to these post-retirement benefits. As a matter of fairness, non-unionized board employees ought to be required to forgo this perquisite as well.

OECTA Recommendation

That language similar to Section F of the MoU be added to subsection 2.(1), as new subparagraphs (12) and (13):

2. (1)

...

[Add: 12. Effective September 1, 2013,

- i. any new retiree (or his or her family) in the education sector who has access to post-retirement benefits (e.g., health, dental, life, etc.) and pays premiums for such benefits shall be included in an experience pool segregated from all active employees, such that the pool is self-funded; and***
- ii. no new retirees (or his or her family) in the education sector shall be eligible for employer contributions to any post-retirement benefits (e.g., health, dental, life, etc.).***

13. Existing retirees (or his or her family) or any employee retiring before September 1, 2013 in the education sector who has access to post-retirement benefits (e.g., health, dental, life, etc.),

- i. will continue to be included in the experience pool in which they are presently included and pay the appropriate premiums for that existing experience pool; and***
- ii. employer contributions where they currently exist will continue for this group.]***

3. MoU TERMS WHICH APPLY (SECTION 4)

3.01 We note that this provision provides the government with the power to modify and replace terms of the MoU, so long as they are prescribed. Thus, the government can after the fact pass regulations that modify or even nullify key items of the MoU, and therefore of collective agreements.

3.02 It is important that the government fully honour its commitment to the MoU. There should be no allowance of any amendment to the MoU that is not jointly agreed to by parties covered by the MoU. Accordingly, OECTA proposes that the power to prescribe changes to MoU terms under subsection 19.(2) be limited only to those changes that are substantially similar to and consistent with the terms of the MoU.

OECTA Recommendation

That subsection 19.(2) be amended by the addition of: "so long as it is substantially similar to and consistent with the purpose and intent of the term it is modifying or replacing," such that 19.(2) would then read:

19.(2) A regulation made under clause (1) (c) prescribing a term for the purposes of paragraph 3 of subsection 4(1) may prescribe a term that modifies or replaces any other term described under paragraph 1 or 2 of that subsection so long as it is substantially similar to and consistent with the purpose and intent of the term it is modifying or replacing.

4. LIEUTENANT GOVERNOR IN COUNCIL'S (LG) POWER TO REQUIRE REIMBURSEMENT OF UNLAWFUL PAYMENTS (SECTION 9.(2)4)

4.01 A concern with this provision is that it could require a lump sum reimbursement by the employee, as opposed to allowing the employee to reimburse the board over a reasonable time period. We note that, pursuant to section 19.1(h) the LG has the power to pass a regulation that determines the amount and manner of the reimbursement of payments.

4.02 We emphasize that reimbursement must be undertaken in a manner that does not result in financial hardship for the employee. The following two recommendations will facilitate reimbursement in a fair and reasonable manner.

OECTA Recommendation

That subsection 9.(2)4 be amended to read as follows:

9.(2)4. If the Minister gives advice under subclause (1) (e) (i), (ii) or (iii) that a board made the payments described in that subclause to an employee, orders requiring the employee to reimburse the board for the payments *[add: in a manner that will not result in undue financial hardship to the employee].*

OECTA Recommendation

That subsection 19.(1) (h) be amended as follows:

19.(1) The Lieutenant Governor in Council may make regulations,

...

(h) where an employee is required by an order made under paragraph 4 of subsection 9(2) to reimburse a board, respecting the reimbursement and the amount and manner of reimbursement *[add: , and such manner of reimbursement shall not result in undue financial hardship to the employee];*

5. NO CONSULTATION OR HEARING (Section 9.(7))

5.01 This is an unusual provision in that usually when a government decision maker is affecting rights, the right to a fair hearing is the reasonable expectation, let alone a right to consult. We strongly suggest that consultations or hearings be granted to the affected parties.

5.02 This touches on basic human rights and is a part of fundamental civil liberties. This legislation must preserve and protect the civil liberties for those subject to its scope. Accordingly, OECTA suggests the following amendments:

OECTA Recommendation

That subsection 9.(7) be amended as follows:

No *[delete: consultation or]* hearing

9.(7) Despite any other law, there is no duty *[delete: to consult or]* to hold a hearing before the Minister gives advice under subsection (1) or the Lieutenant Governor in Council makes an order under subsection (2) *[add: , so long as the Minister or Lieutenant Governor in Council satisfies his or her duty to consult with the board and/or employee bargaining agent whose rights are affected].*

OR add a new subsection 9. (15):

9. (15) *Notwithstanding subsection 9.(7), before the Minister gives advice under subsection (1) or the Lieutenant Governor in Council makes an order under subsection (2), the Minister or the Lieutenant Governor in Council, as the case may be, shall consult with the board and/or employee bargaining agent whose rights are affected.*

6. RESTRICTIONS ON JURISDICTION (SECTION 14)

6.01 Section 14 provides that neither the Ontario Labour Relations Board nor arbitrators have jurisdiction to inquire into or make a decision on whether the Act, a regulation or order is constitutionally valid or in conflict with the Human Rights Code. This provision is silent with respect to any restrictions on the jurisdictions of the Ontario Human Rights Tribunal and the Pay Equity Hearings Tribunal. By negative implication, human rights and pay equity complaints to those Tribunals in regard to this Act appear not to be barred. However, given the importance of these issues, the language in the bill should be stronger.

6.02 The *Public Sector Compensation Restraint to Protect Public Services Act, 2010*, for example, includes a provision that could be added to Bill 115.

OECTA Recommendation

That section 14 be amended so that it is consistent with the *Public Sector Compensation Restraint to Protect Public Services Act, 2010* which reads as follows:

Conflict with this Act

12. (1) *This Act prevails over any provision of a compensation plan and, if there is a conflict between this Act and a compensation plan, the compensation plan is inoperative to the extent of the conflict.*

Exception

(3) *Nothing in this Act shall be interpreted or applied so as to reduce any right or entitlement under the Human Rights Code or the Pay Equity Act.*

7. DIAGNOSTIC ASSESSMENT (SEE APPENDIX A)

7.01 There has been vocal opposition to two aspects of the MoU that will improve the educational experience for students, ensure teachers have more time to spend with struggling students who most need their attention, and put highly qualified, experienced teachers in the classroom while reining in widespread hiring practices of cronyism and nepotism that have long existed in many boards.

7.02 Contrary to what some have stated, the MoU does NOT allow teachers to opt out of conducting assessment. In fact, those who oppose this provision of the MoU would be well advised to read it carefully as the MoU explicitly states: "In order to inform their instruction, teachers MUST utilize diagnostic assessment during the school year."

7.03 Likewise, suggestions that parents will lose their role when it comes to diagnostic assessments are unfounded. At the present time, parents are

generally not involved in the application of the types of assessment that are referenced in the OECTA MoU. The MoU does nothing to change the current practice in that regard and it will have no impact on students with special needs, despite those who would like you to believe otherwise.

- 7.04** Teachers appreciate and value the gathering of information that assessment provides. However, in recent years, board mandates for a large, centralized warehousing of test scores irrespective of the needs of individual students have had a significant impact in the classroom, resulting in less time for student-teacher interaction.
- 7.05** It is also important to note that nothing in the MoU diminishes the rights and responsibilities of all teachers that are currently delineated in the *Education Act*. Teachers remain committed to the ongoing assessment of students and value diagnostic tests as one component of an effective, balanced assessment practice.
- 7.06** However, the ongoing nature and scope of diagnostic tests imposed by some school boards has created a testing culture that prevents teachers from making meaningful and purposeful assessment decisions. Instead, their role has become that of simply fulfilling arbitrary board data collection requirements. Many school boards are fuelling a test-driven culture that prioritizes numbers on a score sheet over meaningful, formative assessment that is specifically tied to grade-level curriculum expectations.
- 7.07** The terms of the OECTA MoU will restore a more appropriate balance between demands for data that does not inform instruction, and assessment that will help teachers better meet the learning needs of their students.
- 8. FAIR AND TRANSPARENT HIRING (APPENDIX B)**
- 8.01** School boards can call upon many experienced occasional teachers whom they have already hired and who are qualified to fill long-term teaching assignments and permanent teaching positions. Unfortunately, these experienced teachers are often passed over for friends and relatives of board officials, even if they have no experience or lack the necessary qualifications for the specific position to which they are hired.
- 8.02** The fair and transparent hiring practice in the MoU takes into account qualifications, performance and experience - not family connections - to determine which teachers will stand in front of students.
- 8.03** Under the terms of the MoU, school boards retain complete responsibility for the hiring of all teachers. Contrary to what some have suggested, the union does not determine who will be hired to fill teaching positions as a result of the MoU.
- 8.04** School boards currently hire teachers and they will continue to hire them. Under the terms of the MoU school boards have three opportunities to screen and interview candidates for a permanent hire - first when they are hired as OT's, again before placing them on a long-term occasional teacher placement roster, and finally at the selection stage for permanent teaching positions. However, the MoU *does* ensure that the process used to hire teachers is fully transparent and fair for everyone.
- 8.05** OECTA anticipates that you will be asked to amend the proposed bill such that these two provisions of the MoU negotiated would no longer be enshrined in the

legislation. We respectfully request that you do not act on those requests. This will simply maintain a biased and unfair status quo in our schools.

8.06 We know that many qualified occasional teachers are successfully completing their occasional teaching assignments while they also take additional qualification courses to provide them with greater expertise in the classroom. Yet, they often remain on occasional teaching lists while others, who have less experience and may not even hold the required qualifications, are hired ahead of them because they have a personal connection to senior board personnel.

8.07 "Hopefully the MoU will make things better," says a teacher who asked to remain anonymous for fear of even fewer job offers. "I've been a qualified teacher for seven years, I have taken several Additional Qualification (AQ) courses and I know that I've been passed over for jobs by teachers with less experience and qualifications. It's common knowledge among teachers here that the board hires in this manner."

8.08 It is time to bring openness, transparency and fairness to school board hiring practices that is present in many other areas of the public sector.

9. CONCLUSION

9.01 By signing the MoU, OECTA demonstrated its willingness to find solutions to mitigate the government's original parameters, for the next two years, which address the needs of our members, students and the province. Yes, unions can be part of the solution. And, yes, supporting our members and supporting students can be synonymous.

9.02 We urge you to consider the amendments we have proposed and to ensure that the terms of the MoU to which OECTA agreed remain as they were when the agreement was signed. Finally the effect of the MoU should remain applicable only to those employee bargaining agents who are signatories to the agreement.

K. Professional Judgment and Effective use of Diagnostic Assessment

Should an existing local collective agreement provision provide a greater benefit to a teacher than the benefit provided by this provision of the MOU, the existing provision shall prevail.

“Teachers’ professional judgments are at the heart of effective assessment, evaluation, and reporting of student achievement.” Growing Success, Assessment, Evaluation, and Reporting in Ontario Schools, First Edition, 2010.

A teacher’s professional judgment is the cornerstone of assessment and evaluation. Diagnostic assessment is used to identify a student’s needs and abilities and the student’s readiness to acquire the knowledge and skills outlined in the curriculum expectations. Information from diagnostic assessments helps teachers determine where individual students are in their acquisition of knowledge and skills so that instruction is personalized and tailored to the appropriate next steps for learning. The ability to choose the appropriate assessment tool(s), as well as the frequency and timing of their administration allows the teacher to gather data that is relevant, sufficient and valid in order to make judgments on student learning during the learning cycle.

The following language shall be incorporated into every collective agreement:

1. The Ministry of Education will release a Policy Program Memorandum (PPM) with respect to the effective use of diagnostic assessments.
2. Boards shall provide a list of pre-approved assessment tools consistent with their Board improvement plan for student achievement and the Ministry PPM.
3. Teachers shall use their professional judgment to determine which assessment and/or evaluation tool(s) from the Board list of preapproved assessment tools is applicable, for which student(s), as well as the frequency and timing of the tool. In order to inform their instruction, teachers must utilize diagnostic assessment during the school year.

L. Hiring Practice

The following language shall be incorporated into every local occasional teacher collective agreement:

Occasional Teachers (OTs) play a critical role in the educational achievement of Ontario's students and Ontario's new teachers are increasingly relying on occasional teaching assignments as their introduction to the teaching profession. The OT role is challenging and builds experience which should be recognized by Boards in the hiring for Long Term Occasional (LTO) and/or permanent positions. It is critical that the process to gain such positions be fair and transparent.

I. Seniority

Seniority as an Occasional Teacher shall commence on the most recent date of hire to the Occasional Teacher Bargaining Unit and shall continue uninterrupted thereafter.

II. The Occasional Teacher Seniority List

(a) The Occasional Teacher Bargaining Unit Seniority List shall provide, in decreasing order of seniority, the names of the Occasional Teachers, the most recent date of hire to the Occasional Teacher Bargaining Unit (seniority date), and experience.

(b) For the purpose of establishing the order of the Occasional Teacher Bargaining Unit Seniority List, where seniority is equal among two (2) or more Occasional Teachers, the tie shall be broken according to the following criteria and in the following order, based on the greater experience:

- (i) Experience accrued as a member of the Occasional Teacher Bargaining Unit, defined as the total number of days worked since the most recent date of hire to the Bargaining Unit (seniority date);
- (ii) Teaching experience as a certified teacher in Ontario;
- (iii) Or failing that, by lot conducted in the presence of the President of the Occasional Teacher bargaining unit or designate.

(c) The Board shall provide the Occasional Teachers' Seniority list, as at September 1st of each school year, to the Bargaining Unit and shall distribute a copy of the list to each teacher worksite by Sept 30th of each school year. The Board shall post the list on the OECTA bulletin board at each work site.

III. The Hiring of Occasional Teachers in Long Term Assignments:

Subject to denominational rights enjoyed by a Separate School Board, the following shall be the process for the hiring of Occasional Teachers into Long Term assignments:

(a) A Long-Term Occasional Teacher Placement Roster shall be generated through the following processes:

- i) Any Occasional Teacher having a minimum of ten (10) working months seniority and having worked a minimum of 20 days in that period from the most recent date of hire, may apply to be interviewed for placement on the Long-Term Occasional Teacher Placement Roster.

- ii) Occasional Teachers who are recommended by the Board following an interview for placement on the Long-Term Occasional Teacher Placement Roster, shall be assigned to the roster.
 - iii) Following the interview, Occasional Teachers not placed on the roster, who make the request, shall be debriefed and recommendations shall be made to help enhance professional growth that may lead to successful placement on the roster in the future.
- (b) The School Board in which the Long-Term Occasional position is needed will hire, according to Regulation 298, one of five roster Occasional Teachers who apply and most closely match the following requirements in the following order:
- i) Supernumerary/Redundant teachers in order of seniority.
 - ii) Recognizing the aim of providing the best possible program and ensuring the safety and well-being of students, the Occasional Teacher on the Long-Term Occasional Teacher Placement Roster who holds the required qualifications for the position, as per the Education Act and Regulations (as recorded on the Ontario College of Teachers Certificate of Qualification), who has the greatest seniority.
- (c) If the Occasional Teacher declines the assignment, the school board shall select from the remaining four teachers on the roster, the qualified Occasional Teacher as per (b) ii) above.
- (d) In the event that no qualified Occasional Teacher on the Long-Term Occasional Teacher Placement Roster accepts the assignment or there is no qualified Occasional Teacher on the roster for the assignment, the Board shall post and fill the Long Term assignment from the Occasional Teacher Bargaining Unit List.
- (e) Hire a new teacher who is not on the Occasional Teacher Bargaining Unit List.

IV. The Hiring of Occasional Teachers to Permanent Teaching Positions:

Subject to denominational rights enjoyed by a Separate School Board, and subject to the provisions hereafter, and subject to Regulation 298, members of the Occasional Teacher Bargaining Unit who are on the Long-Term Occasional Teacher Placement Roster will be hired into permanent teaching positions in the following manner:

- (a) Occasional Teachers who have completed a minimum of one (1) Long-Term assignment that was a minimum of four (4) months in duration, and received a positive evaluation* shall be eligible to apply for any posted permanent teaching positions. All vacancies shall be posted;
- (b) Recognizing the aim of providing the best possible program and ensuring the safety and well-being of students, the five (5) Occasional Teachers on the Long-Term Occasional Teacher Placement Roster, who have applied and who hold the required qualifications

for the position, as per the Education Act and Regulations (as recorded on the Ontario College of Teachers Certificate of Qualification) and are most senior, shall be eligible for a Permanent Teaching position interview.

- (c) The Occasional Teacher who is recommended by the Board following an interview for a Permanent Teaching position placement, shall be awarded the position.
- (d) Following the interview, Occasional Teachers who are not successful and make the request, shall be debriefed and recommendations shall be made to help enhance professional growth that may lead to a successful application in the future.

* the evaluation referred to will be a templated process (greatly simplified from, and not considered equivalent to, a regular TPA) mutually agreed to by the local schools board and the local occasional teacher bargaining unit. Evaluation shall be compulsory for all Occasional Teachers in their first LTO assignment of 4 or more months duration, with any given school board. The parties to this agreement shall develop and implement a standardized occasional teacher evaluation process no later than September 1, 2013.
