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ETFO's Unfair Labour Practice Complaint Against the Government of Ontario

OVERVIEW OF COMPLAINT

On Friday, April 13, 2018, ETFO filed an unfair labour practice complaint with the Ontario Labour Relations Board (OLRB) against Ontario's Liberal government.

ETFO's concerns are based on the Liberal government's conduct during and after the 2014 round of central bargaining. In its complaint, ETFO details how the Liberal government:

- made payouts worth tens of millions of dollars to unions and employee bargaining agencies that did not challenge and, in fact, cooperated in the Liberals' agenda to strip education sector workers' collective agreements during the 2012 round of education sector bargaining under Bill 115;
- engaged in coercion and reprisals, and discriminated against ETFO members because their union successfully challenged the violation of its members' constitutionally protected rights under Bill 115; and
- bargained in bad faith during 2014 education sector negotiations by consistently representing that all four of Ontario's teacher unions would be receiving substantially identical financial settlements for their 2014-2017 collective agreements.

ETFO's complaint alleges that the Liberal government's actions violated five sections (Sections 5, 17, 70, 72, and 76) of Ontario's *Labour Relations Act, 1995* and three sections (Sections 4, 29 and 32) of the *School Boards Collective Bargaining Act, 2014* (also known as Bill 122).

The Liberal government's conduct only recently came to light when it confirmed it would be providing financial payouts to two of four teacher unions in the province (as well as other organizations that negotiate on behalf of education sector employees) totalling tens of millions of dollars, essentially for their non-participation in the Bill 115 *Charter* challenge. ETFO's complaint includes a request for production of all documents related to these recent settlements.

CORRECTIVE ACTION SOUGHT BY ETFO

ETFO is seeking the following corrective action from the OLRB:

- A declaration from the OLRB that the Liberal government violated its obligations under *Labour Relations Act* and Bill 122;
- An order from the OLRB directing the Liberal government to provide compensation to ETFO members that is no less than the collective amount recently provided (or to be provided) to unions and other bargaining agents that were not part of the Bill 115 *Charter* challenge;
- Damages for violating the *Labour Relations Act* and Bill 122; and
- Any other remedy that ETFO may seek or that the OLRB permits.

BACKGROUND INFORMATION

Putting Students First Act, 2012 (Bill 115)

- In **February 2012** the Liberal government met with education sector unions, and described the significant concessions it would be seeking from them during provincial negotiations during the 2012 round of collective bargaining.
- On **July 5, 2012**, the Ontario English Catholic Teachers' Association (OECTA) entered into an agreement (i.e., a Memorandum of Understanding – or “MOU”) with the Liberal government. The OECTA MOU included a number of significant alterations to the terms and conditions of OECTA collective agreements, including a partial freeze on salary grid movement, as well as the elimination of sick leave banks and retirement gratuities.
- A significant concession agreed to by OECTA was a delay on salary grid movement, which meant that grid movement for OECTA members would occur on the 97th day of the school year rather than on the first day of the school year. The delay in salary grid movement was to occur over two school years – 2012-2013 and 2013-2014.
- On **August 9, 2012**, a second teacher union, L'Association des Enseignants et des Enseignants Franco-Ontariens (AEFO), entered into an agreement with the Liberal government. Like the OECTA MOU, the AEFO MOU included provisions that delayed salary grid movement to the 97th day for AEFO members.
- Over the **summer of 2012** ETFO refused to participate in negotiations under the conditions and limitations set by the Liberal government.
- On **September 11, 2012**, the Liberal government introduced (and subsequently enacted) the *Putting Students First Act, 2012* – also known as Bill 115. Bill 115 set out the terms under which education sector collective agreements were to be negotiated or, if negotiations were not achieved, imposed on education sector workers for the period of September 1, 2012 to August 31, 2014.
- The terms of Bill 115 required all education sector collective agreements negotiated after August 31, 2012, to be “substantively identical” to the terms in the OECTA MOU. ETFO would not agree to the significant changes to collective agreements included in Bill 115.

- On **January 2, 2013**, the Liberal government imposed collective agreements on all ETFO locals. The collective agreements included a partial freeze on salary grid movement, as well as the elimination of sick leave banks and retirement gratuities. The Liberal government immediately repealed Bill 115 after imposing those collective agreements.

The 2014 Round of Collective Bargaining and Negotiations on Grid Movement

- On **March 27, 2014**, ETFO and other education sector unions were advised by the Liberal government that salary grid movement delay imposed under Bill 115 would continue, despite the bill having been rescinded on January 2, 2013. Unions were advised that grid delay would remain in place beyond August 31, 2014 until new collective agreements were negotiated.
- On **April 8, 2014**, the Liberal government passed the *School Boards Collective Bargaining Act*, also referred to as Bill 122. Bill 122 established a new, two-tier (i.e., central and local) bargaining process for negotiating collective agreements in the education sector, and it formalized the role of the Government in that process.
- On **September 1, 2014**, ETFO began the 2014 round of collective bargaining with the objective of removing the delay in salary grid movement as of September 1, 2014.
- From the outset of the 2014 round of bargaining, the government and the Ontario Public School Boards' Association emphasized to ETFO negotiators that the financial provisions to be paid to all of Ontario's teacher unions would be substantially identical.
- In the **fall of 2014** every ETFO local filed grievances disputing that the restriction on salary grid movement for 97 days could be applied outside the two-year period of the collective agreement into the 2014-2015 school year.
- In **May 2015** a local grievance filed by AEFO about the issue of grid movement delay during the 2014-2015 school year was dismissed by Arbitrator Carolyn Rowan.
- On **August 25, 2015**, OECTA reached a central agreement with the Ontario Catholic School Trustees' Association that included a provision regarding salary grid movement. The provision appears to be an agreement that the delay in salary grid movement would end after September 1, 2015.
- **Between August and November 2015** OSSTF, AEFO and ETFO reached central agreements that included substantially identical financial provisions to the agreement reached between the Liberal government and OECTA.
- In **November 2015** ETFO entered into a tentative agreement with the government and OPSBA. ETFO agreed in good faith that it would settle its grievances regarding 2014-2015 grid movement delay on the understanding that this would be the basis for restoring grid movement as of September 1, 2015 for all four of Ontario's teacher unions (i.e., ETFO, OSSTF, AEFO, OECTA). ETFO's

settlement also included language confirming that the contents of the settlement were without prejudice to ETFO's *Charter* challenge.

The *Charter* Challenge and Issue of Remedy for ETFO Members

- In **October 2012** ETFO along with OSSTF, CUPE, OPSEU and Unifor began court proceedings against the Liberal government on the basis that Bill 115 violated the Canada's *Charter of Rights and Freedoms* in that it stripped the education sector of its right to bargain collectively during the 2012 round of negotiations.
- In **December 2015** ETFO and the four other unions presented their *Charter* case at the Ontario Superior Court of Justice before Justice Thomas Lederer.
- On **April 20, 2016**, Justice Lederer released his decision, which was in the unions' favour. The decision confirmed that Bill 115 was "fundamentally flawed" and infringed on ETFO's right to meaningful collective bargaining. Justice Lederer referred the issue of a remedy back to ETFO and the Liberal government to attempt to resolve.
- Remedy discussions between ETFO and the Liberal government took place on many occasions since September 2016. ETFO representatives reiterated to the government what a fair Bill 115 remedy needed to include. The government continued to offer inferior settlements and repeatedly told ETFO that it had no more money available to compensate ETFO members for the significant losses they incurred under Bill 115.
- On **March 8, 2018**, ETFO was informed that the Liberal government had agreed to pay an unspecified amount of money to OECTA (later reported to be \$31 million). ETFO subsequently learned that the government had been in similar discussions with AEFO and was about to reach agreements for significant financial payouts with those unions.
- On **March 10, 2018**, ETFO advised its members that it had learned the Liberal government was involved in secret talks with unions and other groups, and that it had negotiated significant financial payouts for them connected to Bill 115.
- In **March and April 2018** ETFO attempted to obtain more information about the nature of payments to OECTA but clear information was not forthcoming from either the government or OECTA. OECTA claimed that the Liberal government's payment was related to a local arbitration award, while the government advised that the money was payment to both OECTA and AEFO (and perhaps others) in exchange for those unions agreeing that they would not pursue Bill 115 *Charter* challenges.