Feigned Outrage and Tired Old Tricks...

The College Employer Council and 2021 Contract Negotiations

By Kevin MacKay

Pearl-Clutching at the CEC

You've got to hand it to them - the College Employer Council (CEC), representing management at all 24 Ontario Colleges, sure have a flair for the dramatic.

In late September the CEC were invited to participate in mediation by the CAAT-A faculty bargaining team. Contract negotiations begun in July of 2021 had stalled, and the faculty team was trying to get them started again. One month later, the mediation process was canceled by the mediator, Brian Keller. Keller then released a report that was highly critical of the CAAT-A team. Not ones to let a good public relations crisis go to waste, the CEC then immediately called for conciliation (the next step in escalating the bargaining process), while simultaneously filing an unfair labour practice complaint with the Ministry of Labour.

The November 1st CEC press release about the end of mediation was full of shocked indignation. Throughout bargaining the CEC apparently "tried to engage the CAAT-A team in discussion to better understand the needs of its members so that an agreement could be quickly reached in the best interests of students, employees, and the greater College community." Meanwhile, the Keller report was quoted extensively, with particular emphasis on a highly inflammatory accusation – "The CAAT-A team has not engaged in meaningful bargaining with a view to concluding a collective agreement". The long-suffering CEC, ever the reasonable, conciliatory partner in negotiations, stymied by an intransigent, "unrealistic" CAAT-A team, thus had no choice but to "have requested that the Ontario Labour Board find that the CAAT-A team is not bargaining in good faith."

It was a shocking development in the process of negotiating a new Collective Agreement for Ontario College faculty. A compelling narrative, for sure… except for one small problem – **it also happens to be complete B.S.**

So What Actually Happened?

At this point I want to be clear that I'm not a member of the faculty bargaining team, am not in regular contact with the team, and have purposely not discussed this article with them. As a college professor and member of the Bargaining Advisory Committee, I have participated in infrequent consultations between the team and the 24 union locals (4 since bargaining began). However, I'm not at all privy to the team's discussions about strategy or communications, nor do I have any first-hand knowledge of what has transpired at the bargaining table so far. What I *do* have is experience as a member of the 2017 CAAT-A bargaining team, and therefore I've seen the CEC negotiators in action. I've also written two reports on the Ontario College System, and am quite familiar with the history of collective bargaining in the sector. Most importantly though, I'm a social science professor who teaches media studies. It's my job to teach my students to be critical of the messages they receive in the media and to understand how to spot bias and manipulation.

With all of that said, I think it is important to unpack the events of the past week – the mediator's report, and the CEC's call for conciliation and filing of an unfair labour practice complaint. Is it true that the college faculty bargaining team has been unrealistic, intransigent, and operating in bad faith? Bad faith is a serious accusation, implying an intentional act of dishonesty. Serious accusations require serious evidence, so lets look at the facts of the matter, starting with what has transpired in bargaining so far. In what follows, I'll emphasize points that are important to keep in mind when evaluating inflamatory statements that the CEC and mediator Keller have made.

The Bargaining Process

1. In November of 2020 the CAAT-A division of OPSEU, representing faculty at all 24 Ontario community colleges, met provincially to elect the team that would negotiate a new collective agreement with the College Employer Council (CEC). The current agreement was set to expire on September 30, 2021.

2. In early 2021, OPSEU union locals at all 24 Ontario community colleges held demand-setting meetings. These meetings are mandated by the OPSEU constitution, and allow all members to democratically participate in developing faculty priorities at the bargaining table. With 24 separate union locals submitting demands that the bargaining team is legally required to consider, **each CAAT-A team, from the very beginning of the College System until the present, has started out with hundreds of demands.**

3. In April 2021, the CAAT-A division had its provincial demand-setting meeting. At this meeting the hundreds of local demands were ranked, creating a list of 17 provincial demands. **Months before bargaining even began, the CAAT-A team had thus already drastically prioritized and condensed its demands.**

4. In June of 2021, the CAAT-A bargaining team issued a notice to bargain to the CEC, as required under the Colleges Collective Bargaining Act (CCBA), the legislation that governs the contract negotiation process. The CAAT-A team proposed 35 bargaining dates between July and September, with the CEC team agreeing to 17 dates. **Bargaining commenced in July of 2021, with both sides meeting 12 times between July 7 and September 17.**

5. On September 17, after a frustrating lack of progress in negotiations, the CAAT-A team invited the CEC to participate in a process of pre-conciliation mediation. This process would see both sides agree to meet with a mediator in an attempt to resolve outstanding issues and achieve a negotiated settlement. **Asking for mediation before conciliation is an uncommon move, and suggests that the CAAT-A team was committed to non-confrontation and non-escalation for as long as possible.**

6. On September 27, Brian Keller was selected as mediator and a media blackout was put in place during the mediation process. **The blackout was strictly observed by the CAAT-A team for the entirety of the mediation.**

7. On October 28, Keller ended the mediation process and produced his report, blaming the breakdown in bargaining entirely on the CAAT-A team. **At this point the CAAT-A team contacted the CEC team and asked to meet on Monday, November 1, and for there to be no escalation until the teams met. In its communication about the end of mediation, the CAAT-A team sent out its final offer of settlement.**

8. On November 1st, the CEC team issued a press release citing the Keller report and accusing the CAAT-A team of "not bargaining in good faith". They simultaneously called for conciliation, thus escalating the bargaining process, and filed their "bad faith bargaining" allegation against the CAAT-A team.

The above timeline may seem overly detailed, but this is important for purposes of clarity. The CEC and mediator are accusing the CAAT-A team of not bargaining seriously or in good faith - but what do the actual facts show? They show that the CAAT-A team has done exactly what every other CAAT-A team has done for the past 21 rounds of negotiations – followed its lawful obligations to the union membership and adhered strictly to the provisions of the Colleges Collective Bargaining Act. **There has been no evidence of failure to bargain, dishonesty, or obstruction on behalf of the CAAT-A team.** If anything, this particular faculty team has proven to be exceptionally conciliatory – offering the unusual step of voluntary mediation before the formal conciliation process. In the end, what the facts show is basic, boring old collective bargaining – nothing more.

What Was in the Union's Last Offer?

The CEC and mediator suggest that the CAAT-A team's demands are "aspirational" and "unrealistic" and that they are the single biggest obstacle to a negotiated agreement. They are apparently so shockingly outre, that the CEC even suggest they are "*unlawful*" (gasp!). Given these serious accusations, we should look at exactly what is in the last offer tabled by the CAAT-A team before mediation ended. It's important to note that this

does not mean this was, or is, the CAAT-A team's *final* offer. At this point we are still relatively early in the bargaining process, and in all contract negotiations much movement happens right near the end. **Upon reading the Union's final offer of settlement, I count 9 outstanding demands.** Six of these are of no monetary consequence to the Colleges, and two are close to being agreed by both parties.

Proposals with monetary implications:

- Language to assign additional time to teaching faculty for online education
- Language to ensure that contract faculty are paid for all work
- Language to add benefits coverage for dental implants

Proposals with non, or negligible monetary implications:

- Language to prevent the contracting out of faculty work
- Language to protect faculty intellectual property
- Language to ensure that coordinator work is accounted for
- Language on promoting EDI
- Language on promoting Indigenous knowledge and supporting Indigenous faculty
- Language to update the class definition of counselors to reflect the actual work they do

Given the actual, published demands of the CAAT-A team, I am hard-pressed to see what is "aspirational", "unrealistic", or "unlawful" about them. For starters, six of the remaining demands do not even cost the Colleges. Language on promoting equity, inclusion, and diversity, and language on supporting Indigenous knowledge and Indigenous faculty members is long-overdue and also basically accepted by both parties. No-one seriously thinks that agreement on these historic items cannot be reached, and thus they should not even be considered outstanding. The demand on coordinator work simply puts in writing a practice that is common at all 24 Colleges, and thus represents no additional cost or entitlements. The demand on updating the counselor class definition is also zero-cost, and again simply reflects the actual work that counselors are already doing at Ontario Colleges.

Language giving faculty IP ownership of the materials they create as academics is a zero-cost demand that would simply bring College professors up to the same IP standards as faculty in all Canadian universities and many other community colleges. The Canadian Association of University Teachers (CAUT) weighed in publicly on the reasonableness of the faculty team's IP demand. Finally, language to prevent the contracting-out of work done by college faculty exacts zero additional cost to the Colleges. The only thing it does do is prevent the Colleges from cutting costs and beefing up their yearly budget surplusses by outsourcing faculty work. It is hard to see how anyone could fail to understand why faculty need to protect themselves from such a threat.

As for the monetary issues, it is critical to remember that before negotiations even began the faculty team were hit with a serious concession – provincial Bill 124 – that limits wage and benefits increases for public sector workers to 1% per year for three years. Bill 124 is a blatant violation of charter rights to collective bargaining, and has been challenged in court by over 40 unions. With current inflation rates, faculty are thus facing a three year pay-cut, and colleges are saving money they would otherwise have paid out in higher compensation.

Instead of any meaningful wage increase, faculty are seeking to increase the amount of workload time associated with online teaching, and to ensure that contract faculty are actually paid for the work they do. The first item reflects the dire need to update workload formulas that are over thirty years old – from a time when faculty were not expected to be web developers, online content creators, and technical trouble-shooters for multiple online platforms. The second item reflects changes that were already mandated by the previous provincial government under Bill 148. Is it bad faith to try to re-instate a provincial law around part-time pay equity that the present Conservative government overturned? To suggest so is ludicrous, and it is equally ludicrous to pretend that faculty's other monetary demand – including

dental implants in the benefits package - could lead to an impasse in negotiations.

When is a Mediator Not a Mediator?

If the remaining CAAT-A demands are both modest and largely non-monetary, then what about the damning mediator's report? Mediators are supposed to be neutral, right? So am I missing something here? To address these questions it once more helps to be clear about what has been said and what the actual facts are. As there is so much at issue in Keller's report, it makes sense to go through his statements point-by-point:

Keller says:
The teams have merely "met", but not yet "bargained." He suggests this is because the CAAT-A team has had no interest in bargaining.

The facts:
We have to remember that **the CEC tried to not bargain at all this round**, instead pressuring OPSEU to accept a two-year "rolled-over" collective agreement. In doing this the CEC bypassed the CAAT-A team entirely and dealt directly with the OPSEU President – a serious breach of accepted bargaining protocol and an insult to the elected faculty team. Despite this early provocation, the CAAT-A team initiated bargaining and suggested 35 meeting dates. The CEC team only agreed to 17 dates. The teams then met 12 times, during which the CAAT-A team presented all of its demands, along with rationale and supporting research.

When bargaining stalled due to what the CAAT-A team perceived as stonewalling by the CEC (i.e. a complete refusal to consider or talk about any of the faculty demands), the faculty negotiators then invited a process of voluntary mediation instead of escalating the process and calling for conciliation. When mediation finished, the CAAT-A team immediately wanted to meet again and not escalate the process. Instead, **the CEC opted for a "gotcha" press release, a retreat from the negotiating table, and a baseless accusation of bad faith bargaining.**

Keller says:
The CAAT-A team had 350 proposals on the table at the start of mediation. The CEC team had 14 proposals.

The facts:
The CAAT-A team had focused its demands to 17 before bargaining even started. **Suggesting that the CAAT-A team was trying to advocate for 350 demands at any point in the negotiating process is flat-out false.**

Keller says:
After meeting with the mediator, and condensing the demands, the CAAT-A team came to the table with "5 proposals that really ended up being 19 proposals". These proposals were still unreasonable and modified "major elements of the collective agreement".

The facts:
I can't for the life of me decide how Keller does math, nor can anyone else I have discussed his statements with. Regardless, what is clear from reading the union's last offer in mediation is that the CAAT-A team had 9 demands remaining. Not 5. Not 19. As I have already shown, 6 of these demands are non-monetary. One monetary demand is about a minor addition to benefits. The two remaining demands seek to modify how much time is allocated to faculty for online teaching, and to ensure that contract faculty are actually paid for the work they do.

It is unclear in what universe the remaining CAAT-A demands can be considered "completely unrealistic". Is Keller denying the unprecedented changes in educational technology that have occurred since the current faculty workload formulas were devised? There was no Internet then, no online education, no email. Is it "unrealistic" that the work demands of these literally world-changing technologies be accounted for? Is it "bad faith" for faculty to want the time to respond to student emails, record quality online videos, develop accessible digital materials, and help students trouble-shoot online learning platforms? In his comments Keller reflects a shocking level of ignorance concerning today's educational

environment.

Similarly, is it "unrealistic" or "bad faith" for faculty to ask that partial load professors have the time they spend evaluating student work accounted for? It has long been acknowledged that the current collective agreement has major gaps concerning fair and equitable treatment of partial load faculty. Full time faculty get more time for evaluation based on the number of students they have in their classes – a critical mechanism when one is marking time-consuming essays and complex projects. Partial load get no such consideration, so when virtual classrooms allow for ballooning student numbers, contract faculty find themselves swamped with workloads that far outpace their wages. Is Keller advocating for the continued exploitation of contract academic staff? Has he somehow failed to encounter any of the international attention that's been drawn to this issue in recent years?

What is also highly suspicious in Keller's report is that he does not mention **even one** of the concessions that the CEC team has in their proposals. The most serious concession is the CEC demand that the union be unable to use staffing data from March of 2020 to April of 2022 when filing Article 2 grievances. Article 2 is the only means through which the faculty union can force management to hire full time over part time positions. **The CEC has made no secret of the fact that it wants to get rid of Article 2, and it has used whatever tricks it can to do so.** One of the main reasons why faculty went on strike in 2017 was to regain Article 2, which we had lost due to a moratorium in the previous bargaining round.

The CEC has made it quite clear that it desires to run Ontario community colleges on the backs of an army of precarious, part-time academic staff. This is why the CEC resists any provisions to increase the number of full time faculty. This is also why they covet complete control over faculty IP – so that any and all course materials created can be taken from their maker and given, often at the last second, to precarious faculty members. Alternatively, they can be sold to the new private college campuses springing up province-wide – a pet project of Doug Ford's Conservative government.

Keller says:
The CAAT-A team's proposed changes to full time and partial load workload violate Bill 124.

The facts:
Keller's statement here is a wholly unsubstantiated and activist interpretation of Bill 124. It is in no way certain that the Bill would prevent changes to the articles in question, and in fact they appear on the face to be exempt from legislation that specifically targets compensation. This would be for an arbitrator to decide, and there would be complex, and substantial, legal arguments to support the CAAT-A interpretation.

Keller says:
Keller is worth quoting verbatim here, as it shows the depth of inexperience he brought to this particular mediation:

"With respect to the Intellectual Property (IP) proposals, I note that the proposals would result in unfettered and complete ownership of IP in college-directed work product to the faculty member. This is, in my opinion, a completely unrealizable goal. If there is an example elsewhere, I am not aware of it. It is a complete reversal from the current provision and may well be at odds with the Copyright Act."

The facts:
This one is a doozy folks, and CAUT Executive Director David Robinson sums it up best: "the CAAT-A bargaining team's proposals on intellectual property would extend to Ontario's college faculty **what is enjoyed by their counterparts in other provinces**.(my emphasis)" Robinson also notes that "while employers in most settings own the intellectual property produced by their employees, common law and tradition have typically granted academic staff first ownership of copyright over the works they create." In IP law this is known as the "academic exception". It's a common thing, has by all appearances not led to the collapse of the university system so far, and

is certainly not worthy of the kind of "hair on fire" reaction that Keller spouts in his report.

Keller says:
The CAAT-A language against contracting out "is in no way a contracting out provision", and would lead to some support staff work being claimed by the Academic Bargaining Unit.

The facts:
This one is almost surreal and makes me think that Keller does not actually understand what contracting out is, nor of what a provision to prevent it would look like. Rest assured folks, the language presented by the CAAT-A team is 100% a provision against contracting out, serving as (in Keller's own words) "a reservation to the bargaining unit of all work that could potentially fall within the class definitions in the collective agreement." This certainly would (again, Keller's own words) "incorporate into this bargaining unit work currently performed in other bargaining units". If Keller had any kind of grounding in the Ontario College System, or had done a minimum of research (or listening!) during the mediation process, he would know that the past decade has seen a large amount of academic work unbundled (broken down into smaller and smaller job pieces) and contracted out to the support staff bargaining unit. This has been a management cost-cutting strategy every bit as pernicious as the reliance on precarious work.

The contracting out of faculty work has been particularly devastating for non-teaching faculty. While today 16 Ontario community colleges are offering 146 different bachelors and honours degrees, the number of librarians continues to plummet. 11 colleges no longer have a single librarian, despite the greater needs for librarian support that come with degree granting and applied research projects. Counselors face a similar situation, with the number of full-time counselling faculty dropping 2.8% from 2012 to 2018, while student demand for accommodations and student mental health needs increased over the same time period. The contracting out of academic work is a grave concern to college faculty – one that is supported by data. How is it "bad faith" for the CAAT-A bargaining team to take this demand forward?

At the end of his report, Keller notes that the CAAT-A proposals on EDI and Indigenous have merit and that the two parties are not far apart on them – agreeing that these are not barriers to settlement. It is the one small part of the report where assertion flirts with reality, as opposed to the rest of the document, which instead reads like an application for a partner position at Hicks Morley. It's a queasy broth of blatant factual misrepresentations, tired CEC talking points, and a scolding tone that is as clueless as it is embarassing. In truth, it's not worth the paper it was written on.

That's right, I said it and it bears repeating…

The Keller Report is not worth the paper it is written on.

So What is Going on Here and What Should Faculty Do About It?

It's hard to understand how an experienced mediator could have produced something like the Keller report. However, what is crystal clear is that it is of no merit or substance as a tool for mediation or as the product of a supposedly "neutral" process. In addition, it is hard to understand what led the CEC to concoct their unfair labour practice complaint against the CAAT-A team. What *is* clear though, is that the allegation is complete nonsense – with no basis in reality and, one certainly hopes, no chance of sticking. With these two points clarified, the narrative I opened with – a poor, ever-reasonable, conciliatory CEC harried by an intransigent faculty team – is turned completely on its head. Instead what we are left with is the same old misinformation, manipulation, and dirty tricks the CEC trundles out each round of negotiations. It is an old and effective playbook.

The truth is that the CEC knows exactly what it is doing with this recent bit of outrage theatre. They know that sewing fear and doubt among college faculty is their best bet. They know that trying to

turn the membership against the bargaining team ensures their victory. They know that the professors, instructors, counselors and librarians that keep our colleges running are tired and stressed out from the horrible pandemic we are living through. They are hoping that these pressures and their tactics will make us panic and make us weak.

In truth, the CEC are winning the long game. Their corporate lawyers have succeeded in neutralizing large swaths of the collective agreement through arbitrations and through the colonization of supposedly "informal" processes like workload complaints. They have twisted provisions around staffing flexibility agreed to in good faith by previous faculty teams. Sessional positions were originally intended for new program start-ups, with the expectation that a professor would be hired full time after one year (once the new program's viability was established). Now sessional appointments are used in a cynical game in which each semester contract faculty are shuffled from classification to classification, from inside to outside of the bargaining unit… all to avoid hiring the full time positions our system needs.

Desperate to keep their stockpile of low-paid, precarious, unprotected workers, the CEC has used every legal dirty trick possible to prevent the unionization of part time and sessional faculty. The cards were signed and votes cast years ago, yet the CEC continues to drag the process out and to deny these contract faculty their charter right to unionize. This cut-throat strategy shows concern for neither faculty, students, parents, the industries our graduates enter, or the province at large. But keeping all of those exploited faculty sure does save the Colleges a chunk of cash…

And about that cash! Fresh from banking close to $1.5 billion in budget surplusses over the past 10 years, college managers don't care that the quality of education is languishing under a "just in time", precarious staffing model. Managers also don't care that there is a crisis of coordination across the system, with many of the most committed faculty members, taking on extra coordinating work and responsibility with little reward, burning out and dropping out in record numbers. College managers also don't care that many academic areas lack enough full time faculty to act as coordinators for the programs and courses offered, and that this once more hurts the student experience. Why should the CEC care? After all, the ranks of college managers, and their compensation, continue to swell unabated.

This is all the long-game, and we are kidding ourselves to think that the CEC team doesn't have it in mind every time they sit down to negotiate. If they sense weakness in our membership and our team, then they go for the jugular - serious concessions. If they are unsure, they try to get us to pass on the entire process – to "roll over" the contract and not bother bargaining at all. They know in this scenario that they win also, that without necessary changes to the contract, current trends mean there will be steadily less of us and more of them ... less control over our work, and more work to do. It is only if we show strength – if we remain calm and stand behind our demands – that the CEC strategies unravel and that actual improvements can be won.

And so, I am sincerely hoping that we can do what an earlier generation of faculty did to get us here today – stand strong behind reasonable demands that safeguard the quality of education and that seek fairness and equity for our most vulnerable members. If we do this, then the CEC will have badly over-played their hand, and their feigned outrage and bad faith accusation will be revealed for the moustache-twirling, cartoon villany that it really is. If we do this, then we will be ready when the CEC plays their remaining cards - a forced offer vote… possibly imposed terms and conditions. Standing strong in these scenarios means rejecting a forced offer by an overwhelming margin - exactly like we did in 2017. It may also mean giving the team a strong strike vote, should they be forced to ask us for it.

It is ultimately impossible to predict what the next few weeks hold. What is certain is that no-one wants a strike, and that includes our faculty bargaining team. Having said that, it is equally true that our team is committed to getting us the best possible contract, and that we have to stand behind them and behind our demands. If we do so,

we win. Students win. Precarious workers win. Racialized and Indigenous faculty win. It's really that simple.

For more information, please attend the province-wide town-hall meeting being organized by the faculty bargaining team on Monday, November 8.

For additional questions and comments about the bargaining process, please contact your local steward or executive.

In the meantime, please take a deep breath, trust in the support of your friends, family, colleagues, and community, and trust in the rightness of our cause. We'll be OK, and we'll get through this together.

In solidarity,

Kevin MacKay
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Vice President, OPSEU Local 240

PROVINCIAL BARGAINING TOWN HALL MEETING

MONDAY, NOVEMBER 8, 6:30PM-8:30PM ON ZOOM

All Ontario College Faculty are invited to attend for a presentation and Q&A with the CAAT-A bargaining team. To register, click the link below...

REGISTER HERE!