

## **COCAL Proposal to End Contingency: Contingent Faculty Bill of Rights**

This document establishes an international case to eliminate the widespread practice of contingency in the employment of non-tenured post-secondary faculty and contingent employment generally. It is based on the belief that employment is fundamental to human dignity.

This document proposes a set of minimal workplace conditions to replace precarious contingent employment with stable, regular employment; it does not propose tenure for the non-tenured.

### **Introduction**

When patterns of injustice or unfairness become established in an economic or social system, individuals who become acculturated into that system oftentimes come to accept those patterns as norms and rarely question them. Cognitive dissonance may rationalize those familiar and accepted patterns, making them seem acceptable, with reasoning along these lines: “*Group X members are given better jobs, better pay and better working conditions than Group Y members even when both perform the same work. It must be because Group X members are superior to Group Y members.*”

Not all claims of workplace unfairness may be serious, but those that rise to the level of violations of such international standards as the Universal Declaration of Human Rights (UDHR) or the International Covenant on Economic, Social and Cultural Rights (ICESCR) surely are—whether they occur in impoverished countries or in such developed regions as North America.

At the heart of post-secondary education in North America is the two-tier faculty labor system, with tenured faculty occupying the upper tier and contingent faculty the lower. Contingent faculty are also known as non-tenured faculty, adjuncts, sessionals, or by several dozen other designations (Berry, 2005, p. xi).

The working conditions of the two tiers are certainly not equal—even though both must satisfy the same credential requirements, the tuition charged for the classes of both is the same, and the grades and credits both award have the same value. The stark inequality is manifest with the tenured professors’ significantly superior levels of job security, compensation, and opportunities for advancement. But the most crucial and arresting feature is the lack of a normal, natural transition between tiers, which has often given rise to comparisons to a caste system (Hoeller as cited in Finder, 2007; Eisenberg, 2012; Wangerin, 2016).

In addition to working conditions, the relationship between the two faculty tiers is beset by status and power differences. Tenured faculty are instrumental in the hiring of contingent faculty, in some cases serving as their de facto supervisors and managers. Virtually always tenured faculty are involved in performance evaluations of contingents, while the opposite is unheard of. The power and status differential along with the superior working conditions between the two tiers may grant “a false sense of superiority” to the former and “a false sense of inferiority” to the

latter, to paraphrase a characterization offered by Martin Luther King (1963) of the “segregator” and “segregated.”

## **Background**

Since the 1970’s, in post-secondary education in the United States, instead of hiring professional educators as permanent employees, higher education institutions began hiring faculty on an as-needed, “contingent” basis, as temporary, probationary employees on fixed-term contracts, most often on part-time assignments. Whether a response to an instructional staff shortage in the 1960’s or as a calculated ploy to reduce labor expenses, the practice has become standard across higher education and has grown into monstrous proportions.

In the United States at present, contingents make up 70 percent of the post-secondary instructional workforce (American Association of University Professors). But it is not the prevalence of contingent faculty but the caste-like substandard professional treatment they customarily receive that violates UDHR’s Article 23 and ICESCR’s Article 7, as elaborated below. However, the prevalence of this employment practice is an aspect of the problem: the inferior working conditions of contingent faculty have come to be accepted as the norm across higher education in the eyes of the policy makers, administrators, full-time faculty, most contingent faculty themselves and the unions that represent them.

Not only does the prevalence of contingent faculty employment cause the practice to seem normal and acceptable, aspects might appear benign to the casual observer: the compensation might seem reasonable especially if considered as part-time income or on a per-class basis institutions might be seen as enriched by a more diverse instructional staff. This benign perspective, however, ignores the sweatshop conditions and caste-like treatment, such as the absence of equal pay for equal work, workload restrictions that prevent contingent faculty from working full-time, the denial of seniority and professional advancement opportunities, all of which preclude “just and favorable conditions of work,” as called for by both the UDHR, Article 23 (i) and ICESCR Article 7.

Confounding the contingent faculty employment problem among is the fact in the United States, Canada, and Mexico, contingent faculty are commonly unionized. But in the United States over the last 45 years, unions have shown neither the capability nor the will to restore professional working conditions to contingent faculty; ironically, the unions involved are the largest, most resourced, and have the deepest workforce penetration of any in the United States. Rather than viewing contingency as an injustice that must be remedied, U.S. faculty unions seem to regard it as a norm.

Ostensibly, the national faculty unions in the United States offer policy statements that decry the low pay and non-professional working conditions of contingents, but none have a strategic plan with a vision designed to solve the problem by bring about equality for contingent faculty, much less a standing history of either bargained or legislative successes in rendering contingent faculty a “decent living for themselves and their families,” to use the language of ICESCR Article 7 (a) (ii)). The most comprehensive, resourced attempt at a national legislative initiative by a U.S. faculty union, announced at COCAL VI in Vancouver in 2006, was the American Federation of

Teachers' Faculty And College Excellence (FACE), which aimed to “create more equitable compensation and job security for contingent faculty and a higher percentage of full-time, tenure-track faculty teaching at our colleges and universities” (FACE, 2009, p. 7). As a national initiative, FACE was a legislative failure, though in Washington state two-year colleges, it resulted in a budget measure that created a few score of new tenure-line jobs. While those individuals fortunate enough to win those new jobs benefited from joining the ranks of the state's 3,500 tenured instructors, the measure left the working conditions of the 7,000 contingents unchanged.

In the United States as of 2016, U.S. faculty unions may say they offer measures to minimize contingency but do not aggressively seek to replace it with regularized employment or otherwise establish equal working conditions for contingents or bridges to an improved professional status. Some U.S. unions defy egalitarian unionism by proposing legislation to benefit tenured faculty but exclude contingents.

If Rip Van Winkle were a university student in the 1960's in the United States, he would be mystified to awaken in 2016 to find that not only are most instructors no longer tenured professors but temporary, hourly employees, and that faculty unions and associations tend to accept contingency an inevitable part of reality in much the same way that slavery was considered a part of the natural social order in the antebellum United States. This acceptance and complacency has allowed contingency to violate basic human rights.

### **Violation of Human Rights**

The Universal Declaration of Human Rights (UDHR) Article 23 (**Figure 1**) and of the International Covenant on Economic, Social and Cultural Rights (ICESCR) Article 7 (Figure 2) both establish workplace standards.

Article 23.

- (1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
- (2) Everyone, without any discrimination, has the right to equal pay for equal work.
- (3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
- (4) Everyone has the right to form and to join trade unions for the protection of his interests.

Figure 1. Universal Declaration of Human Rights (UDHR), Article 23

<p>Article 7</p> <p>The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:</p> <p>(a) Remuneration which provides all workers, as a minimum, with:</p> <p>(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;</p> <p>(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;</p> <p>(b) Safe and healthy working conditions;</p> <p>(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;</p> <p>(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.</p>
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Figure 2. International Covenant on Economic, Social and Cultural Rights (ICESCR), Article 7

Both documents assert that workers have the right to “**just and favourable conditions of work.**” The working conditions of contingent faculty generally are neither just nor favorable.

A fundamental element condition of work is job security. Unlike tenured faculty, who have extraordinary job security with the assurance that their jobs will continue indefinitely, contingent faculty jobs expire at the end of every term. This stark difference and clear favoritism for tenured faculty is, at once, unfavorable and unfair for contingent faculty, especially, as previously noted, both tenured and contingent faculty must satisfy the same credentials, teach the same students, and award the same grades and credits. Whereas the job protection that tenured faculty receive enables them to think of themselves as professionals and jobs as their careers, the precarious nature of contingent employment precludes contingent faculty from considering their jobs as a career.

Contingency further violates UDHR 23(1) that proclaims that employees are to receive “**protection against unemployment.**” While tenured faculty certainly enjoy such protection, contingent faculty certainly do not, being laid off at the end of every term, even if subsequently rehired most or all of the time, which is no protection against unemployment. Unlike tenured faculty who are assured of their positions and have schedule breaks during their school year, most contingent faculty are “truly unemployed, without income, and without reasonable assurance of re-employment virtually every time they walk out the door after having given their last final exam, and turned in end-of-term grades” (Berry et. al. 2008, p. 18). The established and unchallenged pattern of hiring contingent employees term by term is no protection against unemployment.

Compensation is another primary workplace dimension. UDHR 23 (2) affirms that “**Everyone, without any discrimination, has the right to equal pay for equal work.**” Likewise, ICESCR 7(a)(i) affirms that workers deserve “**Fair wages and equal remuneration for work of equal value without distinction of any kind ... with equal pay for equal work.**” Compensation for contingent faculty employment, however, is in clear violation of these equal pay principles. Commonly contingent instructor compensation is based on a discounted rate of pay, such as 60 percent of that provided to tenured faculty for performing the same work of the same value.

A dimension of contingent faculty employment that denies UDHR 23 (3)'s call for “**just and favorable remuneration ensuring ... an existence worthy of human dignity**” and ICESCR 7(a)(ii)'s call for a “**decent living**” is the practice of hiring contingent faculty for classroom instruction only, excluding compensation for such fundamental aspects of higher education employment as office hours to meet with students, preparation time, participation in institutional or departmental meetings, service on campus committees, and other functions. The limited duties assigned to contingents, sometimes cited as a rationale for discounted rate of compensation, has the effect of tainting contingents as mere paraprofessionals, not bona fide professionals who happen to be non-tenured, and contributes to their marginalization of contingents in denial of “**just and favorable conditions of work.**”

Contributing further to the denial of “**just and favorable remuneration**” for contingent faculty are artificial workload restrictions that cap contingent faculty workload at less than full-time. Such restrictions, in and of themselves, ensure economic hardship for workers whose employment is so restricted.

But when those workload caps are combined with the discounted compensation, the result is an annual income is at or below the poverty line as indexed by local conditions, in violation of the “**just and favourable remuneration**” as called for in UDHR Article 23 (3) and employment that provides a “**decent living for themselves and their families**” as called for in ICESCR Article 7 (a)(ii). Contributing to the exploitative nature of workload caps is their use by employers for the purpose of disqualifying workers from such benefits as health care or unemployment compensation eligibility which require satisfying a minimum workload threshold.

ICESCR 7(c) stipulates that there shall be “**Equal opportunity for everyone to be promoted in his [or her] employment to an appropriate higher level, subject to no considerations other than those of seniority and competence.**” Contingent faculty employment violates this provision as there is no natural pathway whereby members of the lower tier of contingent employment advance to the upper tier of tenure-track nor even the option of any appropriately higher level; instead, the vast majority of contingents remain limited by the caste-like distinction, as most contingent faculty are not acknowledged for their seniority, their length of service, their professional development, and their employment status remains probationary in nature even after a decade or more of service.

### **Contingent Faculty International Bill of Rights**

The following are demands to remedy the human rights violations imposed by the widespread hiring of contingent faculty and the restoration of dignity to the workplace:

- 1. Job Security.** Job security shall be achieved by establishment of a defined probationary period which, when satisfied, confers reasonable protection for the employee that his or her job will continue; layoffs of employees who have satisfied the probationary period shall be subject to due process.

Tenure is one superior form of job security, but reasonable job security can be achieved without tenure by regarding those who complete a probationary period as

regular employees and regarding job security as normal and continuing employment condition, as it is for most public sector employment. While there is justification for tenure as an honor bestowed on deserving faculty, there's no justification for the gross inequities in compensation of the current tenured/contingent castes.

2. **Academic Freedom Protection.** All higher education faculty must have academic freedom protection to properly perform their work as educators from their first class on their first day of employment—those first students of that faculty member deserve it. Academic freedom is a form of job security for the tenured and the contingent.
3. **Right of First Refusal and Right of Accrual.** Part-time employees who have completed the probationary period shall be granted the **right of first refusal**, meaning the chance to accept additional work assignments before new employees are hired. Part-time employees who have completed the probationary period shall further have the **right of accrual**, meaning that they shall have assurances that the employer will offer them assignments at the same percent of full-time or greater until reaching 100 percent of full-time.
4. **Removal of Workload Caps.** Part-time workers shall not be barred from working full-time by artificially imposed workload limits. (Where applicable, as workload caps imposed on part-time workers are loosened, enabling part-time employees to increase their workload to approach full-time, overtime/overloads offered as an elected option to full-time workers shall be increasingly ramped down.)
5. **Equal Pay.** The principle of “equal pay for equal work” shall be honored. All faculty shall be compensated according to a single salary schedule that recognizes length of service and professional development.

If the disparity in tenured and non-tenured compensation rates are so significant that equal pay cannot be implemented in a single budget year, a multi-year phased-in solution shall be permissible.

6. **Seniority.** Seniority shall be accrued by contingent faculty members and used as a factor in workload assignment and job protection.
7. **Protection against Unemployment.** Since the pattern of laying off contingent employees at the end of every term is no protection against unemployment, that practice shall be minimized. When layoffs are necessary, it shall be the moral responsibility of employers to earnestly promote access to unemployment compensation for workers who are unemployed. Employers or their agents who do not make a good-faith effort to promote unemployment benefits to laid off employees or who misrepresent the employment status of employees, whether willfully or through error, to discourage unemployment claims shall be deemed guilty of unethical business practice and shall be answerable to all civil penalties.
8. **Advancement.** Contingent and tenured faculty shall have equal access to

advancement, including pay raises that recognize length of service and professional development, among other opportunities. ICESCR 7 (c) shall be upheld: "Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence."

9. **Unions.** The right to form a union for the mutual protection of workers is affirmed by UDHR 23 (4). But a distinction must be made between the right to join a union and the failure of a union to defend the fiduciary interest of those it represents. A union has the obligation to honor its duty of fair representation, which means calling for equality in working conditions. When a union does not strive to defend equal working conditions for those for whom it represent or favors one class of union member over another class of union member, that union shall be considered complicit in a violation of Human Rights.
10. **Due Process.** Just and fair mechanisms must be established to enable unionized workers to hold their unions to account if they feel they haven't been represented appropriately by those charged with administering the Collective Bargaining Agreement or if they feel there's a conflict of interest between a union official/senior, tenured faculty who is, because of the nature of post-secondary work, often in a sub-administrative role in relation to their contingent colleagues.

### **Funding and the Implementation of the Contingent Faculty Bill of Rights**

A lack of funding is commonly offered to explain the erosion of the higher education workplace, and is the presumed reason why reform is not forthcoming. Providing equal pay for contingent faculty would require increased expenditures: In the case of the community and technical colleges of Washington state, equal pay for the 7,000 contingent faculty would require roughly \$135 million dollars per biennium. As noted in 5 above, it may not be possible or practical to hope that this disparity can be remedied in a single budget cycle.

However, funding is not required to implement the majority of required actions, such as a probationary period for contingent faculty and to extend job protection, academic freedom protection, the right of first refusal, or to remove workload caps. Such administrative measures involves a nominal expenditure to accomplish. For current contingent faculty, after completing a probationary period to establish themselves as capable educators, their employment can be stable and secure; they may not have tenure, but their jobs could be protected as civil servant jobs are protected. Their employment would no longer be contingent.

### **Faculty Unity and the Elimination of the Two-Tier System**

When the elimination of the two-tier faculty labor system is proposed, two contrasting reactions emerge, one being that the working conditions of the lower tier should indeed be improved to match those of the upper tier, as has been accomplished in the Vancouver Model (see Appendix A). The other interpretation is defensive and alarmist, where the "elimination of the two tier system" is taken to mean an elimination of tenure and lowering of the upper tier to match the dismal working conditions of the lower tier, and that the working conditions of contingent

faculty are just fine as they are.

Adoption of the latter interpretation dooms the future of the professoriate. If improvements to working conditions of the lower tier are understood as threatening the status and well-being of the upper tier, the potential for faculty unity is preempted, which may shed light on how and why contingent faculty working conditions have been allowed to degenerate into bona fide Human Rights violations. It is not tenable for tenured faculty and their unions to insist on human rights violations as their formula for progress. Of all workers, faculty and their unions should be personally and professionally committed to the idea of equality and the dignity of employment.

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## **Appendix A. An Alternative to the Two-Tier Faculty Workforce: The Vancouver Model**

Some contingent faculty advocates, demoralized by the lack of progress in achieving meaningful change for contingent faculty, are encouraged by the Vancouver Model, which is the faculty labor system that has been collectively bargained in the Canadian province of British Columbia, particularly Vancouver Community College (VCC) and the Vancouver Community College Faculty Association (VCCFA). The contract has eliminated the two-tier system faculty labor system in favor of an egalitarian treatment of all faculty, key provisions of which are summarized below.

At Vancouver Community College, all faculty, whether full-time or part-time, whether permanent or probationary, are paid according to the same eleven-step salary schedule (Cosco, 2014, p. 206). Part-time instructors who teach at 30 or 60 percent of full-time receive exactly 30 or 60 percent of the full-time salary at the same salary step (Cosco, 2014, p. 200). The Vancouver Model avoids the wage discrimination that is standard in the United States and elsewhere where part-time faculty receive a discounted rate of compensation even though they perform the same work.

Not only is there equal pay, but there is also equal work. At VCC, each teaching area has a workload profile which specifies the time allotment and discrete activities that a full-time instructor is expected to satisfy. For part-time instructors, that workload is pro rated according that profile. That is, part-time instructors are assigned the full range of duties on a pro-rated time basis (Cosco, 2014, p. 206). This is unlike most U.S. institutions that contract contingent faculty to essentially “just teach,” depriving part-time instructors of the full-range of faculty functions. Since VCC/VCCFA contract compensates all faculty according to a single salary scale and does not discriminate in workload assignment, it truly satisfies the principle of “equal pay for equal work” that is part of both the UDHR and ICESCR. Unlike the two-tiered system predominate in the United States with part-time contingent faculty in marginalized status, the VCC/VCCFA system, with all instructors fully integrated into the institution and all instructors performing the full-range of teaching duties, offers true institutional flexibility by accommodating fluctuating enrollment without compromising instructional or program quality.

Perhaps the most remarkable feature of the VCC/VCCFA contract is regularization, whereby after completing two years of teaching without an unsuccessful performance evaluation, a contingent faculty member is automatically converted to regular status (Cosco, 2014, p. 208). Frank Cosco of the Vancouver Community College Faculty Association explains that “A regular instructor is nonprobationary and expected to continue working until retirement” (2014, p. 204). For the institution to lay off a regularized instructor, it “must show just cause and this is subject to very rigorous due process requirements” (Cosco, 2014, p. 205). While regularization is not tenure, it provides job protection that is very much like it, and in this way, the VCC/VCCFA contract has effectively ended contingency.

Job security is also protected by seniority. All VCC faculty accrue seniority from initial hire, and seniority is the primary, though not the sole, factor in workload assignment. Seniority, applied in a reverse order, also serves as the basis for a reduction in force if necessary. The seniority rankings are viewable to all instructors, enabling all instructors to know where they

stand in seniority ranking relative to all instructors in the institution as well as other instructors in their specific teaching area.

The method of seniority accrual warrants mention as it exemplifies the egalitarian ethos of the Vancouver Model:

- Probationary instructors accrue seniority on a pro-rated basis: probationary instructors employed part-time at 30 or 60 percent of full-time accrue 30 or 60 percent of the seniority.
- Regularized full-time instructors accrue seniority at the full-time annual rate.
- Regularized part-time instructors also accrue seniority at the full-time rate, whether they teach full-time or part-time. This provision preserves the seniority ranking of regularized instructors even when other instructors may teach more courses; it also protects the jobs of those part-time instructors who voluntarily wish to remain part-time. By contrast, in the two-tiered system, foregoing a full-time assignment means not only teaching at fewer hours but also at a significantly discounted rate of compensation. This seniority accrual provision also means that at VCC, some part-time instructors are senior to full-time instructors, which is yet another feature that is absolutely unheard of in U.S. colleges.

Unlike the majority of faculty in the United States, who can spend their entire teaching careers as precarious contingent instructors, Vancouver Community College offers faculty a chance for advancement through the right of first refusal and job security protected by seniority. Part-time faculty at half time who have taught for six months or who are permanent (regularized) have the **right of first refusal** (Cosco, 2014, pp. 208-09), meaning that they are given the chance to accept additional work before new additional staff are hired. The Right of First Refusal enables a part-time instructor to increase his or her workload until reaching full-time. Contributing to the upward mobility of part-time faculty is the VCC/VCCFA prohibition on full-time faculty from teaching overtime (overloads). Overloads are a standard feature in many in U.S. colleges—at Olympic College in Bremerton, Washington, for example, most full-time tenured faculty teach course overloads. When full-time faculty become accustomed to teaching additional courses beyond their full-time teaching load for the additional income, a conflict of interests is created because full-time faculty overtime displaces part-time faculty jobs. Frank Cosco of the Vancouver Community College Faculty Association states that “Without an overtime ban, the regular full-timers in [a teaching] area could deny work and a career path to a potential term instructor” (2014, p. 210). The Right of First Refusal and the ban on overloads enables the promotion of non-tenured faculty to a “higher level, subject to no considerations other than those of seniority and competence” as set forth in ICESCR Article 7 (c).