

Q_{uestion}:

The Human Resources Department telling me that they can no longer offer me a Continuing Education part-time contract to teach at night. Why did they stop this?

A_{nswer}:

First, the College *CAN* offer you a teaching load for the Continuing Education and Training courses offered during Night School.

However the assignment must be made with full compliance with the Collective Agreement:

- The College *MUST* record the assigned hours on your SWF for that semester. Consequently, your daytime workload will be lower due to the forty-four (44)-hour maximum attributed workload maximum, and overtime may apply up to three (3) total hours.
- The College *CANNOT* offer you a low-ball hourly rate. These assigned hours will be part your normal annual salary.
- The College *CANNOT* insist that you incorporate a business in order to "hide" the income for that assignment.

Two main reasons this practice was stopped:

- The practice of non-arm's length payments is illegal under the Income Tax Act. The College is aware of this illegality but has continued to offer this practice since approximately 1994. Revenue Canada can, at any time, audit a full-time faculty's income and demand payment of back taxes at the person's full-time salary tax bracket. The College does not inform potential transgressors of this problem, nor does it become legally involved in the taxation audit because it is the individual (not the College) who should have known better in Revenue Canada's eyes.
- A 1990 Arbitration award (Canadore) has ruled that Continuing Education is part of a College's teaching offering and as such, and assigned work for this function should be recorded on a Full-Time or Partial Load Faculty's SWF. A number of Colleges have challenged this arbitration award and all challenges to overturn this decision have failed. All challenges and grievances surrounding the Canadore award and its implications have been awarded in the Union's favour. We have included executive summary excerpts and references below.
- *Upon learning of the above implications, Local 237 has, for both legal and Collective Agreement reasons, taken the earliest opportunity to rescind the 6-hour Local Agreement for CE teaching. The Local will not knowingly condone a potentially illegal hiring practice.*

Canadore Award (1990-02-20) http://www.local237.ca/forms/faqs/CE/Union_90-02-20.pdf

"Having regard to the evidence and the submissions of the parties, the Board finds that the Union has established that the College was in violation of Article 4 of the collective agreement as alleged in the grievance, dated November 21, 1988. The Board further finds that the arrangement with the three named faculty members in the grievance, dated February 15th, 1989, to teach in the Continuing Education program in addition to their regular work load was contrary to the provisions of Article 4 and Article 7.02 of the Collective Agreement. These findings substantiate the

issuance by this Board as a remedy in this matter of a declaration that the College has violated the terms of the Collective Agreement in the manner set forth herein and we so award..”

Fanshawe Award (1996-06-28) http://www.local237.ca/forms/faqs/CE/Union_96-06-28.pdf

“Having carefully reviewed the evidence and submissions of the parties the Board is not persuaded to ignore or alter the effect of the Canadore award the ratio of which decision we find applies to this grievance in that the total workload assigned and attributed by the College pursuant to Article 4 01 2a includes the teaching of Continuing Education courses by full time employees covered under the terms of the collective agreement The Board therefore finds that the College was in violation of Article 4 of the collective agreement as alleged by the Union It is our award that a declaration shall issue that the College when failing to include hours of teaching in Continuing Education in Standard Work Forms of the full time teachers and exceeding the maximum allowed hours is a breach of Article 4 of the collective agreement.”