

# FAQ: Bill 115 Remedy

**February 3, 2022**

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Below you will find questions and answers that address how the recent ETFO Bill 115 remedy decision affects members of the Elementary Teachers' Federation of Ontario (ETFO). To jump to a specific section of the FAQ, please click on the links below:

[Background](#)

[Remedy Decision](#)

[Eligibility](#)

[Compensation Process](#)

[Other Questions](#)

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## Background

### **Why did ETFO file a Charter Challenge against the Ontario government regarding Bill 115?**

In September 2012, Ontario's government passed unprecedented legislation called the *Putting Students First Act* (also referred to as Bill 115). Bill 115 imposed collective agreement strips on some education sector union members, including on ETFO members.

ETFO, the Ontario Secondary School Teachers' Federation (OSSTF), Canadian Union of Public Employees (CUPE), Ontario Public Service Employees Union (OPSEU), and Unifor challenged Bill 115 at the Ontario Superior Court of Justice. They argued that Bill 115 interfered with collective bargaining between unions and school boards and, as a result, violated the Canadian Charter of Rights and Freedoms.

### **How did Bill 115 impact ETFO members?**

As part of an austerity push, the McGuinty government passed Bill 115, which imposed collective agreements on ETFO members, froze their pay, eliminated sick pay and sick pay banks and removed their ability to engage in full strike activity. The impact was not just on the economic circumstances of education workers, but on their associational rights, and the dignity, autonomy and equality that comes with the exercise of fundamental freedoms.

### **What did the Court decide?**

In a landmark decision released on April 20, 2016, Justice Thomas R. Lederer of the Ontario Superior Court of Justice agreed with ETFO and the other unions, and determined that Bill 115 substantially

interfered with the unions' collective bargaining rights contrary to Section 2(d) of the Charter of Rights and Freedoms.

Justice Lederer wrote that the Ontario government's process for collective bargaining was fundamentally flawed and that they overran the rights of the employees. Justice Lederer's decision is available at [etfo.ca](http://etfo.ca).

**Why is this considered a “remedy?”**

Remedy is the means by which parties can obtain redress, or compensation by a court or through some other legal process (e.g., an arbitration hearing, a tribunal, etc.) once it has been determined that their rights have been violated. In this case, the court decided a remedy is required given the government's violation of members' collective bargaining rights.

**Why didn't the court's decision in 2016 include a remedy for the losses ETFO and other union members experienced?**

Justice Lederer left it to the parties to determine a fair remedy. It was understood that, if the unions and the government could not agree on a remedy, then the matter could be referred back to the court.

**Did the court's decision in April 2016 obligate ETFO to take the offer that other unions accepted?**

No, each individual union had the ability to reach its own agreement with the government about what it considered was an appropriate remedy for the losses incurred and the impact on collective bargaining rights as the result of the imposition of Bill 115.

**Did ETFO try to work with the government to determine a fair Bill 115 remedy?**

Yes. ETFO met with government representatives several times in an attempt to negotiate a fair Bill 115 remedy settlement between September 2016 and June 2017. ETFO also participated in a mediation that was unsuccessful. An agreement could not be reached so ETFO decided to refer the matter back to Justice Lederer for a decision on remedy.

**Why did ETFO's provincial Executive make submissions about a fair Bill 115 remedy to the court?**

When Bill 115 was passed on September 11, 2012, ETFO members didn't just have their collective agreements stripped; their rights under the Charter were also violated by the Ontario government. ETFO worked over many months to negotiate a remedy from the government that would address both the strips to the collective agreement and the Charter violation. The government was unwilling to provide a remedy that ETFO felt would fairly address these issues. As a result, ETFO decided to have the matter determined by Justice Lederer.

**Did ETFO consult with local presidents about the Bill 115 remedy?**

ETFO determined its position regarding a fair Bill 115 remedy following input from local Presidents and Chief Negotiators at a special meeting on September 20, 2016. ETFO met with local Presidents and Chief Negotiators on several separate occasions to further explore this issue. ETFO last met with local Presidents and Chief Negotiators at a special meeting to discuss the Bill 115 remedy on May 4, 2017.

## Remedy Decision

### **What has the court ultimately decided?**

Justice Lederer's decision is that ETFO members did have their Charter rights violated and that, as a result, they are owed compensation in the form of damages. ETFO members were impacted in three ways: the imposition of one unpaid day; the delay of grid movement by 97 days for those who are still moving on the grid; and the unilateral changes to the sick leave program, including the cancellation of future retirement gratuities.

### **What is the amount of the full remedy settlement?**

As a settlement, an aggregate damage amount of \$103,100,000 will be paid out by the government to eligible ETFO members affected by this violation. The amount each individual will receive will vary depending on their status during the two school years under which there was an imposed collective agreement, 2012-2013 and 2013-2014.

### **How were the amounts determined?**

Justice Lederer weighed several factors, including the monetary impact on ETFO members of Bill 115, the amount of the settlements agreed to by other unions, and relevant case law. Justice Lederer specifically refused to factor in deterrence, and also declined to institute a remedy that would fully compensate ETFO members for their financial losses as, according to Lederer, even in the absence of Bill 115, ETFO may have ended up in a similar position as a result of the collective bargaining process. He felt that the new sick leave plan also provides some benefits to ETFO members, particularly given the younger demographic of ETFO.

### **Why did it take so long to reach a settlement?**

When Justice Lederer issued his decision in April of 2016, ETFO engaged in a protracted negotiation process with the government to try to arrive at a fair remedy. Ultimately, the government refused to agree to a remedy that ETFO felt would be fair to the membership and in keeping with the egregious nature of the Charter violation. As a result, ETFO decided to submit the issue of remedy back to Justice Lederer. A process of mediation then unfolded over time, which was also unsuccessful as the government still would not agree to a fair remedy.

Eventually, the government and ETFO agreed to a process that would allow, ultimately, for Justice Lederer to issue a decision on remedy. This process included the filing of extensive written submissions and several meetings with Justice Lederer. Finally, through the decision of Justice Lederer, ETFO members have been awarded the fair remedy that they deserve.

### **Will the government appeal? Can the remedy funds be clawed back?**

Justice Lederer's decision is final and fully binding on both parties. There is no expectation that the government can or will appeal this decision.

## Eligibility

### **Who is eligible for financial compensation?**

ETFO members may be eligible for financial compensation if they were a public elementary school board employee during either or both the 2012-2013 and 2013-2014 school years. Each individual member's entitlement is based on the amount of time worked on a full-time equivalent (FTE) basis between September 1, 2012, and August 31, 2014. Members who worked a 1.0 full-time equivalent will be eligible for the estimated maximum entitlement of \$1,606. Anything less than 1.0 FTE will be pro-rated downward.

### **I was working part-time during that period. What is my entitlement?**

For those working part-time, entitlements would be pro-rated based on FTE.

### **I was hired during those school years or resigned or retired during that time, therefore, I was only employed during a portion of the school year. How does this affect my remedy share?**

Entitlement to the award would be pro-rated for the period you were employed.

### **I was on leave for one (or both) of those years. Am I still entitled?**

Yes. Members who were on a paid or unpaid leave under the provisions of a collective agreement or on a statutory leave such as maternity or parental leave at any point during either or both of those school years and shall include any leaves such as sick leave and long-term disability provision of the collective agreement or under the *Workers' Compensation Act*.

### **I was on Long-Term Disability (LTD) or receiving Workplace Safety and Insurance Board (WSIB) benefits during that time. Am I still entitled to a remedy?**

Yes, members who were on such a leave and in receipt of long-term disability benefits or benefits from the Workplace Safety and Insurance Board may have an entitlement.

### **I am retired now, but I worked during those school years. Am I entitled to the remedy?**

All members who were employed with a school board as ETFO members in the 2012-2013 and/or 2013-2014 school years may be entitled to a share of the remedy.

### **Am I entitled to the remedy if I was a released officer during that period?**

Yes. If a member was on leave to work for their union for either one or both of those school years, there will be entitlement as long as their release is paid by ETFO.

### **If an ETFO member worked during those years, but has subsequently passed away, what happens to their entitlement?**

Their share of the remedy is payable to their estate.

### **I was a Designated Early Childhood Educator (DECE), Education Support Personnel (ESP) or Professional Support Personnel (PDP) during that period. Am I eligible?**

Yes. The remedy applies to all eligible ETFO members.

**I worked for two different public elementary boards at that time. Does this affect my entitlement?**

No. All those who were working as ETFO members are entitled, regardless of which board they were employed by. Their full entitlement would be paid by the school board for which they spent the most time with during the two years in question.

**I was a member of two different education unions at that time (for example, ETFO and OECTA), and I already received a remedy from the other union. Am I also entitled to an ETFO remedy?**

Under the award, you can't receive more than the estimated maximum payment of \$1,606 regardless of how you received your payment. Therefore, your entitlement under ETFO's remedy would be reduced by the amount of the other union's remedy payment so as not to exceed the \$1,606. Accordingly, if your entitlement under the agreement is a payment of \$200, but you have already received that amount (or more) under another agreement, you would not be eligible for a payment under the ETFO remedy.

**I was doing long-term occasional contracts during that time period. Am I entitled to a share?**

Yes. Long-Term Occasional (LTO) Teachers are equivalent to permanent teachers for the purposes of the remedy.

**I was a daily Occasional Teacher (OT), DECE, ESP or PSP doing occasional work during that time period. Am I entitled to a share?**

Daily OTs who worked a total of 150 days over the two-year period of 2012-2013 to 2013-2014 with at least 50 days worked in each of the two years would be eligible for a \$200 payment under the ETFO remedy.

**During that period, I was a retiree working as an OT. What is my entitlement?**

Those who were re-employed retired Teachers are not entitled to a remedy under the decision as they were not materially impacted with respect to gratuity, sick leave, grid movement delay, or the imposition of the unpaid day under Bill 115.

**During that period of time, I worked both as a daily OT and in an LTO/a permanent assignment. Can I collect the pro-rated amount I am eligible for as an LTO/permanent Teacher and the \$200 minimum for my OT days?**

No. The \$200 minimum is for members who would otherwise not have an entitlement.

**I am currently collecting Employment Insurance. Will this affect my claim?**

No. The award is being paid out as damages and will not affect your Employment Insurance.

## Compensation Process

### How much compensation will I receive?

The estimated maximum amount an ETFO member can receive is \$1,606. This amount will be reduced for members who were not working full time or were not employed by a school board for the full two-year period covered by the award.

For those who worked less than a 1.0 FTE during this time period, the maximum amount would be multiplied by their FTE. For example, if an individual worked a 0.8 FTE during those years, they would be entitled to 80 per cent of the total maximum amount.

For those who were not employed by a school board for the total amount of the two-year period, their entitlement would be reduced based on the period that they were not employed. For example, if they were employed full time for only one of the two years, they would receive half of the maximum amount.

The chart below provides some examples of entitlement:

Description	2012-2013 FTE	2013-2014 FTE	Average FTE	Entitlement	Potential Damage Amount
Full-time member	1.0	1.0	1.0	maximum entitlement	\$1,606
Half-time member	.5	.5	.5	.5 entitlement	\$803
Worked one year and not the next	1.0	0	.5		\$803
Full-time member on a pregnancy leave	pregnancy leave from a 1.0	parental leave from a 1.0	1.0	maximum entitlement	\$1,606
Member who worked part-time each year in question	.8	.2	.5	.5 entitlement	\$803
Member who worked part-time each year in question	.6	.4	.5	.5 entitlement	\$803
Member who worked part-time each year in question	.2	.2	.2	.2 entitlement	\$321
Member who worked half a year and then a quarter of the next year	.5	.25	.375	.375 entitlement	\$602
Member who worked a portion of each year	.75	.5	.625	.625 entitlement	\$1,004

Full-time member, but on WSIB	WSIB from a 1.0 FTE	WSIB from a 1.0 FTE	1.0	maximum entitlement	\$1,606
Full-time member, but on long-term disability (LTD)	LTD	LTD		maximum entitlement	\$1,606
Daily occasional teachers who worked a total of 150 days over the two year period of 2012-2013 to 2013-2014 with at least 50 days worked in each of the two years.				entitlement	\$200
Re-employed retired - no entitlement					0

### **When will I be compensated?**

It will take some time for the entitlements of over 64,198 ETFO members and former ETFO members to be determined, for those members to be notified, for the dispute process to take place, for the funds to be disbursed to school boards and for the school boards to pay out the funds to eligible members.

### **What is the process of compensation?**

ETFO will issue a general communication to current and former members to notify them of the remedy award. ETFO will endeavour to notify each eligible member of that person's entitlement to a payment (including the estimated dollar amount of the individual payment and the basis for its calculation). The notice to each eligible member will state that the recipient has 30 days from the date of delivery of the notice to object to the determinations set out in the notice.

### **What if the amount I am entitled to is inaccurate or I have been left off the list of eligible members?**

Should you want to object to the information set out in the notice ETFO sent, you have **30 days** from the delivery of the notice to initiate a Notice of Objection. If you fail to meet the 30-day deadline, your amount will be considered final, and no dispute will be allowed. All objections must be emailed to the following email address: **Bill115remedy@ETFO.org**. You will receive an auto-responder form titled "Notice of Objection" to fill out. ETFO will then forward a copy of all Notices of Objection to an independent referee who will determine all objections by agreement of the parties.

Compensation will be mailed by the district school board you last worked for to the last known home address that the school board has on file. Please ensure the school boards you were employed with have your current address.

## Other Questions

### Are the funds taxable?

As the settlement is being paid out as damages, it is not subject to tax, statutory deductions or dues deductions. Please consult with your financial advisor to ensure it is reported accurately.

### Was interest applied?

The issue of how long it took to reach the settlement was considered by Justice Lederer in determining what he considered to be a fair remedy. As such, interest is included in the damage award.

### What happens to any funds that are not claimed?

Any remaining funds will be returned to the government.

### How can I update my information with ETFO?

Members and former members can update their information with ETFO by emailing [memberrecords@etfo.org](mailto:memberrecords@etfo.org) or filling out an [online form](#) found on [etfo.ca](http://etfo.ca). Members and former members should also make sure they provide their school board(s) with their updated mailing address.

**For the most up to date information, please visit [etfo.ca](http://etfo.ca).**