



October 3, 2016

Honourable Marlin Schmidt
Minister of Advanced Education
c/o PSLALabourConsultation@gov.ab.ca

Dear Mr. Schmidt:

Re: Submission to the Government of Alberta Post-Secondary Labour Relations Model Review

Attached please find the submission of the Faculty Association of the University of Calgary to the Government *Discussion Guide* regarding post-secondary labour relations.

In developing this submission, we have consulted with our membership and the opinions presented reflect what we have heard and the views of their elected leadership on our Board of Directors.

In summary, our submission makes the following recommendations:

1. The Faculty Association should continue to exist as a legal entity with all agreements and commitments held intact. The *Collective Agreement* should remain intact, with only the provisions required to allow for strike/lockout added in.
2. All current Faculty Association members should continue to be represented by the Faculty Association (i.e. no existing members should lose their rights of representation). Specifically, Architects, Engineers, Lawyers, Physicians, and Nurse Practitioners should not be precluded from Faculty Association membership. Those with supervisory roles (except those excluded as “management”) should not be excluded from Faculty Association membership. The current definition of “management” identified in the *Collective Agreement* should continue (essentially Deans and above).
3. The definition of “academic staff” should continue to be used concurrently: a) to define membership of the bargaining unit, b) for the purposes of collegial governance under the *Post-Secondary Learning Act* and c) for policies established by the University.
4. A system for designation of new academic staff (bargaining unit) members or categories of members should be established. The Association believes that the best place for this discussion to happen is at the bargaining table for each institution and subject to arbitration.

5. All unorganized members (other than those who are clearly excluded as management) should be made members of a bargaining unit of their choice. In particular, we are referring to the Management and Professional Staff group, post-doctoral fellows, and others who have been denied representational rights at the University. The Faculty Association should be an option provided to those groups.
6. No provisions currently included in the *Collective Agreement* should be deemed 'out of scope' (in particular, academic freedom, tenure, and pensions, as mentioned in the *Discussion Guide*).
7. Any increase in pension costs to members due to changes in Plan membership caused by government-imposed changes should be paid for by the government.
8. In addition to establishing processes for strike/lockout, the existing dispute resolution mechanism of binding arbitration should remain intact.
9. Strikes/Lockouts should be prohibited for two years after the establishment of new rules allowing for such, to allow for the transition to such a system.

Finally, I would like to emphasize our last recommendation which is likely the crux of the debate of how the legislative changes should unfold. Given the myriad of known and unknown complications that a move to the *Labour Act* would cause, along with the risks to the protections and benefits to our members, this Faculty Association believes that:

10. The legal incorporation of the Faculty Association should stay under the *Post-Secondary Learning Act*, with minimal amendments to deal with the strike/lockout requirements and the problem of designation.

We look forward to discussing our views with you and your staff further through the mechanism of the next roundtable or in other opportunities.

Respectfully submitted,

[Original Signed]

Dr. Sandra Hoenle
President

Attachment



October 3, 2016

Submission to the Government of Alberta Post-Secondary Labour Relations Model Review

In reviewing the Alberta Government's *Discussion Guide*, the Faculty Association of the University of Calgary developed a discussion paper of our own, highlighting the many potential consequences raised by the points enumerated in the *Discussion Guide*. We circulated these documents to our membership and ALL of the responses we have received have confirmed the concerns as outlined in our discussion paper.

As the questions in the *Discussion Guide* are somewhat convoluted and, in some cases, leading, we have decided instead to respond by taking a principled approach to make our position as clear as possible. The following are the principles we believe are essential in the Alberta Post-Secondary Labour Relations Model, at least as it pertains to the University of Calgary academic staff.

A. The Continuation of the Faculty Association and the Right to Representation

1. ***The Faculty Association should continue to exist as a legal entity with all agreements and commitments held intact.***
 - 1a. ***The Collective Agreement should remain intact, with only the provisions required to allow for strike/lockout added in.***

Over the last 35 years and beyond, the Faculty Association has negotiated a wide variety of agreements. The continuation of the Association is essential to ensure that all of the legal commitments that have been made to the Association and its membership, and by the Association to various bodies, continue to be in force. A myriad of various agreements would be put into legal limbo if the Association is not continued. Moreover, the Faculty Association is intrinsically entwined into a wide variety of University policies, procedures, and practices, to protect our members. These agreements, commitments, protocols, and the like have been built up over years of discussion and negotiations with the employer and are intrinsic to our role as a bargaining unit.

Through the Faculty Association, the academic staff of the University of Calgary have fought for the benefits and protections in the *Collective Agreement*. In addition, there are a variety of agreements,

commitments, procedures, and protocols that have been developed in discussions and negotiations with the employer. This wide variety of documents and practices are intrinsic to our role as a bargaining unit. Much of the value we have provided as a bargaining unit will be lost if the government is not careful to preserve and protect our legal existence, the agreements we have negotiated, and the commitments we have made. These should remain as the starting point for any future negotiations; there should not be a situation where we need to start from a blank slate.

- 2. All current Faculty Association members should continue to be represented by the Faculty Association (i.e. no existing members should lose their rights of representation).**
- 2a. Specifically, Architects, Engineers, Lawyers, Physicians, and Nurse Practitioners should not be precluded from Faculty Association membership.**
- 2b. Those with supervisory roles (except those excluded as “management”) should not be excluded from Faculty Association membership.**
- 2c. The current definition of “management” identified in the Collective Agreement should continue (essentially Deans and above).**

Given the intention of the review to improve the post-secondary sector’s labour relations system, it would be disturbingly ironic if the result of this review resulted in the reduction of representational rights of academic staff members. The current *Labour Relations Code* excludes (in Section 1(l)):

- “(i) a person who in the opinion of the Board performs managerial functions or is employed in a confidential capacity in matters relating to labour relations
- (ii) a person who is a member of the medical, dental, architectural, engineering or legal profession qualified to practise under the laws of Alberta and is employed in the person’s professional capacity, or
- (iii) a nurse practitioner who is employed in his or her professional capacity as a nurse practitioner in accordance with the *Public Health Act* and the regulations under that Act;”

In the research university, it is essential that academic staff remain engaged in their professions, to do research at the cutting edge of those professions. To exclude these members from the Faculty Association is antithetical to the intention of representing academic staff. Often these are the members most in need of representation and protection by the Faculty Association as their work can be controversial, requiring the protection of academic freedom under the *Collective Agreement*. Certainly this is where we have heard most from our members, as clinical members in particular express to us their concern about losing the protection of the Association in their work. The guarantees of ownership of intellectual property, the provisions of research and scholarship leaves, the protections of academic

freedom, and so on, could all be lost if these members are not in the Faculty Association. Certainly, excluded members at other universities in other provinces do not enjoy such protections and benefits.

In universities generally, but in research universities in particular, academic staff routinely supervise others as an essential component of their work. Whether it is graduate students providing teaching or research assistance (in accordance with the Graduate Students' Association *Collective Agreement*), laboratory assistants, field workers, or other academic staff, about half of our membership would likely be engaged in some such supervision at any point in time. This is fluid. While an academic staff member is teaching a particularly large class, s/he may be assigned a graduate student as a teaching assistant, but not when s/he is teaching a smaller class. Similarly, acting as a Department Head, Director, Area Chair, Graduate Advisor, or one of the many other titles within the academic administration of the University, is something that members tend to do part-time in conjunction with their regular teaching, research and service duties. Excluding members who engage in this level of supervision would severely compromise the right of representation.

That being said, there are clear management positions who have the authority to discipline or make agreements with the Faculty Association. These are the positions which we agree should be excluded from the Association. This has already been bargained in our case: we have already listed such positions in our *Collective Agreement* and generally they include those in the capacity of Dean or above.

During the debate regarding the definition of the bargaining unit, some individuals at other universities have raised the prospect that sessional instructors could be excluded from the Faculty Association and be organized separately. It should be noted that part-time sessionals at this University voted to join the Association before they were designated academic staff in 1994. The term "sessional" has different meanings at different universities, as it is a locally defined term. At the University of Calgary, the term has generally referred to those with contracts of 12 months or less; although there are a couple of categories of "regular" academic who can have contracts of 12 months as well. We have had sessionals as Associate Dean and Department Head. We have had sessionals chairing the research ethics committee, supervising graduate students, and engaged in various forms of research. In other words, the roles played by sessionals are diverse, and are fully integrated with the academic work of the University. By being part of the Faculty Association, we have tried to encourage sessionals to be seen as colleagues and fellow academic staff members. We have been able to negotiate certain representation rights and protections. When there have been cuts to other staff we have been able to shield the sessionals from the full impact and, in the case of long-serving sessionals, we have been able to negotiate the transition to regular academic staff positions. In fact, both our Association President and Principal Negotiator joined the regular ranks of the Association through such transitions, as have a number of senior members in the academic ranks. This is in contrast to representation by a union separate from that of regular academic staff, where there is an inherent (somewhat perverse) incentive to keep the sessional instructors in an exploited employee category, in order to maintain their union membership. While recognizing there will always be a legitimate need for sessionals (to integrate members from the community, fill last minute vacancies, etc.) and that sessionals should be

remunerated appropriately, the ultimate goal of our Faculty Association is to negotiate the creation of regular full-time positions, not keep them in a perpetual underclass.

Similarly, there has been some discussion about separating out those outside of the professorial and instructor streams. In our case, these are the librarians, archivists, curators, counsellors, and other academic professionals. The recognition of these members as academic colleagues and thus as members of the Faculty Association has been an essential feature of the University. The protection of tenure and academic freedom is essential for these members to be effective in their roles. We believe they should all continue to be protected by the Faculty Association and the *Collective Agreement*.

Some individuals at other Universities appear to have misunderstood the *Charter's* Freedom of Association to mean that every person has a right to pick which union he or she wishes to join and that subgroups of a union have the right to break away and form new unions. This interpretation is not consistent with the current state of the law nor is it consistent with recent decisions of the Supreme Court. In *Mounted Police Association of Ontario et al*, the Supreme Court ruled that legislatively established bargaining units are acceptable representatives of employees where there is a "meaningful process of collective bargaining that provides employees with a degree of choice and independence sufficient to enable them to determine and pursue their collective interests". Further, under any labour regime – whether under the *Labour Act* or special legislation – subgroups cannot simply break away from their union local. If that was allowed, the consequences would be labour chaos since every time there was a disagreement within a union, a new union would be formed.

Some have questioned the legitimacy of the Faculty Associations on the grounds that the government 'forced' academic staff into membership in a Faculty Association. In fact, this is not historically accurate. To set the record straight, the four University Faculty Associations that existed in Alberta prior to 1981 were freely formed as "Societies" under the *Societies Act* long before any government action. When the government refused to allow the Faculty Associations to become bargaining agents, the Faculty Associations took the government to the International Labour Organization. The establishment of the Faculty Association under the *Universities Act* (now the *PSLA*) was after four years of discussions between the government and various stakeholders. At the University of Calgary there was a general meeting of our membership who voted in support of incorporation under the *Universities Act*. While many other aspects of the legislation in 1981 were problematic (such as the designation process), certainly the final recognition of the Faculty Associations in law was not something the Faculty Associations opposed.

B. Academic Staff = Bargaining Unit

- 3. *The definition of “academic staff” should continue to be used concurrently: a) to define membership of the bargaining unit, b) for the purposes of collegial governance under the Post-Secondary Learning Act and c) for policies established by the University.***

Currently, the definition of “academic staff” in the *Post-Secondary Learning Act* is used for multiple purposes. The various players in the University have relied on the consistency of this definition in establishing policies and agreements, and in making those policies and agreements interdependent. For example, the University’s policy on intellectual property is predicated on the provisions in the *Collective Agreement* and the protections provided therein. Similarly, the Research Integrity policy relies on the representation provided by the Faculty Association for academic staff members. Tearing apart this symbiotic relationship will unleash a massive make-work project to rewrite policies and trigger new debates about issues which are not currently a problem. Certainly one of the dangers in changing the definitions related to academic staff is in the unintended consequences of not only changing the protections of the *Collective Agreement*, but also the rights and protections that may have been established by GFC, the *Post-Secondary Learning Act*, or various University policies.

C. Changes to the Bargaining Unit/Designation

- 4. *A system for designation of new academic staff (bargaining unit) members or categories of members should be established. The Association believes that the best place for this discussion to happen is at the bargaining table for each institution and subject to arbitration.***
- 5. *All unorganized employees (other than those who are clearly excluded as management) should be made members of a bargaining unit of their choice. In particular, we are referring to the Management and Professional Staff group, post-doctoral fellows, and others who have been denied representational rights at the University. The Faculty Association should be an option provided to those groups.***

The University of Calgary Board of Governors has actively prevented these groups from organizing as bargaining units. In many cases, the individuals are required to hold PhDs, conduct research, publish research, engage in teaching of various kinds, and otherwise engage in the teaching and research mission of the University. In these cases in particular, we believe that the Faculty Association would be the best vehicle to defend the rights and negotiate the salaries and benefits. In other cases, it may be that AUPE is the most appropriate bargaining unit where the nature of the work best fits that union’s mandate. If neither of these is appropriate, the employees should have the right to organize under the

third party. However, the wholesale denial of organizational rights to employees at the University of Calgary must end.

That being said, we don't believe that there is a one-size-fits-all approach that should be imposed across the province. The needs of the various institutions are different; the ways they have evolved are different; and we believe the best way of responding to these differences is by empowering decisions at the local level, with the tool of arbitration where agreement cannot be reached. This is a situation where strike/lockout is not appropriate given that the members affected are not in the bargaining unit.

D. The Scope of the Collective Agreement

6. *No provisions currently included in the Collective Agreement should be deemed 'out of scope' (in particular, academic freedom, tenure, and pensions, as mentioned in the Discussion Guide).*

We were most alarmed to see a suggestion in the Government's *Discussion Guide* suggesting that provisions such as academic freedom, tenure, and pensions might be deemed 'out of scope' – that is, that the Faculty Association would not be able to negotiate on those provisions which would be decided elsewhere. To begin with, we believe that the exclusion of those provisions could trigger a *Charter* challenge, given that the current provisions have been freely negotiated by the Parties to the *Collective Agreement*. However, it may be that the Government is intending this to be a good thing by providing a superior benefit than that provided for in the *Collective Agreements*. Even in that situation, we would not support deeming these provisions out of scope, as the Government's largesse can just as easily be taken away by successor governments. If the Government intends to raise the bar, it can establish minimum standards – such as the requirement that all *Collective Agreements* include protections for academic freedom.

E. The Universities Academic Pension Plan (UAPP)

7. *Any increase in pension costs to members caused by government-imposed changes that affect Plan membership should be paid for by the government.*

The Universities Academic Pension Plan (UAPP) is not a government plan. It is an independent plan established under the *Employment Pension Plans Act* with nine Sponsors – the Boards of Governors and Faculty Associations of the Comprehensive Academic Research Institutions (CARIs) – the University of Alberta, Athabasca University, University of Calgary, and University of Lethbridge – and the Banff Centre. In effect, the *Sponsorship and Trust Agreement (STA)* that establishes the pension plan acts as a nine-party collective agreement. As part of the establishment of this independent plan, it was required that changes be made to all of the individual *Collective Agreements* and these were ratified by the membership of each of the four Faculty Associations before the STA came into effect. Since this is so,

new bargaining units do not have the inherent right to join the *Agreement* without a change being ratified by the nine Plan Sponsors in accordance with the amendment formula (there is a specific exception if a faculty association is ever created at the Banff Centre). Similarly, because such an agreement would need to be ratified by the members of any new union, an agreement cannot be imposed upon them.

In the STA there is no provision for the possibility of multiple bargaining units within the UAPP at a single university. Thus, if there ever was agreement to allow a new union to join the Plan, there would need to be a fundamental rethinking of the governance model for the Plan. Discussions on this matter would be difficult.

If the changes to the labour regime result in current Faculty Association members losing their right of representation and becoming “exempt”, it is not clear that the current plan membership definitions would cover such members. As each University’s definition in the plan is somewhat different, the implications may depend upon which University the exempt members are employed at. More likely, it would require a change in the membership definitions to continue to cover such members. Such changes can only be made through the processes outlined in the STA. There is no guarantee that the Sponsors will agree to allow changes to the definitions to establish new ‘exempt’ members in the Plan and they are under no duty to do so.

There is nothing precluding employers from putting members of new unions or newly exempt members into another plan (such as the Public Service Pension Plan), establishing a new plan, or providing some other form of benefit in lieu of pension. So we are not saying that affected individuals will not be eligible for a pension; rather we are flagging the issue that it cannot be assumed that such affected individuals will be entitled to stay within the UAPP, based on current rules.

If any government-imposed changes result in fewer pension plan members, this may cause significant increases in the costs for current members, especially (but not exclusively) related to the pre-92 unfunded liability. Effectively this is simply because fewer people would be sharing the responsibility for paying for the costs of a very expensive pie. If such increases are directly related to legislative changes made by the Government, we believe that the Government has the responsibility for picking up those increased costs, especially related to the pre-92 unfunded liability, as they would be unilaterally changing the basis of the agreement that was made in 1992 regarding the payback of that liability.

We are concerned that there may be other financial consequences related to a fundamental change in the Plan membership. The exclusion of large groups of members may change the demographics of the Plan, and thus the actuarial assumptions used in setting contribution rates. Further, a significant loss of contributing members would change the ratio of contributing members to retirees, potentially leading to greater volatility in the contribution rate. All this being said, we want to emphasize that in this discussion there is no danger related to Plan’s continued financial viability – the decisions of the

Trustees have been solid. It is simply that the changes in membership may consequentially lead to substantially different contribution rates.

F. Dispute Resolution in the *Collective Agreement*

- 8. *In addition to establishing processes for strike/lockout, the existing dispute resolution mechanism of binding arbitration should remain intact.***

Unlike the situation in the colleges or for graduate students, the Comprehensive Academic Research Institutions (CARIs) – the University of Alberta, Athabasca University, University of Calgary, and University of Lethbridge – have not been banned from striking under the *Post-Secondary Learning Act*. Therefore, there is no reason why the establishment of a strike/lockout provisions in the *Act* should take away the alternate dispute mechanism established in our *Collective Agreements*. It may be that with the addition of the strike/lockout process, the Parties to our *Agreement* decide to adjust the provisions to take into account the additional mechanism; however we see no reason why the Government should do so.

G. Transition

- 9. *Strikes/Lockouts should be prohibited for two years after the establishment of new rules allowing for such, to allow for the transition to such a system.***

Once the strike/lockout provisions are established in legislation, the Faculty Associations and Boards of Governors will need time to adjust to the new system. For example, depending on the provisions of the legislation, we may need time to create internal policies and protocols for votes, resources such as strike funds will need to be established, provisions related to ‘essential services’ will need to be negotiated, and so on. We would not like to see a lockout or strike vote called before the Parties have had a chance to work out fair processes.

H. Faculty Association in the *Post-Secondary Learning Act*

- 10. *The legal incorporation of the Faculty Association should stay under the Post-Secondary Learning Act, with minimal amendments to deal with the strike/lockout requirements and the problem of designation.***

If this was 1981 and we were discussing how to establish the Faculty Association as a bargaining unit, organizing under the *Labour Act* may have been a good idea. However, as we have investigated the implications of moving to the *Labour Act* now, the potential consequences create risks that are too high for us to support such a move. All of the provisions that would need to be changed to incorporate us into the *Labour Act* in turn create new consequences, and the problems compound. The consequences

to University policies, to the governance structures, to the Pension Plan, to our membership, to our internal governance structures, and so on, cannot be justified by the need to simply install a strike/lockout provision to meet the Supreme Court decision. There is no benefit to the Faculty Associations or its members to justify creating such risk of harm. It would be a massive undertaking to identify and address all of the implications, and we cannot be sure that there will not be members who are significantly harmed if the move to the *Labour Act* is taken. The provisions, protocols, structures and agreements which have been built up over 35 years of the life of the Association may be jeopardized. In the Government's *Discussion Guide* there appears to be no recognition of the significant implications of such a move, nor of how such implications might be mitigated. In that context, the risk of the loss of representational rights, benefits, protections, etcetera, for many current academic staff members simply cannot be justified.

I. Conclusion

The University of Calgary Faculty Association Board of Directors has fully reviewed the potential implications of the Government's *Discussion Guide* and consulted with our members directly and through the Department Representatives. Our discussion document can be accessed through our website. One of the difficulties in this discussion has been the proximity of the University of Alberta to the Legislature, and the unique circumstances at that University. We ask that the Government not view the entire system through the lens of the University of Alberta and instead recognize the structures and needs of the other research intensive universities, as well as the other parts of the post-secondary system. As we have noted, we believe that the solution to the presenting problem can be achieved through a minimalist approach. We strongly encourage you to take this minimalist approach to solving the presenting problem, rather than a wholesale restructuring which will create many new problems and consequences for years to come.