

October 30, 2015

Mr. Bart Muusse
Legislation Manager
Legislation and Governance Branch
Advanced Education
Bart.Muusse@gov.ab.ca

Dear Mr. Muusse:

Re: Labour Relations Model for Academic Staff in Alberta

On behalf of the Confederation of Alberta Faculty Associations (CAFA), I am pleased to present the following recommendations and the attached position paper. After an extended period where the previous government did not seem to care about consulting with the Academic Staff Associations about post-secondary issues, this is a very welcome change. We thank you for this opportunity to share our views with you.

CAFA represents the four Academic Staff Associations within the Comprehensive Academic Research Institutions (CARI) group of Universities in Alberta. Our recommendations are therefore focused on the needs and history of this group of institutions. CAFA represents the following Academic Staff Associations:

- Association of Academic Staff University of Alberta
- Athabasca University Faculty Association
- Faculty Association of the University of Calgary
- University of Lethbridge Faculty Association

The evolution of a separate labour relations regime for post-secondary institutions is unique to Alberta through the *Post-Secondary Learning Act*. Within this unique construct, the Academic Staff Associations have evolved into vibrant, effective organizations and the negotiations between Board of Governors and Academic Staff Associations have resulted in generally good outcomes for all involved. While our legislative framework may seem odd to those used to a more traditional labour relations model, there is no reason to believe that it is fundamentally flawed. While we believe that there needs to be changes to this labour relations regime within the *Act* (as outlined in the recommendations below), we do not believe that simply severing our unique history and structure will be responsive to our needs nor

benefit the public good. Therefore, we believe that the unique labour relations regime should continue with the changes as outlined below.

To summarize our recommendations from the attached paper, they are as follows (not in any priority order):

1. That the labour relations model for academic staff take into account both the unique role of academic staff in our society, as well as the exceptional demands on the Academic Staff Associations. *(see attached paper, section B.i., page 1)*
2. Notwithstanding the right to freedom of association, that the current Academic Staff Associations and Collective Agreements be kept intact with their incorporation protected by the *Post-Secondary Learning Act*. *(see attached paper, section B.ii., page 2)*
3. That a more diverse, equitable and robust selection process for Boards of Governors be established. *(see attached paper, section B.iii., page 3)*
4. That, consistent with the bi-cameral nature of university collegial governance, all governance and administrative processes within the universities be reviewed to ensure transparent, consultative, and democratic decision making, consistent with the primacy of the Collective Agreement. *(see attached paper, section B.iii., page 3)*
5. That a review of university governance structures and authority, as defined in the *Post-Secondary Learning Act*, be undertaken by the government within the term of their current mandate, following extensive consultation with stakeholders. *(see attached paper, section B.iv., page 3)*
6. That in considering changes to the labour relations system, it be recognized that the Academic Staff Associations often play broader roles than typical unions within the collegial governance structures of the universities. *(see attached paper, section B.v., page 4)*
7. That the legislation be permissive in allowing Academic Staff Associations and Boards of Governors to negotiate alternative dispute resolution mechanisms, without precluding the right to strikes/lockouts, if the Parties agree to such alternative mechanisms. *(see attached paper, section C, page 4)*
8. That certain labour provisions be introduced into the *PSLA*, and for the Labour Relations Board to take a limited role in protecting these provisions. Specifically, these provisions should include:
 - a. The requirement for good faith bargaining.

b. That complaints related to the duty of fair representation be heard by the Labour Relations Board.

c. That Collective Agreements continue to be in force during mediation/ arbitration, until a new agreement is put into force.

d. The full disclosure of members' information to Academic Staff Associations so as not to interfere with their representation of employees in the bargaining unit. *(see attached paper, section C, page 4)*

9. Notwithstanding the right to the freedom of association, that designation of academic staff should be subject to the collective bargaining process and thus subject to mediation and/or arbitration as established in the Collective Agreements at each institution. To establish a new baseline, a one-time special tribunal should be established to resolve any issues which cannot be resolved by the local Parties within 6 months of the passage of any new legislation. *(see attached paper, section D, page 5)*

10. That the authority for establishing hiring rules for academic staff be transferred from the General Faculties Council to the Collective Agreements. *(see attached paper, section E, page 6)*

We would welcome the opportunity to discuss our thoughts further within the roundtable discussions and with government representatives as described in the Minister's letter. We would appreciate hearing back from you to set up a mutually convenient time to discuss our submission in more detail. We hope our comments are useful to you and we look forward to further discussions.

Sincerely,



Mark McCutcheon, Ph.D.
President

attachment: Position Paper on Labour Relations

cc: Heather Bruce, President, Association of Academic Staff University of Alberta
Sandra Hoenle, President, Faculty Association of the University of Calgary
David Kaminski, President, University of Lethbridge Faculty Association
Lawton Shaw, President, Athabasca University Faculty Association

**Confederation of Alberta Faculty Association
Position Paper on Labour Relations
in the Alberta Post-Secondary Sector
October 26, 2015**

A. Introduction

This position paper is presented by the Confederation of Alberta Faculty Associations, representing the four Academic Staff Associations of the Comprehensive Academic Research Institutions (CARI) in Alberta:

- Association of Academic Staff University of Alberta
- Athabasca University Faculty Association
- Faculty Association of the University of Calgary
- University of Lethbridge Faculty Association

The Government of Alberta has announced that it intends to introduce amendments to all of its labour legislation to bring it into compliance with the *Canadian Charter of Rights and Freedoms* as interpreted in recent Supreme Court of Canada rulings. The changes being contemplated include amendments to the *PSLA*, the statute that *inter alia* governs labour relations between Academic Staff Associations and public post-secondary institutions in Alberta. It remains unclear how far the government intends to go in revising the Act, once it is open, though it appears that the whole statute – not just those sections that specifically address labour relations – will be reviewed in due course. The immediate concern, however, is with the labour relations provisions contained in the statute.

While the details of our position are attached in the position paper, we would like to underscore the following points:

B. Contextual Factors

i. Labour Relations for Academic Staff is Different

While there are certainly some similarities, the work of academic staff and the key issues for Academic Staff Associations are somewhat different than other labour organizations. For example, in the context of the ‘duty to accommodate’ in most sectors a person like Stephen Hawking would be completely disabled; but in an academic context he continues to publish, teach graduate students, and lecture, despite being almost completely immobilized. Academic staff often have more in

common with, and more connections with, their disciplinary colleagues at other universities than they do with the professor in another discipline down the hall. That is, a professor of history will likely connect with her colleague at Dalhousie University rather than with a physics professor at her home University. Also unlike other institutions, academic administrators (heads/chairs/associate deans – defined and designated differently at each institution) may be more junior than the colleagues they ‘administrate’. The academic administrators return to the ranks when they finish their terms. Rather than a linear progression ‘going up the ranks’ as might exist in private sector organizations, administrative appointments are temporary and cyclical. Thus the role of “administrator” in the academic setting is significantly different. Academic staff do not work the typical 9 to 5 work day. Research requires academics to work all times of the day and evening when they are not teaching or doing service. Research may take academic staff around the world at all times of the day or week. Teaching staff are required to do scholarly work in their disciplines which again requires work beyond the typical 9 to 5 work day.

Because of all these unique features of academic work, traditional constructs of labour unions may not always be the best fit for resolving the conflicts and interests of academic staff. The Supreme Court has acknowledged the unique nature of academic work, tenure, and academic freedom as well as the governance model of Universities which places the collegial ‘academy’ at the core of academic decision making. Unlike most other unions established under the Alberta Labour Relations Board, Academic Staff Associations must deal with issues beyond the traditional union obligations of collective bargaining and collective agreement vigilance. More specifically, these extraordinary duties encompass founding principles of academic integrity, intellectual property, research grants, academic freedom, research leaves, the unique nature of academic work, and so on.

[Recommendation #1:] ***Therefore we recommend that the labour relations model for academic staff take into account both the unique role of academic staff in our society, as well as the exceptional demands on the Academic Staff Associations.***

ii. Relative Success of the Current Labour Regime:

Despite a number of significant flaws as outlined below, the current post-secondary labour relations regime has been successful in many ways. Generally, most disputes regarding salaries and benefits or terms and conditions of employment have been successfully resolved and the Universities have prospered with robust Associations defending the rights of academic staff. It should be noted that, in Canada, academic freedom is only protected through collective agreements. The current collective agreements in Alberta have evolved over 30 years. While we don’t think there needs to be a transition of the labour relations regime, if it is changed (i.e. to a union under the Labour Code), there will need to be transitional language to protect the

existence of the Academic Staff Associations, the description of the existing bargaining units, and the integrity and existence of the collective agreements. We are concerned that the Boards of Governors/Administration would use any gap in Association representation or Collective Agreement to set back the provisions protecting academic staff. We are concerned that a complete restructuring of the system would ironically harm academic staff more than any of the potential benefits a new system might create.

[Recommendation #2:] ***Therefore, we recommend that, notwithstanding the right to freedom of association, any system changes keep the current Academic Staff Associations and Collective Agreements intact with their incorporation protected by the Post Secondary Learning Act.***

iii. Anti-Union Sentiment among Boards of Governors and Administrations:

This discussion is occurring following a long period of anti-union sentiment within the former governing party, among Boards of Governors, and within university administrations. Rather than seeing Universities as collegially-governed public bodies, these groups have tended to impose corporate culture and structures. The change in labour relations required in Alberta does not simply require a change in laws or structures; it requires a change in culture which can only come from more diverse appointments to Boards of Governors and more transparent, consultative, and democratic processes throughout the universities and administrations. For the public good, we need Board of Governors members who understand the role of non-profit institutions, and who support the principles of academic freedom, bi-cameral governance, and the multi-faceted role of universities within society. Frankly, we need Boards of Governors that are more reflective of the society in which we all live.

[Recommendation #3:] ***We therefore recommend a more diverse, equitable and robust selection process for Boards of Governors.***

[Recommendation #4:] ***Consistent with the bi-cameral nature of university governance, we also recommend that all governance and administrative processes within the universities be reviewed to ensure transparent, consultative, and democratic decision making consistent with the primacy of the Collective Agreement.***

iv. Review of PSLA Structures and Processes for Collegial Decision Making

The governance processes within the post-secondary system generally, and in the CARI group specifically have been eroded significantly and are in need of updating. The traditional bi-cameral separation of financial authority held by the Boards of Governors with academic authority held by the General Faculties Council has been systematically undermined. The degradation of the system has often been

orchestrated by the administrations who have imposed themselves into the breach. The overall growth of and control by the administration over the last two decades has been breathtaking. Some have now come to refer to themselves as a “third arm” of collegial governance. Overall, there needs to be a rebalancing of authority and responsibility to ensure effective decision making respecting the need for an appropriate balance of powers and a reaffirmation of the primacy of the collective agreement in this context. We understand that discussions regarding such changes to the *PSLA* are further down the government’s priorities, and we will be preparing a submission related to these points in due course. However it must be recognized that currently one of the only significant barriers to administrative domination of the governance of post-secondary institutions comes from the Academic Staff Associations. In the absence of significant structural change to the democratic processes within the universities, any weakening of Academic Staff Associations would feed the administrative domination.

[Recommendation #5:] ***We recommend that a review of university governance structures and authority as defined in the Post-Secondary Learning Act be undertaken by the government within the term of their current mandate, following extensive consultation with stakeholders.***

v. Academic Staff Associations Go Beyond the Labour Relations Role

Because of the unique evolution of Academic Staff Associations within Alberta, they have become more than the labour organizations which exist for academic staff in other provinces. Although the experience is varied depending on the institution, we play a significant role in protecting the academic rights of members (including academic freedom), protecting the integrity of governance processes, ensuring the two-way exchange of information, and supporting the integrity of the academy and the public good. Certainly, this is a role that the administration would like to see diminished or eliminated as it casts a spotlight on the power imbalances and inappropriate decision making.

[Recommendation #6:] ***We recommend that in considering changes to the labour relations system, it be recognized that the Academic Staff Associations often play broader roles than typical labour unions within the collegial governance structures of the universities.***

C. Dispute Resolution Mechanism/Bargaining Best Practices

Certainly, one of the key motivators for this discussion is the question of the resolution mechanism to be used. Based on our reading of the Supreme Court of Canada decision, there is a default right to strike that needs to be established as a part of the post-secondary learning labour relations regime. However, we also

believe that each set of negotiating partners (i.e. Board of Governors and Academic Staff Association), have the right to negotiate alternative provisions as an aspect of their freedom of contract. Such contract provisions must be negotiated freely and respecting the fundamental right to strike. To meet this threshold, there must be provisions added to the *Post-Secondary Learning Act* related to strikes/lockouts, and to allow for access to the Labour Relations Board to regulate the fair implementation of such provisions. In other words, we are proposing a regime that operates in parallel to the *Labour Relations Code*.

[Recommendation #7:] ***That the legislation be permissive in allowing Academic Staff Associations and Boards of Governors to negotiate alternative dispute resolution mechanisms, without precluding the right to strikes/lockouts, if the Parties agree to such alternative mechanisms.***

This is not the only part of the *Labour Code* that needs to be incorporated into the *Post-Secondary Learning Act*. While we believe there are good reasons to exclude Academic Staff Associations from many facets of the *Labour Relations Code*, as explained above, the wholesale exclusion leaves a few significant gaps. For that reason, we recommend the following additions to the *Post-Secondary Learning Act*.

[Recommendation #8:] ***We recommend that certain labour provisions be introduced into the PSLA, and for the Labour Relations Board to take a limited role in protecting these provisions. Specifically, these provisions should include:***

- a. The requirement for good faith bargaining.***
- b. That complaints related to the duty of fair representation be heard by the Labour Relations Board.***
- c. That Collective Agreements continue to be in force during mediation/arbitration, until a new agreement is put into force.***
- d. The full disclosure of members' information to Academic Staff Associations so as not to interfere with their representation of employees in the bargaining unit.***

D. Designation

Of importance to the CAFA members is the current process for designating/de-designating academic staff. The current provisions in *PSLA* sections 5(2)(a) and 60(2) allow the Board of Governors to unilaterally designate or change designation of academic staff (after consultation). Given the previously explained anti-union sentiments and the domination of the administration, the Academic Staff

Associations are almost powerless in forcing matters of designation of academic staff to be addressed. That being said the experiences of the CARI institutions on this point are diverse, with the U of A historically taking a broad view of the definition of academic staff; the U of C and U of L taking an exceedingly narrow view, and the Athabasca in an anomalous situation related to its unique role. At the U of C and U of L there are large numbers of university staff who are prevented from being represented in any bargaining group. In many cases these are individuals whose work is intrinsically tied to research and teaching and should be recognized as part of a more broadly defined academic staff complement.

The key issue is that there is currently no way to force decisions and there is a power imbalance held by the Boards of Governors/Administrations. Even if we were able to force discussions with our Boards of Governors/Administrations, our experience on such matters in the past has been administrative inaction for extended periods of time. Or, some Boards may be taking action based on corporate hierarchical considerations. So while the bargaining table will be the best place to resolve issues in the future, it may not be as effective in resolving the backlog of issues at the various institutions. Therefore, we believe the best solution would be (and thus our recommendation is):

[Recommendation 9] *Notwithstanding the right to freedom of association, designation should be subject to the collective bargaining process and thus subject to mediation and/or arbitration as established in the Collective Agreements at each institution. To establish a new baseline, a one-time special tribunal should be established to resolve any issues that cannot be resolved by the local Parties within 6 months of the passage of any new legislation.*

E. Hiring

One of the contradictions in the *PSLA* is that the Academic Staff Associations are given authority over the terms and conditions of employment, yet the General Faculties Councils have authority over the hiring rules. For the most part, the General Faculties Councils have no way to ensure the rules are followed or to enforce compliance when they are not followed. This exclusion of the Academic Staff Associations from the hiring practices means that we have no way to ensure that those hired are truly academics, treated fairly or consistently.

[Recommendation #10:] *We therefore recommend that the authority for establishing hiring rules and processes for academic staff be transferred from the General Faculties Council to the Collective Agreements.*

Conclusion

In conclusion, we would like to reiterate our thanks to the government and those involved in the review of these provisions. We look forward to continued discussion to improve the labour relations practices within Alberta post-secondary institutions.