

## **Management Bargaining Team Chair's August 12 Response to U5 submission - Academic Freedom, Intellectual Property, and Academic Councils**

- In the Union proposals on Intellectual Property (13.06 I, J, K, L & M), the Union propose language to regulate the intellectual property rights of Indigenous Peoples. We must not lose sight of the fact that we are negotiating contractual language directed at the employment relationship of our employees and the colleges. The collective agreement does not apply to Indigenous Peoples who are not employees of the Colleges. We are prepared to have discussions related to Indigenous issues arising in the employment context which may be raised by the foregoing proposals and would like to discuss process with the Union team. We acknowledge the special status of Indigenous Peoples and recognize that proposals related to Indigenous knowledge require more consultation and discussion. We are committed to engaging in this process and discussions with the Union team in bargaining. Our response today deals with the balance of the Union's Academic Freedom, Intellectual Property, and Academic Councils (U5) proposals.
- We have closely reviewed the Union's submission regarding Academic Freedom, Intellectual Property, and Academic Councils.
- We have compared those proposals to the ones tabled by the Union in 2017.

### **Academic Freedom/ Academic Control**

- That comparison reveals that the Union's "Academic Freedom" proposal is largely an expansion of the proposals made in 2017.
- The Academic Freedom proposals the Union submitted are in our view not about academic freedom. Instead, they are really about academic control. Academic freedom is currently sufficiently provided for in the existing structures and the current collective agreement.
- The Colleges cannot cede academic control as this would prohibit the ability of Boards of Governors and CEOs to effectively undertake their responsibilities as these are laid out in legislation. The entire architecture of the college system in Ontario is informed by the statutory purposes of the colleges. These purposes are reflected in the colleges' current governance structure, the collaborative, multi-stakeholder process for program review and development, and the varied program offerings across the colleges which are themselves framed by the Ontario Qualifications Framework, provincial Program Standards, and other external entities and accrediting bodies, and which are meant to be responsive to the needs of multiple stakeholders within their communities.
- In the rationale that the Union provided with its U5 proposals, it states that "..., in the face of what (the Union) understand to be the biggest challenge in the history of

the College system – the massive and sudden shift to Emergency Remote Learning—academic freedom enabled faculty throughout that process to make the decisions that were most appropriate to their courses, their subject matter, their professional standards, and their students’ needs”. If, as the Union team says, faculty were able to properly exercise their academic freedom to navigate the crisis of the pandemic we fail to see any basis upon which the Union could ground a demonstrated need for any further change to the academic freedom language.

- As the Ontario Court of Appeal has recently said in the Canadian Federation of Students decision: Ontario colleges are highly regulated Crown agents. They are established by regulations made under the OCAATA ... The Minister enjoys extensive control over Ontario colleges, as s. 4 makes plain. That section specifically empowers the Minister to direct college operations...
  - a. [32] Ministerial control over colleges is reiterated throughout the OCAATA. For example, s. 5 of the Act authorizes the Minister to intervene in the affairs of a college if, in the Minister’s opinion, the college is not providing services as required, the college fails to follow a policy directive, or it is in the public interest to do so. The Act permits the Minister to define the public interest having regard to such considerations as the quality of a college’s management and administration and the quality of the education and training services it is providing.

## **Intellectual Property**

- Similarly, the Union’s proposals regarding Intellectual Property are largely an expansion of the proposals made in 2017.
- The Colleges are not prepared to entertain that expansion for many of the same reasons we provided in 2017:
- We submit that in the Ontario College system, the primary role of the Teacher is to deliver programming that is either bound by provincial program standards, or in some cases prescribed at the curriculum level by external bodies. Generally speaking, Teachers within the Ontario College system do not engage in research with the goal of pushing the boundaries of knowledge or creating new knowledge. Nor are courses or course content generally created based on the research of individual Teachers.

## **Academic Council / Senates**

- The Union proposals regarding Academic Councils are a rebranding of the Union’s 2017 Senate proposals taken to an even higher level of control and less administration involvement.
- Our position on Senates and College Governance is laid out in [the article](#) that CEC initially published on April 19<sup>th</sup>, 2021.

- In 2017, the three Union proposals under these headings were largely responsible for precipitating a protracted bitter strike.
- That strike was ended by back to work legislation with binding interest arbitration.
- Arbitrator Kaplan did not award any of the Union's proposals which are now reiterated and expanded in the current set of proposals.
- The Colleges' position on these matters has been clear, and known to the Union, since the last round of bargaining. This position was recently made clear again in the governance work undertaken and published by Sheridan College. We are once again confirming that the Colleges will never agree to proposals like those contained in the Union's current U5 submission (acknowledging the caveat regarding Indigenous Peoples stated earlier).

## **In Conclusion**

- We believe that these proposals are designed for rejection given that they were the subject matter of the last strike and were not awarded in any measure by Arbitrator Kaplan.
- The Union needs to seriously consider its position in this regard.
- Maintaining these demands is not a path to a negotiated settlement.
- A strike over these proposals will not be ended by an agreement which contains any of these demands.
- The only way that a strike will be ended with these demands still on the table is return-to-work legislation (we note that OPSEU is institutionally opposed to back-to-work legislation and has current litigation against previous back-to-work legislation introduced by the government).
- The best predictor of the future is the past – Arbitrator Kaplan did not award any of these untenable demands in the last arbitration and given the lack of demonstrated need for these proposals it is highly unlikely that any arbitrator would now award them.
- If the Union has some reasonable proposals on these topics that it would like us to consider, we invite the Union to table them so that we may have an informed discussion about them.
- Our principals have entrusted each of us with the serious task of concluding a collective agreement. We are here to engage in deliberate discussion to achieve that end while maintaining the unique characteristics of the Ontario college system.