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# POST-SECONDARY LEARNING ACT CONSULTATION – WHAT WE HEARD

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## OVERVIEW OF THE CONSULTATION PROCESS

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### Current landscape

The labour relations model for faculty and graduate students at Alberta’s public post-secondary institutions is contained in the Post-secondary Learning Act (PSLA). The model does not apply to Alberta’s five independent academic institutions (which are private but receive some public funds), or to the Banff Centre. Nor does it apply to non-academic staff members, to whom the Public Service Employee Relations Act applies.

In general, the PSLA labour relations model can be described as an open-ended or enabling model of labour relations. For this reason, labour relations has developed in an organic way over a long period of time with many collective bargaining processes contained in collective agreements rather than in legislation. This may be contrasted with other Canadian jurisdictions in which faculty and graduate students are governed by the provincial equivalent of Alberta’s Labour Relations Code (LRC).

The PSLA establishes one faculty association at each of Alberta’s 20 public post-secondary institutions and one graduate students association at each of Alberta’s four comprehensive academic and research institutions. These associations are granted the exclusive authority to represent their members in collective bargaining with the board of governors at their respective public post-secondary institutions and to enter into a collective agreement on behalf of their members. The membership of a faculty association consists of all employees designated as academic staff members by the board of governors at an institution.

In most cases, the PSLA mandates compulsory binding arbitration to resolve disputes that occur during collective bargaining. The compulsory binding arbitration requirement was introduced with the passage of the PSLA in 2004 and effectively prohibits strikes and lockouts in most of Alberta’s public post-secondary sector. In the few cases where a notional right to strike still exists (faculty associations at Alberta’s four comprehensive academic and research institutions), the right to strike was “bargained away” prior to the coming into force of the PSLA in 2004.

There are a number of common features of Canadian labour relations models that the PSLA does not speak to, including strike/lockout procedures, the requirement to bargain in good faith, the duty of a trade union to fairly represent its members and rules prohibiting unfair labour practices. In addition, the PSLA does not provide faculty members and graduate students with access to the Alberta Labour Relations Board.

### Changes to Alberta’s labour relations legislation

A January 2015 decision of the Supreme Court of Canada (Saskatchewan Federation of Labour) recognized a Charter-protected right to strike when collective agreement negotiations break down.

This decision has led the Government of Alberta to re-evaluate the compulsory interest arbitration provisions in the PSLA and the Regulation.

## Labour relations in other jurisdictions

In all other Canadian jurisdictions labour relations for faculty and graduate students is governed by the equivalent of Alberta's LRC. The Alberta approach is unique in that a separate statutory scheme governs labour relations for faculty and graduate students. In contrast to their counterparts in other provinces, Alberta's faculty members and graduate students do not have the right to strike.

In Alberta, faculty and graduate students are represented in collective bargaining by a statutorily established bargaining agent, whereas in other Canadian jurisdictions a trade union may apply for certification to represent faculty and graduate students. The certification process permits multiple smaller associations instead of one large faculty association; for example, contract/sessional instructors may choose to be represented by a different association than fulltime tenured faculty.

Finally, in Alberta the board of governors has the power to designate categories of employee or individual employees as academic staff members; while this is not unique, because of the way the legislation is drafted, a designation decision has the effect of determining who is or is not a member of the academic staff association. In contrast, in other jurisdictions the scope of the bargaining unit is subject to the approval of the Labour Relations Board and employers are not permitted to determine the bargaining unit to which their employees belong.

## Consultation

In October and November 2015, Advanced Education consulted with academic staff associations, graduate student associations, non-academic staff associations, and public post-secondary institutions on how to go about implementing the right to strike. A discussion guide with proposed options and questions was sent on behalf of the Minister of Advanced Education to the boards of governors of public post-secondary institutions, and to faculty and graduate students associations. Department staff made themselves available to meet and discuss the proposed options, and a number of stakeholders accepted this offer. The discussion guide contained two options to facilitate conversation: (1) implement the right to strike through amendments to the PSLA or (2) implement the right to strike by transitioning faculty members and graduate students to the LRC. Stakeholders were also asked to provide feedback on essential services legislation.

Feedback was also requested from (undergraduate) students associations on the impact that strikes and lockouts might have on students at public post-secondary institutions. In addition, an online public comment form was available on the essential services consultation website during the month of October.

General consensus among consulted stakeholders was that if the Government decides to amend the PSLA by March 31, 2016 it should take a minimalist approach in amending the Act to ensure it complies with the Supreme Court of Canada decision. Stakeholders were amenable to broader amendments on a longer timeline following further consultation.

### Preference for Option 1/hybrid approach

- There is a general preference among both institutions and associations for Option 1 as set out in the discussion guide. Some stakeholders have suggested (as we have internally identified as well) doing a hybrid of *Post-secondary Learning Act* (PSLA) and the *Labour Relations Code* (LRC).
- Items suggested to be included in the PSLA are for example strike/lockout procedures and rules around picketing. In relation to the hybrid approach, associations request to include items such as good faith bargaining, duty of fair representation and an appeal mechanism for designation.
- Submissions from individual faculty members indicate that there is some support for the LRC model. The Mount Royal Faculty Association found in a poll of their membership that a slim majority favoured transitioning to the LRC model over retaining the PSLA model for labour relations. Other faculty associations were less supportive of the LRC model, although a number of associations indicated that it might be a workable solution but would require additional consideration before implementation.

### Uniqueness of sector

- Many stakeholders stressed the uniqueness of the post-secondary sector, and emphasized the need to consider the particularities of labour relations in the sector before making any changes to the model. Two of the more emphasized differences were: collegial governance and the lack of a solid distinction between manager and employee among academic staff members.

### Collegial governance

- Both the institutions and the associations expressed a strong commitment to collegial governance. Most stakeholders feel that transitioning to the LRC model would adversely impact collegial governance within the sector. The LRC model is perceived as a more adversarial model of labour relations, which is broadly viewed as inappropriate for this sector. It is not apparent that collegial governance has been adversely affected in other Canadian provinces in which the LRC model is utilized.

### Stability

- Many stakeholders strongly emphasized the need for stability in this sector. Even those who support the introduction of the right to strike/lockout acknowledge that strikes/lockouts should be rare as they would have a negative impact both on students and on relationships within the sector.
- Most stakeholders believe that a transition to the LRC model would have a negative impact on stability within the sector due to, for example:
  - Potential for invalidation of all or part of collective agreements
  - Potential for union “raiding”; i.e. a third party trying to obtain bargaining rights for all or part of the academic staff (fracturing of bargaining units)
  - Potential impact on collegial governance structures

### Academic freedom

- Academic staff associations strongly emphasized the need to protect academic freedom. They argue that academic freedom is currently protected through collective agreements and, therefore, it is important to ensure that the current collective agreements are not impacted by any changes to the legislation.

### Minimalism

- Some stakeholders have endorsed a minimalist approach in light of the short timelines for consultation. In the immediate term, they have advised government to keep the scope of the amendments narrow and focus only on what is required to address the Supreme Court of Canada decision.

### Continuity

- Stakeholders have addressed the need for continuity after whatever changes are made to the labour relations model, including:
  - Continuity of collective agreements
  - Continuity of bi-cameral/collegial governance structures
  - Continuity in the relationships between boards of governors and academic staff associations
- A number of stakeholders also expressed satisfaction with the current model of binding arbitration to settle collective bargaining disputes.

### Policy vs. legal

- In addition to the policy questions put forward in the discussion guide, some stakeholders have raised some legal issues as well, for example:
  - Whether board designation of academic staff infringes upon the *Charter* right to freedom of association
  - Whether the Supreme Court of Canada decision actually requires the removal of the compulsory binding arbitration provisions from the *Post-secondary Learning Act* (PSLA)
  - What is the legal standard for defining an essential service
  - Whether academic staff associations can “contract out” of the *Charter*-protected right to strike

### Freedom of association

- The *Charter* right to freedom of association has come up in some of the stakeholder feedback. Notwithstanding the Supreme Court of Canada decision, stakeholders have differing interpretations of what is required in relation to this right.

### Essential services

- Views on essentiality ranged broadly from a view that there are no essential services within the public post-secondary sector to a view that all academic staff members are essential.
- The most common view appears to be that some small number of academic staff members perform essential services such as, for example, ensuring safety in laboratories or feeding animals.

### Impact of strike/lockout

- Notwithstanding whether academic staff members are essential, stakeholders broadly expressed concern regarding the impact of a strike/lockout in this sector.
- Students in particular worry about the impact of a strike/lockout and believe that tuition should be refunded in the event of lost class time. In addition, students strongly argued that even a refund of tuition fees would not adequately compensate them for the negative impact of a strike/lockout including, for example, the cost of delayed entry into the labour market for students who miss graduation due to a strike/lockout.
- Delayed graduation may impact students who have obtained employment that is contingent on their graduation, classes delayed into summer can affect students’ ability to complete summer

work/study arrangements and the visa status of international students could be put in jeopardy.

- The impact of a strike or lockout on apprenticeship training would be more severe than for other forms of post-secondary training due to the shorter duration of training, which typically lasts for 6-8 weeks such that a strike of 2 weeks' duration could be sufficient to cause a cancellation of an entire training period. Capacity issues within the apprenticeship training system are such that an apprentice whose training period is cancelled would likely be forced to wait until the next academic year to re-enroll in training.

#### Graduate Students

- Graduate students associations expressed their desire to retain the PSLA model for labour relations. They were very clear that their main reason for doing so is that they do not wish to lose their statutorily enshrined exclusive authority to represent graduate students in collective bargaining. In addition, graduate students associations expressed reservations regarding the right to strike as they believe that the economic pressure they can exert on their employer through a strike is limited and they fear being locked out. They favoured retention of compulsory binding arbitration for graduate students.