

From gentlemen's agreements to collective agreements: how the unionization of full time faculty members in Anglophone Canadian universities has changed the management and governance structures of those universities.

Joy Bennett

A thesis in the Special Individualized Programme

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ABSTRACT

From gentlemen's agreements to collective agreements: how the unionization of full time faculty members in Anglophone Canadian universities has changed the management and governance structures of those universities.

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Concordia University, 2003

This thesis examines the influence that unionized faculty associations have had on the management and governance structures of Canadian universities by exploring the reasons that led to certification, the certification process, and the collective bargaining history at three research level Anglophone universities. Since the 1940s Canadian labour legislation has permitted unionization and collective bargaining in the private sector, but it was only in the mid 1960s that changes in the legislation, at both the federal and provincial levels, allowed individuals in the public sector to unionize. The certification of professionals in the public sector gave Canadian university faculty associations the model they needed to consider unionization and collective bargaining as a viable means by which they might ensure academic freedom, increase faculty autonomy and improve compensation.

The three universities – the University of Manitoba, Dalhousie University and Queen’s University - were studied using case study methodology, which included interviews, examination of primary and secondary documentation, and textual analysis of collective agreements. In each case, the conditions under which unionization occurred have been examined, the reasons for certification analysed, and the results discussed.

This study shows that unionization led in fundamental ways to changes in the governance and management structure of the universities, with authority relating to faculty personnel matters shifting from the senate to direct negotiations between the board of governors and faculty associations. As a result, significant management powers have devolved from the senior academic administrators to academic peers. The gentlemen’s agreements, formerly forged during senate debates, have been replaced by negotiated collective agreements. The overall implications of these changes on the governance and management of Canadian Anglophone universities have generally been positive, but only time will tell whether they will continue to be so.

For Gary, Marian and my colleagues at Concordia University

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During the course of my research I was overwhelmed by the generosity of individuals, both in the senior administrations and the faculty associations at the University of Manitoba, Dalhousie University and Queen's University. I am grateful to each of the individuals who shared their experiences of unionization and collective bargaining with me. Their recollections and advice were invaluable to my work and I thank each of them sincerely.

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brought a particular expertise to my work and they have all offered me outstanding advice and assistance over the course of this work. I am truly grateful to Dr. Enn Raudsepp, Chair, Department of Journalism; Dr. Donald Savage, former Executive Director of CAUT and Adjunct Professor of History and Dr. Jerry Tomberlin, Dean, John Molson School of Business. I would add a note of thanks to Dr. Martin Singer, Dean of the Faculty of Arts and Science and Dr. Jack Lightstone, Provost and Vice-Rector, Research for their willingness to appoint Dr. Savage as an Adjunct Professor of History, in order for him to work with me.

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Montreal, 15 July 2003.

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CHAPTER 1
THE ROAD TO COLLECTIVE BARGAINING IN CANADIAN ANGLOPHONE
UNIVERSITIES: 1950-1970

The decision for Canadian academics to join the ranks of the unionized “working class,” was a decision that came in stages across the country and was prompted by local circumstances, external forces, and provincial government legislation. Among Anglophone universities, certification was decided locally, one university at a time, with little or no provincial or regional trends. The situation was somewhat different in the province of Quebec where each campus of the University of Québec system certified shortly after its inception, and the other Francophone universities in that province followed suit. In universities such as Laval, which had been founded and subsequently managed by the hierarchy of the Catholic church, unionization was a viable alternative that offered faculty an opportunity for more academic autonomy. Although this study is primarily a discussion of the situation in Canadian Anglophone universities, the situation in Quebec Francophone universities provides interesting and important comparisons and will be introduced and discussed in that light.

While it is highly unlikely that any two faculty associations made their decision for exactly the same set of reasons, or were responding to exactly the same real or perceived threats to their autonomy, identity and economic situation, it is clear that there were degrees of dissatisfaction with working conditions and economic benefits in most universities across the country. It was that nagging dissatisfaction that prodded and propelled faculty members, in all disciplines, to sign union cards. In

doing so they committed themselves and their colleagues to begin the process of collective bargaining; that is, to sit down, across a table from representatives of their employer and to engage in the often arduous, lengthy and confrontational exercise of contract negotiations. As they did so, they had to know that academic life would never be quite the same again and that the very act of collective bargaining in a legally accredited process would change the fabric of Canadian universities forever.

Unionization changed the governance and management structures of those academic institutions as the issues of power and the sharing in the decision making processes were moved from senate debates to negotiating tables and boards of governors became the ultimate management decision makers as they mandated senior academic administrators to bargain on their behalf with the faculty association. Through collective bargaining, legally binding grievance and arbitration procedures for settling differences replaced any internal appeal mechanisms previously sanctioned by either senates or boards. The discussion concerning the allocation of the “bundle of rights”¹ that each side would bring to the table to be negotiated and renegotiated usually focussed on similar issues; academic freedom and tenure, appointments, promotions, dismissal, and grievances and, of course, salaries and other economic benefits. As faculty associations jockeyed for positions that would afford their members greater autonomy and more control in the management of the university,

¹ Margaret K. Chandler, and Daniel J. Julius, Faculty VS Administration: Rights Issues in Academic Collective Bargaining (New York: Center for the Study of Collective Bargaining in Higher Education, 1979).

academic management tried to hold onto their historically acquired rights to appoint, promote, grant tenure, dismiss, and compensate. Senates often were divided along union and non-union sentiments. The rift was frequently bitter and long-lasting.

BACKGROUND

Canadian labour history has its past in the mines, railroads and factories of the country. Workers from Great Britain and Europe brought with them the skills that they had acquired abroad and a keen desire to find better opportunities and greater economic rewards than had been available to them previously. They also brought with them their traditions of craft guilds and trade unions. What they found in Canada in the late 1890s and early part of the 1900s was a rather chilly labour climate. Prior to 1872 there was no legislation that enabled or even allowed for the recognition of unions, and the capitalist managers resisted the union movement in any way that they could, including the use of force. In fact “the extensive use of force by the state in employers’ resistance to unionization has become one of the hallmarks of Canadian labour history.”² Management was particularly reluctant to accept any obligation to discuss salaries and working conditions with employees and even more reluctant to allow employees to gain equal bargaining power, that is, the right to withhold their services in a legal strike.

² L. V. Panitch, and D Schwartz, "The Economic Crisis and the Transformation of Industrial Relations in Canada," CAUT Bulletin 30.7 (1983).

In 1900, William Lyon Mackenzie King joined the newly created Ministry of Labour in the Government of Canada and for the next forty years was the author and driving force behind labour legislation and labour relations policies in Canada. In 1907 he was the architect of the Industrial Disputes Investigations Act. According to Sir Wilfrid Laurier, the Prime Minister at that time, the Industrial Disputes Investigations Act (IDIA) was introduced “with the sole object of preventing the untold misery and mischief wrought by strikes.”³ King, educated in labour relations and dispute resolution at the University of Toronto and at Harvard University, did not believe in, or even support, the collective bargaining process, but rather was convinced of the power and usefulness of conciliation, and was of the opinion that any two factions could be persuaded to come to a compromise that was in the public good. The IDIA was intended as a forum to investigate and resolve disputes between management and employees and thus to eliminate or reduce labour strife and illegal strikes.

Although he believed in the benefits of workers’ associations and various modes of industrial conflict resolution, for forty years he refused to bring forth enabling legislation that would provide the right to unionize or strike and thus equalize the bargaining power between employee and employer. It was only in 1944

³ Daphne Gottlieb Taras, "Collective Bargaining Regulation in Canada and the United States: Divergent Cultures, Divergent Outcomes," Government Regulation of the Employment Relationship Ed. Bruce Kaufman. (Madison, WI:IRRA, 1997).

when the federal Liberals feared that they would lose the next election to a more socialist party that Bill PC 1003 was passed. Bill PC 1003 legislated the rights of private sector workers to form unions and required employers to recognize those unions and to negotiate with them in good faith.

The years following 1944 saw a good deal of union activity in the Canadian labour force. However, the “very same legislation which backed with state sanctions the right to recognition and guaranteed the right to strike also constrained the nature of bargaining and the exercise of union power in a highly detailed manner.”⁴ The right to strike was frequently curtailed in order to retain management’s control of the bargaining process. Where previously overt force had been used, as in the Winnipeg General Strike of 1919 when the RCMP was called in to quell the strikers, now the rule of law was used to control and circumscribe labour rights.

The new labour climate related only to private sector employees. Public sector workers which included government employees, teachers and health care workers were excluded from collective bargaining legislation, except in Saskatchewan, which had set a precedent in 1944 by including civil servants in the provincial Trade Union Act. Elsewhere in Canada, public sector employees had formed associations with memberships that embraced all levels of employees from clerks and shop floor workers to senior managers and directors. One of the main purposes of these

⁴ L. V. Panitch and D. Schwartz. "The Economic Crisis."

associations was consultation with the employer to influence salaries and working conditions. Since professionals and white collar workers traditionally viewed unions with scepticism, it is not difficult to understand why they felt more comfortable in an association-consultations relationship.⁵ Until the late 1960s and early 1970s most public (government) employers rejected the idea of collective bargaining for their employees, relying on the concept of government sovereignty to support and justify their position. In 1951, Canadian Prime Minister Louis St. Laurent put it this way:

There can be no bargaining agent for the nation comparable with the employer in industry. The funds from which salaries are paid in public service have to be voted by Parliament and Parliament alone can discharge that responsibility.⁶

Some years later, still trying to hold back the inevitable, Quebec Premier Jean Lesage stated, "The Queen does not negotiate with her subjects."⁷ Little did "the Queen" know that "she" would soon be negotiating with thousands of Quebec provincial employees who were eager to test the boundaries of the new legislation and

⁵ Allen Ponak and Mark Thompson, "Public Sector Collective Bargaining," Union-Management Relations in Canada, Ed. Morley Gunderson and Allen Ponak (Don Mills: Addison-Wesley, 1995).

⁶ Allen Ponak and Mark Thompson, "Public Sector Collective Bargaining."

⁷ Allen Ponak and Mark Thompson, "Public Sector Collective Bargaining."

would plunge the province into strikes with thousands of person-days lost, a situation unheard of since the illegal strikes of the 1930s. During the post war period the level of union density had remained steady at about 30% of the non-agricultural workers and did not change until the 1960s.

Collective bargaining in the public sector in Canada did not begin until 1963 when collective bargaining rights were promised to federal civil servants. The Public Service Staff Relations Act passed in 1967, resulted in the unionization of more than 100,000 federal employees. Following the federal model, one by one, all of the ten provinces and two territories passed legislation that would allow some form of collective bargaining to public service employees. Perhaps it was a result of Quebec's "Quiet Revolution" or the desire of the Lesage government in Quebec to gain labour's support by making peace with labour and implementing a new labour regime that prompted the Quebec government to be the first province to extend full collective bargaining rights and the right to strike⁸ (See Appendix A) to public sector employees

⁸ The right to strike is essential to the collective bargaining process as it is the factor that equalizes the power between the two parties. Without the right to strike employees are merely engaged in "collective begging" and negotiations can drag while management refuses to bargain in good faith knowing that workers will continue to perform their tasks. Since the early days of collective bargaining in the public sector in Canada there have been various provincial and federal amendments which limit the right to strike for certain categories of essential service employees, for example firemen, or to require that a certain number of employees remain on the job to provide "essential services", for example nurses.

in 1965. “The Queen” was soon to learn all about negotiations strategy and strikes as provincial workers rushed to sign cards and unionize into the largest collectives in the country. Thus opened a new era of collective bargaining in Canada, one that would see white collar workers and professionals join the ranks of blue collar labour in seeking certification. Before the 1960s, organized labour in Canada was predominately blue collar, male, private sector and linked to unions in the United States.⁹ Unionization of the public sector changed all that since a large proportion of public servants were white collar, professional workers and many of them were female. In fact approximately 60% of public sector union members are female, with their highest representations in education, health and social services. Similarly, virtually all professionals who engage in collective bargaining are employed in the public sector.¹⁰

The transition from association-consultation to legally mandated negotiations was not always easy, and between 1975 and 1984 the number of person-days lost to strikes and work stoppages was a phenomenal 208,251 person-days federally¹¹ with the provinces ranging from a modest 72 person-days in PEI to a high of 706,826 person-days in Quebec.

⁹ Allen Ponak and Mark Thompson, "Public Sector Collective Bargaining."

¹⁰ Allen Ponak and Mark Thompson, "Public Sector Collective Bargaining."

¹¹ Allen Ponak and Mark Thompson, "Public Sector Collective Bargaining."

Collective bargaining now came to the public's attention. Public service sector negotiations became fodder for the news media; postal workers' negotiations and strikes became news that affected the lives of the public. The Canadian public was treated to scenes of teachers taking to the picket lines promoting "better education" via better salaries and working conditions and to our senior citizen lining up to collect pension cheques that would not be delivered by the postal service. When the workers finally settled their contracts, their gains (and losses) were a matter of public record. Few of the public could be immune to the information nor could they help but compare their own working arrangements with those that were publicly debated and reported. It also became evident that unionization and collective bargaining had gained a new respectability as public service unions represented well-educated and highly-qualified professional workers. The fact that teachers and health care workers could not only survive, but benefit from a unionized arrangement made it possible for faculty members to consider this model in a positive light.

FACULTY UNIONS

What then were the factors which compelled academics in Canadian Universities to leave the hallowed halls of academe with their collegial governance structures and their version of association-consultation to enter the fray of unionization, collective bargaining, strikes, lockouts and labour unrest? Carr and

Van Eyke¹² have proposed that three conditions are necessary for faculty members to make the decision to move from “association-consultation” to certification and collective bargaining, and I would add a fourth:

1. The law must establish the right of the group to require their employer to bargain with them;
2. There must be a substantial measure of dissatisfaction with existing conditions of employment;
3. Someone must make the positive efforts to organize.
4. There must be considerable concern for future academic and economic stability.

LEGISLATION

In Canada, labour relations are governed provincially so that although federal legislation has an influence, each province or territory enacts its own labour legislation to suit the needs of its particular labour environment. In the case of private sector employees, the provincial legislation follows principles derived from the Federal Bill, PC1003. However, no such overriding principles govern labour legislation for the public sector. Each province has its particular legislation governing its public and para-public workers. In many cases, there is different legislation for

¹² Robert K. Carr, and Daniel K. Van Eyck, Collective Bargaining Comes to Campus (Washington: American Council on Education, 1973).

different categories of public sector workers, for example, firefighters and police may be governed by different legislation than are nurses or teachers (See Appendix A). In particular, the right to strike is often severely curtailed or eliminated for certain sectors in order to maintain essential services. In other cases, the scope of issues that may be bargained is constrained, thus expanding and enhancing management rights and limiting and curtailing union power.

Between 1965, when Quebec passed legislation to allow its public service employees virtually the same collective bargaining rights as employees in the private sector, and 1975, the union density of government employees became approximately 80%.¹³ In fact, in Canada, over half of all union members are in the public sector and the two largest unions, Canadian Union of Public Employees and the National Union of Provincial and General Employees are public sector unions.¹⁴ The union density rate for the education sector is about 75%. According to Gunderson and Hyatt this high degree of union density in the public sector was built on three main foundations: municipal workers had a long history of being covered under private sector legislation

¹³ Union density is the measure of union members as a percentage of paid workers in non-agricultural employment

¹⁴ Morley Gunderson, and Douglas Hyatt, "Canadian Public Sector Employment Relations in Transition," Public Sector Employment in a Time of Transition, Eds. Dale Belman, Morley Gunderson, and Douglas Hyatt (Madison: Industrial Relations Research Association, University of Wisconsin, 1996).

and they provided the “thin edge of the wedge”; second, the socialist party, the predecessor of the New Democratic Party in Saskatchewan included its own civil service under its original legislation passed in 1944 and gave its own civil servants the same collective bargaining rights, including the right to strike, as had been granted to private sector employees; thirdly, and perhaps most applicable to the university sector employees, many employees in the public sector had a long history of consultation with their employers over salaries and working conditions, so that while the public employers had resisted collective bargaining, they were familiar with the process. The public sector employees were ready to take the step from “collective begging” to “collective bargaining.”¹⁵

The 1960s was also a period of rapid and drastic change in the social environment. It was an era of civil rights movements in the United States, anti-Vietnam War protests, the Quiet Revolution in Quebec and international campus militancy. In the universities, many newly hired faculty members had come from that tradition of campus unrest and revolution, and Canadian universities in the later 1960s became a haven for well-educated draft dodgers from the United States seeking faculty appointments. While the Canadian academy was still struggling to produce sufficient numbers of qualified faculty members to meet the growing needs of new Canadian universities, this pool of Americans who needed employment and were

¹⁵ Morley Gunderson and Douglas Hyatt, "Canadian Public Sector Employment Relations in Transition."

eager to cross the boarder was a welcome addition. Faculty members coming from American universities and colleges also brought with them a familiarity with collective bargaining since legal certification had been sought at many U.S. campuses and by 1972, about forty American four-year colleges had certified and had selected bargaining agents. While these American imports were not necessarily agents of change, they were, nonetheless, not unfamiliar with the notions of collective bargaining and in all likelihood were not inherently opposed to the concept. The British influence was also evident as faculty members who had either studied in British universities or taught there were accustomed to the British model of faculty self-governance and were likely to support the ideas of faculty autonomy as espoused by British academics such as Sir Eric Ashby¹⁶ and C. H. Stewart.¹⁷

While the passage of the Public Service Staff Relations Act in 1967 did not provide Canadian faculty members with any new legislation that directly affected them, by providing the means by which other professionals could certify, the foundations were laid for faculty members as professional employees to begin to consider the possibility of certification. The right to freely associate, to sign union cards without employer sanctions or interference was important. Without those rights,

¹⁶ Eric Ashby, "Self Government in the Modern British University," Science and Freedom 7 (1956): 3-16.

¹⁷ Charles H. Stewart, "The Government of Canadian Universities," CAUT Bulletin 5.2 (1957): 8-10.

tenuous as they may have been for faculty, there could have been no unionization. When faculty sought certification it was not through the public service legislation but through the provincial private sector labour codes. This was possible because most universities were independent non-profit organizations governed by a provincial charter or similar instrument. However, in most cases, applications for certification were contested by the employer who often opposed certification on the grounds that a sufficient number, that is 50% of the faculty members, had not signed cards, and on the grounds that a cohesive bargaining unit had not been defined. The inclusion of faculty members from professional faculties such as law, medicine and engineering was frequently contentious, for both the potential union and the employer. In Manitoba, the Manitoba Labour Relations Board held up approval of certification of the University of Manitoba Faculty Association for nineteen months¹⁸ while the membership in the bargaining unit was sorted out. A few employers argued that professors were not employees as defined in legislation because they have more say in the governance and management of the organization than do workers in other fields. The decision of the United States Supreme Court in the case of Yeshiva University in New York, which said that professors are not eligible for certification because they perform management functions, was a major setback for collective bargaining in both the U.S. and Canada and was cited as the reason for management to oppose

¹⁸ Neil Tudiver, Universities for Sale: Resisting Corporate Control Over Canadian Higher Education (Toronto: Lorimer, 1999).

certification at Mount Allison University. However, although certification could be held up by employer objections and Labour Board deliberations, Canadian faculty associations were always ultimately successful in their bids to unionize. Between 1974 when University of Manitoba finally won certification, and 1985, a majority of Canadian university Faculty Associations had either certified or were negotiating with their employers under a special plan arrangement. Since 1985 the faculty associations in several more Canadian universities have sought certification. In 2003 the faculty associations at only three Anglophone Canadian universities remain uncertified and do not bargain under any special plan arrangement.¹⁹

DISSATISFACTION WITH CURRENT WORKING CONDITIONS:

During the period from 1974 to 1985, three issues appear to have galvanized university faculty members to abandon the association-consultation method of influencing salary and working conditions and to seek certification: salaries, concern for issues of academic freedom and tenure, and a desire to share more fully in the decision making of the university, including budget allocation decisions. By definition, these three issues all influence and inform one another so it is difficult to understand where the desire for more say in decision making with respect to budget

¹⁹ The University of Toronto Faculty Association is not certified but does bargain under a Special Plan arrangement with its employer and may seek arbitration on unresolved monetary issues. The university faculty associations in Alberta do not have the legal right to certify but bargain with their employers under Special Plan arrangements.

allocations ends, and the desire for better salaries continues; similarly it is difficult to grasp just where the concern of the faculty for issues of academic freedom and tenure ends and the desire for a greater share in the decision making with respect to appointments, renewals, promotions and tenure decisions begins. Linked with the sharing of decision making power was the question of conflict resolution mechanisms such as grievance and arbitration. I would suggest that these concerns are all intertwined in an elaborate matrix of power, academic values and local tradition.

The most interesting and complex are the questions concerning the protection of academic freedom and tenure and the appropriate sharing of power with boards of governors or regents.

ACADEMIC FREEDOM AND TENURE

Nothing ever seems quite as precious and important as when the threat is made to summarily remove it. So it was with academic freedom and tenure. Although numerous cases of threats to academic freedom and tenure from government sources, the courts, public opinion and the press²⁰ had been made in U.S. universities, it was not until a case emerged in Canada that held the academic spotlight for a year and whose reverberations continued to be felt in the Canadian academy forty years later, that Canadian academics began to realize that the threat was real, immediate and

²⁰ Margaret Gillett, "The Anatomy of Academic Freedom in the United States, 1959-60,"

CAUT Bulletin 10.5 (1962): 5-16.

required attention. Although several cases of threats to academic freedom and tenure involving prominent academics such as Frank Underhill at the University of Toronto, E.A. Havelock and W.H. Alexander at Alberta, and E.A. Forsey and F.R. Scott at McGill, had occurred in the period 1930-1950, none of these cases received the attention of the academic public that the case of Harry Crowe received in 1958. The reasons are clear; the Crowe case became a public 'cause célèbre', documented in the public press and investigated and reported to the academic community by the then infant, Canadian Association of University Teachers (CAUT). At the request of the Queens University Faculty Association, CAUT established its first fact finding committee of inquiry to investigate the dismissal of Professor Harry Crowe from United College in Winnipeg and to make recommendations. The complete report prepared by the Committee of Inquiry,²¹ including supporting documents, was published in the CAUT Bulletin of January 1959. For the first time, Canadian faculty members had all of the information before them concerning how academic freedom and tenure might be violated. All of the miserable mistakes, maleficent motives and incompetent decisions were rendered public in a coherent and reasonably objective report. The academy could never again be complacent about the issue.

²¹ V. C. Fowke and Bora Laskin, "Report of the Investigation by the Committee of the Canadian Association of University Teachers into the Dismissal of Professor H.S. Crowe by United College, Winnipeg, Manitoba," CAUT Bulletin 7.3 (1959): 2-91.

THE CROWE CASE IN BRIEF

The details and analysis of the Crowe case have been reported in detail by Vernon Fowke and Bora Laskin, Michiel Horn and Donald Savage.²² However, I believe it is important to reiterate the salient points here as an illustration of what can go wrong in the absence of formal grievance procedures and when decision making power is left in the hands of lay or clerical boards and not shared in an appropriate and seamless way with faculty.

Professor Crowe was a tenured professor in the History Department at United College²³ in Winnipeg. He had been appointed in 1950 shortly after his return from military service in World War II. During the academic year 1958-59 he was on an approved leave from United College and was teaching in the History Department at Queens University in Kingston, Ontario. The administration of United College, the Principal and the Chairman of the Board of Regents, took the decision to dismiss Professor Crowe based on the contents of a personal letter that he wrote while teaching at Queens University to a colleague at United College. Professor Crowe was

²² V. C. Fowke and Bora Laskin, "Report of the Investigation."

Michiel Horn, Academic Freedom In Canada: A History (Toronto: University of Toronto, 1999).

Donald C. Savage and Christopher Holmes, "The CAUT, the Crowe Case, and the Development of the Idea of Academic Freedom in Canada," CAUT Bulletin 30.7 (1983).

²³ United College is now the University of Winnipeg.

dismissed, not once but twice in the space of four months from the United College of Winnipeg. He was never given reasons for his dismissal nor was he ever afforded the opportunity to meet with the administration to state his side of the story. The letter that he had written was purported to contain statements that were critical of the United College administration, its mission and some of its former administrators. However, it may simply have provided the administration with an excuse to eliminate what they considered to be a disruptive element within the faculty. It had been clear for some time that the History Department, and in particular Professor Crowe and his colleagues, Professors Reid, McNaught and Packer were not strong supporters of the administration of United College or of Principal Lockhart.

By some mysterious and unexplained route, the letter never reached the rightful recipient, Professor Crowe's colleague, Professor Packer, but, arrived in a different envelope with an attached note at the office of the Principal of United College, Dr. Lockhart, advising him "Found in College Hall. We think you should read it. Some staff loyalty."²⁴ After confronting Professor Packer with the letter it appears that Lockhart decided to share the contents of the letter with members of the board of regents and in May of 1958, despite the representations on Crowe's behalf made to Dr. Lockhart by Professor J. Stewart Reid, Chair of the Department of History at United College and others, Professor Crowe was sent a letter by the chair of the board, informing him that he could return to United College for one more year but

²⁴ V. C. Fowke and Bora Laskin, "Report of the Investigation."

that his contract would end on August 31, 1959. Professor Crowe, confident that he had done nothing wrong, convinced that the administration was acting unfairly and unjustly, and enraged that Principal Lockhart had violated his privacy rights by opening mail not addressed to him, determined to fight. At the time of receipt of the first dismissal letter Professor Crowe was a tenured member of the faculty at United College. He had been appointed in 1950 for one year and depending upon satisfactory service was to be reappointed in a permanent capacity. In 1951 Professor Crowe was granted a permanent appointment--for all intents and purposes, tenure. The letter sent to him by Alan Watson, Chair of the Board of Regents on 4 July 1958 effectively terminated that tenured appointment. Prior to the sending of this letter, the board of regents had met with the president of the college to discuss the situation. Dr. Reid, Crowe's colleague and unofficial advocate, had asked and been granted permission to be present at that meeting. However, he had no official voice at that meeting and no standing. The only academic administrator to attend the meeting in an official capacity was the president. The board of regents consisted of 43 members, the majority of whom were either representatives of the United Church or appointed by the General Council of the United Church; the other members were either elected by alumni or co-opted. The principal was the only academic on the board. Dr. Lockhart had, one assumes, one vote.

Toward the end of the summer of 1958, the Queens University Faculty Association requested the Canadian Association of University Teachers (CAUT) to investigate the situation surrounding Professor Crowe's letter of dismissal and report

on any evidence of violation of academic freedom and tenure. After some discussion at the CAUT Council meeting, CAUT agreed to do so and established a committee of inquiry. Before that committee could begin its work, one member was obliged to recuse himself because of a conflict of interest (he had participated in a United Church General Council meeting at which the case of Professor Crowe had been discussed). The remaining committee consisted of Professor Vernon Fowke from the University of Saskatchewan and Professor Bora Laskin²⁵, from the University of Toronto. The president of CAUT informed United College of the impending investigation and requested their co-operation. Over a short period of time in which arrangements for the on-site interviews and investigation were being made, United College repeatedly assured the CAUT of its co-operation. However, once the committee of inquiry was in Winnipeg, the commitment to co-operate disappeared and questions were raised as to the legitimacy and objectivity of the CAUT committee. President Lockhart and the board of regents refused to be interviewed or co-operate with the investigation. They chose to be represented to the committee by legal counsel. At one point, President Lockhart informed the committee that he had been “instructed” not to attend or be interviewed. Indeed, Dr. Lockhart had previously told the president of the United College Faculty Association, Professor McNaught, that “he might not have done what he did as a private citizen but that he represented the Church and the Board and had to

²⁵ Bora Laskin was later to become the Chief Justice of the Supreme Court of Canada.

do what he was doing in order to defend them.”²⁶ It appears that he had no sense of his position as first among equals or as a champion of the academic faculty but rather as a spokesperson for the management. One can only assume that his instructions had come from the board of regents and that he was prepared and willing to do their bidding.

Shortly after the committee of inquiry had been established, Professor Crowe received a second letter from Alan Watson, the chairman of the board of regents, in which he was informed of his summary dismissal and offered a severance package. The financial compensation offered to Professor Crowe was equivalent to one year of salary at the level he was earning prior to his leave at Queens, considerably less than the current salary for professors at his rank. Needless to say, in addition to the summary dismissal itself, the severance offer became a bone of great contention. The situation deteriorated over the next months and split the faculty into those who supported Crowe and those who supported Lockhart. Several of Crowe’s colleagues resigned in his support and when the university ultimately refused to reinstate them although Crowe’s situation had been somewhat resolved, Crowe resigned.

The CAUT committee of inquiry found that there had been a gross violation of academic freedom, and that Professor Crowe had, against all common understanding of what tenure means, been dismissed not once but twice without having been given

²⁶ V. C. Fowke and Bora Laskin, "Report of the Investigation."

any reason for his dismissal or being offered any opportunity to explain or answer the allegations to the president of United College. However, the most damning conclusion stated by the committee was that it had become clear to Professors Fowke and Laskin during the course of the investigation and particularly in the context of the exchanges between Professor Crowe and Alan Watson concerning Crowe's salary following the first deferred dismissal, that "in the view of the Board Professor Crowe was not sufficiently complaisant, not servile enough in thought and attitude to his administrative superiors."²⁷ The committee also found that the treatment of Professor Crowe's private letter to a colleague involved an invasion of privacy that encroached upon his very elementary rights as a citizen. In addition, the board of regents sanctioned that violation of basic rights when it read and discussed the contents of the letter and endorsed the actions of the principal. To academics doubtless aware of the McCarthyite tactics in the United States, the act of using a purloined letter to cast accusations of disloyalty was real cause for concern. The committee also found that the role the principal occupied, whether by permission of the board of regents on the principal's request or on the initiative and direction of the board, was wholly inappropriate to his office as chief executive officer and head of the college.²⁸

²⁷ V. C. Fowke and Bora Laskin, "Report of the Investigation."

²⁸ V. C. Fowke and Bora Laskin, "Report of the Investigation."

To force or to permit the principal of a university or college to occupy a position of docile subservience to the governing board is to reduce an institution of higher learning to the level of a business corporation [...].²⁹

Whether or not the Fowke-Laskin Report was truly objective in every sense remains debatable as there is sufficient evidence on each side of the question.

However, Michiel Horn has summarized it well:

Would not a balanced account have found fault on both sides? Indeed it would. An impartial history of the college would have distributed blame more widely. The hostility and suspicion with which the dissidents regarded Lockhart and the board undoubtedly influenced what happened. But it was not the intention of Fowke and Laskin to write a college history, and even had they done so, they could hardly have reached a conclusion on the central issue other than the one they did reach: 'That Principal Lockhart and the Board of Regents were respectively tactless and arbitrary in their handling of a situation which they themselves had created' and that neither had any tenable ground for the severe treatment of Professor Crowe.³⁰

²⁹ V. C. Fowke and Bora Laskin, "Report of the Investigation."

³⁰ Michiel Horn, Academic Freedom In Canada: A History.

What is perhaps most important to take from this case is the fact that a tenured faculty member, who, by all accounts was an excellent teacher and historian, could have been dismissed without any process of natural justice, without any evidence of cause and without being given the reasons for his dismissal. Equally important was the fact that such a dismissal could be affected by a board of regents composed of forty-three members, of whom forty-two were non-academics.

The reverberations of this unfortunate series of events were felt throughout the Canadian academic community. In January of 1959, the CAUT devoted the entire ninety pages of its bulletin to publication of the Report of the Committee of Inquiry. For the first time all Canadian academics could read for themselves an account of the events. Typically faculty members were more than eager to debate the issues and to line up either in support of the CAUT report and Professor Crowe or the administration of United College. In Winnipeg, faculty members wrote letters to the editor of the Winnipeg Free Press expressing their views on the situation and the press across the country picked up the debate. However, despite the academic debates, the CAUT Council accepted the Fowke-Laskin Report and endorsed their findings. Shortly thereafter, CAUT established a fund to help pay the legal fees of the other faculty members at United College who had resigned in protest against Crowe's dismissal.³¹

³¹ In 1978 the CAUT would establish a voluntary Defence Fund to which member associations could belong.

The events at United College made it clear to Canadian academics that there was a definite need to establish a formal office for the CAUT and to hire a senior academic as executive secretary to tend to the matters of the academy, prime of which was academic freedom and tenure. The establishment of a national office for the CAUT provided a central source of information and assistance to Canadian academics and allowed CAUT to play a significant role in the development of collective bargaining across the country. About a year after the Crowe case, J. Stewart Reid, the chair of the History Department at United College who had resigned in support of Harry Crowe, was appointed after a search, as the first executive secretary of the CAUT. CAUT intended to make academic freedom and tenure one of its primary missions. It was unlikely that Dr. Reid would ever let his colleagues at CAUT forget the implications of the Crowe case and unlikely that Canadian academics would ever be complacent about academic freedom and tenure issues. Efforts of the CAUT committee charged with preparing a policy statement on academic freedom and tenure, modelled after the American Association of University Professors (AAUP) statement were redoubled, the committee, headed by Professor Turner, also prepared guidelines for future CAUT committees of inquiry. Shortly thereafter, CAUT council established the Academic Freedom and Tenure Committee as a standing committee of the association.

The committee of inquiry's findings concerning the role of the president and the inordinate amount of decision making and policy making power of the board of regents also had considerable influence on the actions and priorities of the CAUT in

the years to come. Stewart Reid was a driving force behind the establishment of the Commission on University Government in Canada, co-sponsored by CAUT and the Association of Universities and Colleges in Canada. The chair of the steering committee, Claude Bissell, paid tribute to Reid.

Although the Report is a document that issues from the whole university community, it could not have come into existence without the work of one man. That man is Stewart Reid [. . .]. The Report is only one of many activities upon which he left his impress, but I like to think that he would have given it a special pride of place.³²

UNIVERSITY GOVERNANCE

There was a desire in the university community to entrench in policy that is enforceable, the two clear principles of tenure:

1. that academic freedom should be a contractual right and not a question of grace and favour by a president or a board of governors. This could only be achieved if faculty contracts legally specified that dismissals would be solely for academic reasons and be so judged by an independent tribunal or arbitration
2. that tenure provisions which guarantee academic freedom would also guarantee academic quality. This requires a rigorous examination of qualifications by peers

³² Claude T. Bissell, "A Proposal for University Government at University of Toronto," CAUT Bulletin 15.2 (1966): 42-47.

or other experts and has been incorporated in tenure regulations across the country. Few would argue with the proposition that tenure standards have increased in Canada since the 1950s.³³

The enshrinement of the rights to academic freedom and tenure was only part of the equation that faculty associations were seeking to resolve as they took the first tentative steps toward collective bargaining. The other equally important issue to be resolved was that of university governance. The question of board and senate membership and the role of the faculty members and academic administrators on those governing bodies had to be clarified and reformed, for only when faculty had appropriate representation on boards could they be assured that tenure and academic freedom would be respected. In addition, questions concerning the length of terms of academic administrators had troubled faculty associations for some time.

The governance of Canadian universities has been the subject of much debate and comparisons with the universities of other countries since the early 1950s. Writing in 1957, the British academic, Sir Eric Ashby declared that “Canadian universities can learn much from the commonwealth” and proposed that self-government of the academic body is:

[. . .] based upon upholding certain principles of dealing with the business of the law—and notably the principle that business should flow upwards

³³ Donald C. Savage, and Christopher Holmes, "The CAUT, the Crowe Case."

and not downwards [. . .] whereby the effective control of key questions is secured for academic staff.³⁴

The key issues that Ashby recommended control over were: 1) admission and examination of students; 2) setting of curricula 3) appointment and tenure of academic staff, 4) allocation of income among the different categories of expenditure; in effect, all of the issues that really matter in a university. In the same year, Charles Stewart was “disturbed” to find that the “element of academic participation in the supreme government of Universities was practically nonexistent in Canada.”³⁵ He went on to criticize the composition of Canadian boards of governors pointing out that the principal is often the only academic on the board, witness the case at United College, and to comment on the control that deans have over a faculty that in most cases, had little or nothing to do with their appointment, unlike the usual situation in most British universities of the time where the faculty members elected their dean. Stewart’s appeal was a simple one, “I should . . . like to think that anyone who was fit to teach my child...was also fit to have one vote in the direction of what, after all, were largely his own affairs.”³⁶

³⁴ Eric Ashby, "Self Government in the Modern British University."

³⁵ Charles H. Stewart, "The Government of Canadian Universities."

³⁶ Charles H. Stewart, "The Government of Canadian Universities."

The debate on university governance raged over the next few years with scarcely an issue of the CAUT Bulletin devoid of some article or commentary on the topic. Vernon Fowke, who had intimate knowledge of the Crowe case, advocated a system of shared responsibility for the governance of universities and went so far as to declare that while increased salaries for faculty members are “absolutely essential” in order to improve the public’s regard for faculty members, the notion that faculty members are somehow “incompetent to conduct their collective affairs” must be eradicated. He supported Ashby’s four criteria over which academic faculty must have control and added other areas where faculty must gain power: the search for a new President; appointments, promotions, and dismissals; curriculum, course content and all aspects of teaching and research. Percy Smith, the Executive Secretary of CAUT considered that universities were like any other community, as opposed to a corporation, and as such deserved to be governed from the bottom up, with faculty having a full say in all of the academic and financial decisions that would affect the academic life of the university.³⁷ W. P. Thompson, President Emeritus of the University of Saskatchewan took issue with Smith³⁸ saying that faculty members have sufficient say and that although there is no formal structure, faculty are naturally consulted on all issues before decisions are taken. However, what faculty was beginning to want were not informal agreements and gentlemen’s promises, but

³⁷ Percy J. Smith, "University Government," CAUT Bulletin 8.3 (1960): 4-14.

³⁸ W. P. Thompson, "University Government," CAUT Bulletin 9.2 (1960): 4-8.

formal contracts that would give teeth to their rights to a shared role in the governance of the university, or better still, complete control.

In the fall of 1960, CAUT published a report prepared by an ad hoc committee on university governance. Entitled, *The Reform of University Government*, and prepared by five members representing universities across the country, the report was intended as a discussion piece for the CAUT Council meeting of that November. The report, stated:

[. . .] the essential function of university scholars is to pursue and propagate truth as they see it, freely and without fear of favour; yet in Canada they are hired, paid, governed and controlled by an outside body whose members may have particular interests to protect or promote.³⁹

Since the president is appointed by the board, his role as the sole academic on many boards is fraught with potential for conflict of interest and while there is a semblance of democracy and control over the president's power in that there are usually various committees and boards set up to advise on issues, most of them are filled with the president's appointees, and faculty as a whole, have little or no opportunity to elect any members to such committees. In a rebuttal written to this

³⁹ CAUT Committee on University Government, "The Reform of University Government: A Statement Presented to the Executive Council of the Canadian Association of University Teachers as a Basis for Discussion, June 12, 1960," *CAUT Bulletin* 9.1 (1960): 10-35.

report, W.P. Thompson,⁴⁰ wrote that boards are properly constituted and that, in his opinion, there is nothing wrong with the provincial government, who pays the bill, having a substantial say in who sits on a board of governors and thus how universities are managed. He also believed that the committee structure as it was in place, gave all the consultation and voice that were need by the faculty. He argued that while the board appears to have control, in fact the faculty are the ones who recommend on most issues and that most boards would not act without the approval of the faculty. The question of course is, which faculty members are consulted and how are they named. If, as the report writers claim, they are named by the president or his associates, then one has to question the possibility for conflict of interest and the degree of democratic representation that is at play.

The report goes on to make the important link between academic freedom and tenure and university governance:

[. . .] the fact remains that faculty members hold their posts during pleasure [of the board] and may be dismissed at any time without cause shown [. . .] if academic freedom and tenure are to be guaranteed in Canada, the basic nature of university governance must be changed and

⁴⁰ W. P. Thompson, "University Government."

scholars must be given the “predominant” voice in university governance.⁴¹

The committee members recommend modelling the Canadian university after those in Britain, the U.S. and Europe with academic staff comprising the majority of the governing body. The report stated several “desirable principles”: financial support should be given to universities with no attempt at interference or financial control; the governing body should be composed of a majority of academics; senates should be composed of academics at least half of whom are elected; presidents and deans should hold office for limited periods—not more than six years and should not be eligible for immediate reappointment; the general faculty should nominate and elect the president; the faculty of the college or school should nominate or elect the dean; administrative officers should consult and take advice of academics on all matters of hiring, promotion, tenure, educational matters, dismissal and budgets; department members should decide on the chair and the renewal of a chair; and most importantly “arrangements for the implementation of these principles should be made formally.”

Over the ensuing years the debate continued in the pages of the CAUT Bulletin with arguments put forward for and against the participation of the faculty in university governance. Individuals such as John Corson, argued that universities ought to be governed like corporations with one leader and everyone else falling into

⁴¹ CAUT Committee on University Government, "The Reform of University Government."

line. He viewed the trend to allow faculty to have more say in the governance of their own institutions as “wrong and dangerous.”⁴² Waterman reported on progress made at St. John’s College, University of Manitoba, where faculty had won considerable say on the board and had the right to some elected academics on the governing bodies. There appeared, at least in 1961, to be optimism that faculty would gain some representation since the faculty association had been granted the right to send faculty members to the College Council with speaking, but not voting, rights and that this provision would be reviewed after one year.

In 1963, the Executive Secretary of CAUT, Stewart Reid wrote a long review article on the state of university governance entitled, “The Evolution of Canadian University Organization” in which he argued the benefits of the traditional system of governance in British universities where the academics have de facto control of admission and examination of students, curricula, appointment and tenure of office for academic staff and allocation of income among the various categories of expenditures. Reid made the point that, at the time of writing of the article,

[. . .] while these conditions were fulfilled [. . .] in virtually all British and Commonwealth universities they were fulfilled at no Canadian university, where the board has ultimate authority for admission and

⁴² J. J. Corson, The Governance of Colleges and Universities (New York: McGraw Hill, 1960).

graduation, appointments and promotions are made by the board, and financial control rests with the board.⁴³

In fact, in many of the Canadian provinces at the time, while the provincial government was not directly involved in the boards, most of the governing boards were composed of lay members who would appoint new members as required. In some cases such as McGill, senate did have the right to elect three members of the senate to the board. Reid concludes his paper with the following comment:

In most of our existing universities, the present organization is at its best faulty and anachronistic. At its worst it poses a serious threat to academic freedom and to the future health and vigour of higher education in Canada.⁴⁴

University administrators were beginning to realize that faculty ought to have some role in the governance of the universities but they were reluctant to hand over the power to professors who are basically “unsuited for administration and not fit candidates for service on boards.”⁴⁵ In a speech before the CAUT Council on 15 June

⁴³ J. H. S. Reid, "The Evolution of Canadian University Organization," CAUT Bulletin 11.6 (1963): 3-25.

⁴⁴ J. H. S. Reid, "The Evolution of Canadian University Organization."

⁴⁵ M. Samuel Freedman, "University Government: An Address to the Council of the CAUT Given on Monday, June 15, 1964," CAUT Bulletin 13.1 (1964): 14-26.

1964, Justice Samuel Freedman, Chancellor of the University of Manitoba discussed university governance. While Justice Freedman believed that it was in the interest of the university to have faculty members sit on boards, he explained his concern for the conflict of interest situations that might arise and said that in situations where the government sits directly on the board, in the case of conflict between a faculty member and the board, the board would prevail. He also argues that faculty members can better spend their time on other things, presumably teaching and research. However they would have no control over the policies governing those activities. He believed that faculty members should be consulted on academic issues, but that at the end of the day, things should remain pretty much as they are, with the lay board members controlling the university's business and representing the university to the public.

A major step forward in the evolution of university government came with the agreement between CAUT and the Association of Universities and Colleges of Canada (AUCC) to undertake a joint study of Canadian university governance. Supported by the Ford Foundation, a steering committee was established with two representatives from each organization. Two commissioners were appointed to research and prepare a "dispassionate examination and evaluation of the present structure and practices of the government of both English and French-language universities of Canada, including provincial, church related and independent

institutions.”⁴⁶ The recommendations of this commission follow closely those put forward earlier by the CAUT report and Stewart Reid. However, what is important about this study is that for the first time, the university administrations and the faculty associations were working together and recognizing that the governance structures of Canadian universities as they existed did not provide for the democratic and open participation of the faculty members, or for that matter, the students. The fact that the results did not go as far as the faculty associations would have liked is irrelevant. What is important is that it was finally recognized by both parties that there was a need for reform. However, while the report was perhaps too little, too late, it did establish the paradigm for university governance which both faculty associations and administrations were prepared to implement during subsequent association-consultation or collective bargaining. In fact, the recommendations did not go very far at all in changing the nature of the university, “the report does not recommend changing the anti-democratic nature of the university but shows how the same university can be made to work more effectively and less obviously.”⁴⁷ In addition it was claimed that the report disenfranchises the young faculty members and suggests

⁴⁶ James Duff, and Robert Berdahl, University Government in Canada, Report of a Commission Sponsored by the Canadian Association of University Teachers and the Association of Universities and Colleges of Canada (Toronto: University of Toronto Press, 1966).

⁴⁷ Peter Cameron, "The Duff-Berdahl Report: Will the Patient Live?" CAUT Bulletin 15.2 (1966): 47-53.

that “only acceptable faculty would ever be elected.” [to boards of governors]⁴⁸

Canadian faculty associations were poised and anxious to take responsibility and control over the destiny of their universities.

Indeed, times were changing quickly and by the time the Duff-Berdahl report was made public in 1965, the face of Canadian universities had already changed. New universities were opening to meet the increasing demands of the post-war baby boom for places in universities. In fact, the number of Canadian universities rose from twenty-nine in 1951 to forty-five in 1970; and during the same period, the number of full-time faculty members grew from six thousand seven hundred in 1956 to sixteen thousand in 1966, an increase of almost one hundred and forty percent. By 1972 there were forty-eight member associations in CAUT, representing sixteen thousand, five hundred faculty members. The increased size of the Canadian professoriate gave it new strength and with that the possibility to consider new ways to protect its interests. In Quebec, a new state university, Université de Québec, had been mandated and one of its first branches, Université de Québec à Montréal had opened with a faculty certified under the Quebec Labour Code⁴⁹ and affiliated with the Confédération des Syndicats Nationaux. New legislation governing the establishment of universities and new charters for existing universities began to slowly change the face of the Canadian

⁴⁸ Peter Cameron, “The Duff-Berdahl Report.”

⁴⁹ In 1965, Quebec had passed legislation allowing for public service employees to certify and bargain collectively.

academy. Little by little, the governing structures were changing to allow for more and different representation of faculty members on boards, senates and the participation of faculty members in the selection of academic administrative officers. By 1967, fifteen institutions had faculty representation on the board of governors in comparison to two or three in 1965.⁵⁰ Universities were considering the questions of representation of faculty and were starting to implement changes, perhaps small changes and perhaps slowly, but changes, none-the-less. However, the changes that were being made were made at the pleasure of the governing board and could just as quickly be snatched back; faculty associations wanted something better, more secure and enforceable. The following decade would bring even more changes to the academy as the desire on the part of faculty for legally binding agreements that would guarantee autonomy, self-government and control of the academic matters of the university would cause faculty associations, one by one, to apply for recognition under their appropriate provincial labour relations board and begin the process of collective bargaining.

BUDGET ALLOCATION AND SALARIES

Canadian universities are funded almost totally by provincial government grants. The granting formulas vary across the country but normally the formula by which universities receive their operating grants is based on student enrolments, the

⁵⁰ E. J. Monahan, "The Inevitability of Gradualness. A Report on Changes in University Government in Canada," CAUT Bulletin 16.2 (1967): 33-42.

nature of the programmes, the inclusion of professional schools of dentistry, engineering, law and medicine, the level of educational programmes (first, second or third cycle); the research produced and various other factors which weigh more or less heavily in the equation. By whatever measure universities are funded, the decision is a political one, based not only upon the needs of the universities and the general “public good” that may be affected by access to university education, but also upon the political mood of the day, whether the enlargement of public service is the optimum or whether, as has been the case in recent years, governments, both federal and provincial have striven at whatever cost, to reduce public spending, to balance provincial and federal budgets and to be seen as employers who are fiscally conscious and cost cutting. Public sector employers have tried to set the model for the private sector. Faculty members became increasingly aware in the late sixties and early seventies that cuts to university budgets had the potential of being translated into programme and departmental elimination which in turn could become job loss for faculty members. When the president of Carleton University in Ontario made the announcement that decreased provincial funding to the university would almost surely result in faculty lay-offs, the faculty voted almost immediately to certify. In the late 1960s and early 1970s the baby boom was over and the demographics showed a potential decline in future students. Faculty were quick to realize that a decline in clientele would ultimately result in a decline in university budgets and hence a threat to the economic well-being of the faculty. In his annual report to the CAUT, Charles Biglow, warned faculty members of enrolment drops and reminded them that fewer students lead to fewer faculty. He also emphasized the need for faculty associations to

insist that university administrators provide clear evidence of any perceived or threatened financial crisis and assurances that all other solutions have been explored before faculty cutbacks are proposed.⁵¹

Salaries had always been a concern of CAUT and since its founding as an organization in 1951, a commitment to providing information on faculty salaries to its members had been a primary mission. Each year, in the CAUT Bulletin, a faculty salary survey was published showing average salaries from across the country at various academic ranks and including, where possible, salaries of administrative positions. Average salaries of full-time Canadian faculty by rank over the period 1971/72 to 1977/78 were shown by David Balzarini⁵² as follows:

Average professorial salaries by rank, 1971-1978

Year	Professor	Associate Professor	Assistant Professor	Lecture	All Ranks
1971-72	22922	16788	13259	10679	15896
1972-73	24043	17519	13869	11163	16767
1973-74	25362	18467	14656	11827	18047
1974-75	27526	20041	15970	12980	19885
1975-76	31466	23138	18603	15354	23268
1976-77	34095	25351	20222	16554	25579
1977-78	36550	27554	21879	18013	27908

In his analysis, Balzarini argued that while faculty salaries had indeed increased by 60-65%, depending on rank, over the seven year period, the average

⁵¹ Charles C. Bigelow, "Report of the President 1972-73," CAUT Bulletin 22.1 (1973): 18-21.

⁵² David Balzarini, "The Economic State of the Academic Profession," CAUT Bulletin 26.5 (1979): 36-35.

weekly salaries of Canadians during the period 1971-1978 increased by an average of 87.4%. He goes on to argue that faculty salaries are strongly correlated with age, and that the increased average salary of academics indicates an aging of the professoriate rather than a real wage increase.

While it is probably true that few if any individuals entered the academic profession of professor and researcher with the intention or the belief that they would “get rich” it is equally true that year after year of CAUT faculty salary surveys which showed faculty salaries “falling behind” the private sector salaries could hardly have been a reason for optimism in the existing system. In another analysis, Balzarini examined lifetime earnings of faculty members.⁵³ He showed that over a lifetime, faculty, on average, do not ever make up for the loss of earnings during their student years. A typical professor’s earnings will catch up with the earnings of supermarket cashier at age forty-four, a carpenter at age fifty-six and a teacher at age sixty. Again, this information gave little reason for optimism to faculty members. It is no surprise that salaries became an important issue in collective bargaining as faculty members attempted to keep pace with the rest of society during a period of high inflation and increasing cost of living.

⁵³ David Balzarini, "Is the Academic Rewarded in His Lifetime?" CAUT Bulletin 27.3 (1980):

AVAILABILITY OF INDIVIDUALS TO MAKE POSITIVE EFFORTS TO UNIONIZE

Carr and Van Eyke⁵⁴ have stated as their third condition for certification the need for someone to be present who can take the positive steps to unionize. That is, there must be individual faculty members on campus who have the vision of a certified association, who have the confidence and respect of other faculty members who will support that vision, and the organizational skills and particular knowledge required to organize a faculty association.

The University of Manitoba was well placed to be the first Anglophone Canadian university to seek certification. The faculty association of the University of Manitoba had been instrumental in the establishment of the CAUT, in fact one of its founding fathers. Members of the University of Manitoba Faculty Association had been active on the executive of CAUT since its inception; hence it was one of the more mature faculty associations in the country. In addition, CAUT had become increasingly aware that certification was just around the corner and in 1973, in his annual report to the CAUT, Donald Savage, Executive Director, reported that one of the most important concerns for CAUT was developing information and expertise on collective bargaining. CAUT would soon change its fee structure to provide funds for help with collective bargaining and in 1974, CAUT declared its priorities as “academic freedom and tenure, collective bargaining and the establishment of local

⁵⁴ Robert K. Carr and Daniel K. Van Eyck, Collective Bargaining Comes to Campus.

offices.”⁵⁵ At the same time, Dr. Savage warned the CAUT Council that “the decision on Manitoba, if positive, will open the floodgates for requests to the CAUT on collective bargaining for organization and assistance in negotiating agreements.”⁵⁶ He was right.

THE MOVE TO CERTIFICATION

By the early 1970s the conditions were present for certification of Canadian faculty associations and by 1974, the University of Manitoba, St. Mary’s and Nelson had all won certification. Within a short space of time, 1965-68, legislation had been passed federally and in all of the ten provinces and territories to permit certification in the public sector and the public sector employees had responded overwhelmingly by seeking certification. Sufficient time had passed and the public sector had demonstrated that collective bargaining brings improved working conditions and salaries. In a paper prepared in 1978, Morley Gunderson showed that the salaries of public sector employees were between 6.2% (for males) and 8.6% (for females) higher in the public service than for private sector workers in the manufacturing industry.⁵⁷ It is also interesting to note that in a study prepared in 1992 on the effects of

⁵⁵ Israel Cinman, "CAUT Enters New Era: Structure Aimed at Strengthening CAUT Role in Collective Bargaining and Lobbying Governments," CAUT Newsletter (1974).

⁵⁶ Israel Cinman, "CAUT Enters New Era."

⁵⁷ Morley Gunderson, Earnings Differentials Between the Public and Private Sectors, Working Paper (Toronto: University of Toronto, 1978).

unionization on faculty salaries, the answer to the question posed by the authors, “Does certification under a labour relations statute translate into higher salaries?” was a resounding “yes”. In fact, even bargaining under a special plan agreement provided the same salary benefit of about 3%. The longer the faculty are unionized, the greater the salary returns.⁵⁸ Faculty members had only to look to their counterparts, such as teachers or health care workers in the public sector, to see what wage settlements they had achieved.

The Universities had seen a period of considerable expansion in the 1960s as new universities, staffed with young new faculty opened, and established universities took on new faculty members to meet increased student demands. These new, younger faculty members were not satisfied with the status quo and wanted change. By the early 1970s there was sufficient dissatisfaction with the working conditions in most universities to seek change. Faculty members were not longer prepared to be treated as employees of a corporation with little or no say in the management of that corporation and they were tired of the endless battles with administrations for solutions to problems relating to their conditions of employment. The Duff-Berdahl report on university governance had not resulted in the sweeping administrative changes that faculty sought. Canadian faculty were still not in control of their own senates or boards of governors; academic freedom and tenure conditions remained at

⁵⁸ D. I. Rees, P. Kumar, and D. W. Fisher, Unionization and Faculty Salaries in Canada, Working Paper Series 10 (Kingston, ON: Queen's University School of Industrial Relations, 1993).

the pleasure of the board with no legal clout to ensure that they would be respected. While many universities had an agreement for association-consultation with their employers, grievance procedures had little weight and certainly no legal standing. Many faculty wanted a final resolution of appeals other than “dickering with the president.”⁵⁹

As the CAUT had matured, more executive members of local associations gained information about what was required for certification and began to understand the process. Nationally, the CAUT was gaining expertise in the field of collective bargaining and had expanded its mandate to include collective bargaining and negotiation information as a primary mission. In order to be efficient and effective, the CAUT created a team of collective bargaining professionals who were prepared to offer on-site training and assistance. Nicknamed the “flying circus,” this group of dedicated professionals assisted most of the early faculty associations who unionized.⁶⁰

⁵⁹ Donald C. Savage, "Collective Bargaining: the State of the Nation," CAUT Bulletin 23.1(1974): 10-12.

⁶⁰ The members of the “flying circus” were: Donald Savage, Executive Director; Vic Sim, Associate Executive Secretary; Marie-Claire Pommez, Professional Officer assisted by the members of the Collective Bargaining Committee-Charles Bigelow, Jean-Denis Gagnon (Law, Montreal), Roland Penner (Law, Manitoba), Joe Rose (Business, UNB), and Roy Watson (Anthropology, Victoria).

The fourth factor, the worry that some future events could change the face of the university, was also present. Faculty had for years been regaled with information of their individual dwindling economic status with respect to the rest of society but by 1970, faculty began to worry about their collective future. The public sector was expanding, every segment wanted its share of the tax dollar, consumers of the public services wanted more and better services and faculty associations began to fear that the universities' share of the pie might not continue to be sufficient. That could mean reduced funding to universities, which if the faculty did not have a say in how the budget was to be allocated, could mean closure of departments or programmes and job loss. The time had come to bargain the financial exigency and academic redundancy articles that provide job guarantees and preserve the status quo for all tenured faculty members.

SUMMARY

By the early 1970s the conditions outlined by Carr and Van Eyke were all in place. Legislation had been passed that permitted collective bargaining in the public sector and the federal and provincial employees had taken advantage of that new legislation in high numbers; faculty members across the country were sufficiently dissatisfied with their conditions of employment as lay boards continued to make the decisions that governed their status and salary; faculty associations were maturing and some associations had executive members who had gained considerable collective information at the national level, and the CAUT was in a position to provide additional assistance and information; and finally there was a general fear that

financial constraints would be imposed on the academy that would augur poorly for the future of universities and their faculty members. The time had come to move from a situation of “collective begging” to “collective bargaining” and to exchange the polite gentlemen’s agreements for binding legal contracts.

CHAPTER 2 METHODOLOGY: A THREE-PRONGED APPROACH

In 1966 it was charged that:

[. . .] universities are becoming so large, so complex, and so dependent upon public funds that scholars no longer form or even influence their own policy, that a new and rapidly growing class of administrators is assuming control, and that a gulf of misunderstanding and misapprehension is widening between the academic staff and the administrative personnel, with grave damage to the functioning of both.⁶¹

In their report, James Duff and Robert Berdahl answered this charge by recommending that Canadian universities adopt a bicameral system of governance with a board of governors who would ensure fiscal as well as social responsibility and a senate, to be composed almost entirely of elected faculty members, to manage the academic mission. These recommendations influenced the structure and the decision-making process at Canadian universities for the next two decades.

In 1993 the Canadian Association of University Teachers (CAUT) believed that it was time to re-examine governance and accountability at Canadian universities and mandated an independent study group on university governance and

⁶¹ James Duff, and Robert Berdahl, University Government in Canada, Report of a Commission Sponsored by the Canadian Association of University Teachers and the Association of Universities and Colleges of Canada (Toronto: University of Toronto Press, 1966).

accountability.⁶² The report of the Independent Study Group on University Governance (ISGUG) confirmed many of the recommendations made in the Duff-Berdahl report. However, it also made some new and revolutionary recommendations. For example, it recommended that senates ought to have a budgetary as well as an academic role, since the budget drives the activities of the university. This would give senate authority and responsibility. In addition, ISGUG recommended that senates play greater roles in the selection of senior university officers and that such officers should provide leadership in a collegial fashion rather than emulating corporate, top-down, management models.

Both of these reports examined the decision-making structures and processes at Canadian universities, but while they took into account the role of faculty members on the various governing bodies, they paid little attention to any influence that unionized faculty associations and the collective bargaining process may have had.⁶³

⁶² Guy Bourgeault, Ernst Benjamin, and Ken McGovern, Governance and Accountability, The Report of the Independent Study Group on University Governance (Ottawa: CAUT, 1993).

⁶³ Management decisions refer to those decisions which have budgetary or financial implications that are usually taken by senior administrative officers of the university such as presidents, vice-presidents, dean/directors, and boards of governors or regents. Academic decisions usually concern curriculum, academic programmes, or faculty personnel decisions that are frequently made by academic peers or senates. However, the boundary between these two types of decisions is not always sharply defined.

This thesis examines the influence that unionized faculty associations have had on the management and governance structures of universities by exploring the reasons that led to certification, the certification process, the collective bargaining history and the changes that have been made to the governing structures and processes as a result of certification and collective bargaining at each of three selected universities. The labour-management history at each of the universities is traced from the time of certification to the present by means of interviews with members of the administrations and the unions, examination of documentary evidence such as correspondence, minutes of meetings, published documents, and articles in local and national print media. An examination of successive collective agreements at each institution evaluates the influence that negotiations have had on faculty personnel decisions such as reappointment, promotion and tenure.

Three universities have been chosen as representatives of the approximately seventy accredited universities in Canada. They are: the University of Manitoba, Dalhousie University and Queen's University. While no two universities are exactly alike, these three are sufficiently similar in size and purpose to be comparable. All three universities are research/medical institutions⁶⁴ and offer, in addition to various undergraduate programmes, a wide variety of graduate and professional programmes including law and medicine. These universities are representative of three major geographical regions of English Canada—the West, Ontario, and the Maritimes and

⁶⁴ Designation adopted from MacLean's Magazine.

hence three different provincial governments. They are of comparable size, each having between ten and seventeen thousand full-time students and between eight and twelve hundred full-time faculty members. Because they are research universities, their student populations are drawn from across the nation and internationally.

The faculty association at the University of Manitoba was the first association in a large Anglophone university in Canada to seek certification when it did so in 1973. Queens' University was one of the most recent, when it certified in 1995. Dalhousie University was part of the group of universities that certified in the late 1970s and early 1980s. By selecting universities that certified at different times it is possible to examine the influence that the earliest to certify, Manitoba, had on the others and whether the last to certify, Queens', had a significantly different certification and collective bargaining experience than did the earlier universities. In other words, had the Canadian academy matured over time and did the universities learn from each other's experience?

The decision to consider research/medical universities was made in order to study the tensions that existed between various faculties during pre-certification discussions and the decision to certify. Traditionally, faculties of engineering and science had been better paid and were less likely to consider certification as a means to improve their working conditions than were their colleagues in faculties such as arts or education. Similarly, there has been more reluctance on the part of professional faculties, such as law and medicine, to seek certification than there has been in the non-professional faculties.

METHODOLOGY

A case study of each institution was prepared based on interviews with senior university administrators and union leaders. A series of questions (see Appendix B) was asked of each interviewee and every effort was made to address the same issues in each interview although not necessarily in the same order. Allowing for the subjective nature of such interviews and the need to allow the interviewees to tell their particular story, the interviews followed the pattern of the prepared questions but permitted diversions to areas that the interviewee believed important and relevant to the certification story. Since some years have passed since certification at all of the institutions concerned, care was taken to validate information gained in interviews with other interviewees or with documentary evidence. However, because this is a qualitative study, and based to some extent upon subjective recollections of events, it was important to document as many points of view and impressions of the events and situations as possible.

Wherever possible, the interviews were conducted in the interviewee's office or home and were recorded, with the interviewee's permission. In cases where an *in situ* interview was not possible, a telephone interview was arranged.

The interviews were designed to be approximately two hours in length and followed a standard pattern of questions. Where necessary and possible, follow-up interviews or correspondence was arranged with some of those interviewed.

The interviews were transcribed for research purposes but the transcriptions are not included in this thesis. A list of those interviewed from each university may be found in Appendix III.

DOCUMENTARY EVIDENCE

The documentary evidence was used to frame the story, to fill in gaps in the interviewees' recollections, to verify those recollections, and to provide additional details and evidence of events. It was important to trace the union's messages to its members as recorded in executive meeting minutes, newsletters, correspondence and the local daily press. Similarly, the administration's position was traced in minutes of the boards of governors and senates, correspondence, publications prepared for the university's administrative officers, and the local daily press.

In addition, reports that appeared in both the CAUT Bulletin and University Affairs provided a national professional view of events from the union and administrative view points, respectively. The local daily newspapers in each city provided a public commentary on the university activities and a sense of where the public bias lay, either in favour of the union or the administration. Documentary evidence such as newsletters, correspondence, minutes of the meetings of the board of governors and senates from each institution were sought. However, in every case, I was denied access to the minutes of the closed sessions of the board of governors and hence had to rely upon publicly available documentation. Since, it is understood that most of the documentary evidence available was, because it emanated from one party

or the other, partisan, care was taken to balance each side of the argument and to obtain as much corresponding documentation from each party as possible.

COLLECTIVE AGREEMENTS

Since much of the information available, be it from interviews, documentary evidence or public press, was by definition, partisan, it was essential to identify a tool that could be used as a non-partisan, quantifiable measure of the relative impact that the union or the administration has had on those issues that are of importance to faculty members and the administration. Collective agreements are such tools because they are the result of negotiations between the two parties that have culminated in an agreement to which both sides have given their approval. Once signed by the two parties, collective agreements are legally binding and constrain all other arrangements and discussion concerning working conditions and compensation between the parties. Collective agreements may not override the law, for instance, in areas such as human rights. The collective agreement becomes the basis for any grievance and arbitration hearing and arbitrators are bound to write their decisions within the limits of that agreed upon text: that is, arbitrators may not add to or subtract from the agreed upon text. However, if the language of the collective agreement text is vague, the arbitrator may appeal to the general understanding of the words or their use in the academic community. Ratified collective agreements are deposited with the provincial labour ministry office and become public documents.

By examining collective agreements of an institution over a period of time one gains a sense of the issues that were given priority during a particular negotiation

period and issues that re-emerged at each round of bargaining for revision and reassessment. The language and tone used in collective agreements are also indicative of the levels of trust, collegiality or hostility between the two parties. For example, a word count of the number of times the imperatives, “must” and “shall” instead of the less emphatic, “may” and “should” are used, will give an indication of the trust level between the parties and the importance of the issue to them. I would speculate that the more frequently the imperatives are used, the more important the issue is to the union and the more likely it is that the trust level between the parties is low. There may also be a tendency to repeat concepts or principles in order to emphasize their importance or for one side to assert control over particular issues.

Collective agreements are useful tools by which to evaluate the impact that one party has had over the other on the management and governance of the university. In order to do this, relevant articles are selected and measured against a set of evaluative criteria which has been established to demonstrate the impact that each party has had on the policies and procedures that have been agreed upon during negotiations. To understand the long-term impact or assertion of one party over the other, over time, it is necessary to examine successive collective agreements to determine what changes have been incorporated into the text and the extent of those changes. It is also useful to note whether the change is merely a word or line, a complete clause, or, the entire article.

In 1979, an analysis of United States college and university collective agreements was published by Margaret Chandler and Daniel Julius.⁶⁵ Chandler and Julius chose to examine the package of faculty issues known as “rights” issues. These are the central clauses of any collective agreement and are concerned with faculty members’ rights to participate in the governance of the university. Chandler and Julius’ aim was to determine the degree of assertion faculty had gained over issues such as appointment, contract renewal, promotion, tenure, long-range planning, financial emergency and management rights in the period since certification. Their study examined the contracts of 63 four-year universities and 142 two-year colleges spread over all of the major geographic regions of the United States.

Chandler and Julius ranked the articles in collective agreements in their study on a scale of 1(low faculty impact) to 5(high faculty impact), based on the level of faculty assertion on that particular issue. Essentially, Chandler and Julius examined the committee composition and role, where the decision-making power lay, the precision of the procedures and policies, and constraints on management. The rank of “one” indicated a weak faculty assertion and strong management assertion while a rank of “five” indicated a strong faculty assertion and weak management assertion. Their criteria were specifically developed for each article, and the collective

⁶⁵ Margaret K. Chandler, and Daniel J. Julius. Faculty VS Administration: Rights Issues in Academic Collective Bargaining (New York: Center for the Study of Collective Bargaining in Higher Education, 1979).

agreements that were studies were rated on an article by article basis. This analysis enabled Chandler and Julius to draw some conclusions on the impact of collective bargaining in the U.S. in 1979.

My purpose was to determine the impact of the collective bargaining process on the governance of Canadian Anglophone universities since 1970. Using Chandler and Julius' methodology as a starting point, I adapted the criteria and the ranking system to evaluate successive collective agreements from the three chosen universities. This provided me with a tool by which I could verify what had been reported in the interviews and documentary evidence.

When bargaining a collective agreement is completed both parties usually claim victory and put the most positive spin they can on what has been bargained, whether it is to their advantage or not. By examining subsequent collective agreements I show where faculty unions have made gains into the governance and management of the university or, where management has held onto those prerogatives considered as management rights. However, one must be cognisant of the fact that the contract language finally agreed upon does not always reflect the intent of the parties and, moreover, that the interpretation and implementation of any article may not reflect the intent. Such speculations are, however, beyond the scope of this study.

ARTICLES SELECTED FOR ANALYSIS

In addition to Chandler and Julius' list of "rights" articles—appointment, reappointment, promotion, tenure, and management rights, I have added "dismissal and discipline". I believe that it is important to measure the procedures and

safeguards for members against the latitude the management has to discipline or dismiss. The articles to be analysed for their impact in this study are:

1. Appointment Procedures:

Appointment procedure articles are concerned with all of the procedures, recommendations and decisions that pertain to the initial appointment of faculty members. This includes the decisions that are made whether or not to fill positions that have become vacant, if and how the advertising of vacant positions is to be done, if and how search committees will be established, whether search committees are advisory or decision making, and to whom such committees report. The appointment procedures' article is a measure of the faculty control over the decision to fill positions, where to fill the positions and the colleagues that will be selected to join a department. The more autonomy the faculty has in this decision, the more they control their own academic destiny. The more control the management has in the placement and selection of new hires, the more it can plan for the future and shape the nature and scope of the university's programmes.

2. Contract Renewal:

In the case of tenure-track positions, contract renewal usually takes place after a specified number of years of service. The first contract renewal may take the individual to the point where he or she is eligible to be considered for tenure or a second renewal may be required. Contract renewal is concerned with the ongoing nature of the position, the evaluation process and criteria for offering a new

contract. Control of this process is a measure of faculty autonomy in the decision to retain or terminate junior faculty members. By measuring the faculty assertion in the process of contract renewal, the level of autonomy the faculty has in deciding which colleagues to retain is made evident. Contract renewal or reappointment is a crucial step in an academic career and the individuals or bodies which control these crucial decisions have great impact on the governance of the university.

3. Promotion:

Promotion clauses normally include criteria and procedures for promotion through the academic ranks. Since promotion is the means by which academic excellence is recognized, it is important to determine what body or individual has control over this decision.

4. Tenure:

Tenure, which confers upon a faculty member a status that grants him or her appointment without term, except by virtue of resignation, retirement or dismissal for stated cause, is the most important measure of faculty autonomy or management control. The level of faculty assertion in this clause is an important measure of faculty autonomy is deciding who will remain in a department to do what work. The granting of tenure assures the faculty member of academic freedom to pursue research without interference. Since tenure is such an important step in an academic career, management has been reluctant to share the authority for the conferring of tenure with faculty members, preferring to retain

the power to bestow this status if and when they please for themselves. Control of this decision is a determinant of faculty autonomy or management control.

5. Dismissal and Discipline:

Dismissal and discipline are concerned with the right and responsibility to reprimand and even dismiss tenured and untenured faculty members for cause. Again, the level of faculty assertion in these issues is a measure of the level of autonomy that faculty has in the management of their peers and the union has in its protection of its members. The more precise the procedures and sanctions are, the more the faculty is in control of this process. The greater the flexibility and latitude for the management, the more they are in control.

RANKINGS

Appointment Procedures:

Rank 1: No mention of such a clause found in contract.

Rank 2: Brief discussion of the topic but no mention of faculty rights or responsibilities in the determination or control of appointments. Administration decides if, when and how to fill vacancies.

Rank 3: Faculty consultation with administration on procedures and policies. Search committees of either appointed or elected faculty member who make recommendations.

Rank 4: Greater faculty decision making authority through elected committees, checks and controls on management decisions.

Rank 5: Faculty control over the procedures and processes through elected committees. Faculty make the decisions which are implemented by management. If management refuses to implement a decision, reasons must be provided to faculty.

Reappointment and Renewal:

Rank 1: No mention of such a clause found in the contract.

Rank 2: Brief discussion of the topic but no mention of faculty rights or responsibilities in the determination and control of reappointments. Administration controls if and when to reappoint. Negative decisions may be grieved on procedural grounds but are not subject to an appeal process.

Rank 3: Faculty consultation with administration on procedures and policies. Evaluation committees composed of elected or appointed faculty members who make recommendations to management. Negative decisions may be grieved on procedural grounds but are not subject to an appeal process.

Rank 4: Greater faculty decision-making authority through elected, autonomous committees of faculty with checks and controls on management decisions. Negative decisions may be appealed on substantive grounds and grieved on procedural grounds.

Rank 5: Faculty control over procedures and processes. Faculty make the decisions which are implemented by management. Negative decisions may be appealed and grieved.

Promotion:

Rank 1: No mention of such a clause found in the contract.

Rank 2: Brief discussion of the topic but no mention of faculty rights or responsibilities in the determination and control of promotions. Administration controls if and when promotions are to be granted.

Rank 3: Faculty consultation with administration on procedures and policies. An evaluation committee of either elected or appointed faculty at both the departmental and faculty levels who make recommendations to management exists. Management may be involved in the decision making process in addition to being the ultimate decision makers. Negative decisions may be grieved on procedural grounds but are not subject to an appeal process.

Rank 4: Greater faculty decision-making authority through an elected, autonomous committee of faculty at both the departmental and faculty levels with checks and controls on management decisions. Management may only be involved in the decision-making process as non-voting members. Negative decisions may be appealed on substantive grounds and grieved on procedural grounds.

Rank 5: Faculty control over procedures and processes through elected committees at both the departmental and faculty levels. Management is not directly involved in the decision-making process. Faculty make the decisions which are implemented by management. Negative decisions may be appealed and grieved.

Tenure:

Rank 1: No mention of such a clause found in the contract.

Rank 2: Brief discussion of the topic but no mention of faculty rights or responsibilities in the determination and control of tenure. Administration controls if and when tenure is to be granted.

Rank 3: Faculty consultation with administration on procedures and policies. An evaluation committee of either elected or appointed faculty at both the departmental and faculty levels who make recommendations to management on tenure exists. Collective agreement states criteria and service requirements for tenure consideration. Management may be involved in the decision making process in addition to being the ultimate decision makers. Negative decisions may be grieved on procedural grounds but are not subject to an appeal process.

Rank 4: Greater faculty decision-making authority through an elected, autonomous committee of faculty at both the departmental and faculty levels with checks and controls on management decisions. Collective agreement states criteria and service requirements for tenure consideration. Management may only be involved in the decision-making process as non-voting members. Negative decisions may be appealed on substantive grounds and grieved on procedural grounds.

Rank 5: Faculty control over procedures and processes through elected committees at both the departmental and faculty levels. Collective agreement states criteria and service requirements for tenure consideration. Management are not

directly involved in the decision-making process. Faculty make the decisions which are implemented by management. Negative decisions may be appealed on substantive grounds and grieved on procedural grounds.

Discipline and Dismissal:

Rank 1: No mention of such a clause found in the contract.

Rank 2: Brief discussion of the topic but no mention of faculty rights or responsibilities in the determination and control of discipline or dismissal.

Administration controls all disciplinary procedures and sanctions.

Rank 3: Procedures and policies mentioned but much discretion is in the control of the administration. Administration controls sanctions. Grievance and arbitration are possible.

Rank 4: Procedures and policies specified in collective agreement. Some constraints on management discretion are in place. Sanctions are specified. Grievance and arbitration are possible.

Rank 5: Reasons for disciplinary action, procedures and policies specified in collective agreement. Controls on management decisions are mandated. Sanctions are specified. Grievance and arbitration are possible.

Since each of the three universities chosen has a unique labour history, it will be necessary to vary the number of collective agreements examined in each case. In the case of the University of Manitoba the first two collective agreements, followed by

agreements reached at approximately ten year intervals will be examined. However, I will include the agreements just prior to and just following the strike of the University of Manitoba Faculty Association in 1995 as a validation of the anecdotal and documentary evidence of the reasons for, and resolution, to that strike. In the case of Dalhousie University I will look at the first two collective agreements and then at agreements reached at approximately ten year intervals. I will include the agreements immediately prior to and following the strikes by the Dalhousie University Faculty Association in 1985, 1998 and 2001. Queens' University has only bargained three collective agreements to date, so all three will be considered.

The results will be presented in tabular fashion to demonstrate the changes in each article over the time period. Any special situations will be noted. See Appendix D.

SUMMARY

By using a three-pronged approach--interviews, documentary evidence and collective agreements-- I intend to answer the following questions about each university:

1. Why did the faculty association certify?
2. What were the main obstacles to certification?
3. Did the administration oppose certification? If so, why?
4. What were the major issues to be overcome?

5. What were the gains/losses after certification?
6. What, if anything has changed in the way the university is governed and managed?
7. What were the common issues among the three universities studied and can those issues be extended to other universities?

Each of the methodologies will enable me to explore answers to different questions. In some cases all three methods will be needed to piece together a significant answer or to reconstruct the chain of events that occurred. The methodology described in this paper as a tool by which to examine collective agreements will enable me to compile much of the information needed to explore the answers to questions five and six.

The answers, or the combination of answers, will then be analysed to determine if patterns of similarities in issues and events occurred such that some common conclusions about changes in governance and management as a result of certification can be drawn for the three universities studied.

CHAPTER 3

THE RIGHT, THE MEANS, THE WILL: CERTIFICATION AND COLLECTIVE BARGAINING AT THE UNIVERSITY OF MANITOBA

The University of Manitoba was established in 1877 to confer degrees on the students graduating from its three founding colleges—St. Boniface College, St. John’s College, and Manitoba College. It was the first university established in western Canada. In 1882 the Manitoba Medical College became a part of the university and in 1900 the Manitoba legislature changed the University Act so that the university could do its own teaching and in 1904 a building in downtown Winnipeg became the first teaching facility with a staff of six professors. By 1929, more schools and departments had been added and the university moved to its permanent home in Fort Garry. In 1967 two of the colleges that had been a part of the University of Manitoba were granted university status by the provincial government. They were United College, which became the University of Winnipeg and Brandon College, which became Brandon University. By 2002-2003, the University of Manitoba had a teaching faculty of 1100 members, almost 22,000 full-time equivalent students, and a budget of about 320 million.

CERTIFICATION AND EARLY COLLECTIVE BARGAINING

On February 1, 1973, the University of Manitoba Faculty Association (UMFA) applied to the Manitoba Labour Relations Board for certification as the legal and sole bargaining agent for the academic staff at the University of Manitoba. The decision to seek certification from the Manitoba Labour Relations Board was made after UMFA’s request to the board of governors of the University of Manitoba for voluntary recognition as the bargaining agent for the academic staff was refused. UMFA had requested the power to negotiate “salaries, pension, teaching conditions, library and research facilities and other terms and conditions of appointment.”⁶⁶ The board of governor’s decision to refuse voluntary recognition was based on their reasoning that:

⁶⁶ "Recognition As Bargaining Unit Refused by Manitoba Board," University Affairs (1973).

[. . .] the province's labour relations act defines collective bargaining to be a formal adversary system envisioning a sharp distinction between management and labour[. . .]and the board does not see how such a system can be made compatible with the idea of shared responsibility that is the basic philosophy of the University of Manitoba Act.⁶⁷

The board did offer other consultative measures and the possibility of discussions on economic conditions. This minimal offer did not satisfy the faculty who were tired of what they called "binding supplication."

In responding to Mr. Justice Dickson, chair of the board of governors, the president of UMFA made it clear that the terms offered were not acceptable to the UMFA members and that they intended to proceed to seek certification. UMFA was determined to bargain not only economic matters but all other terms and conditions of employment. In its reply, UMFA said, "a real adversary system exists when interested parties do not meet as equals, and this is the present situation at the University of Manitoba [. . .]. This is unacceptable." UMFA's response continued, "shared responsibility implies shared rights and this means shared authority in the decision making process."⁶⁸ However, throughout this period and in fact right up to the date when the Manitoba Labour Relations Board legally granted certification, UMFA

⁶⁷ "Recognition As Bargaining Unit Refused by Manitoba Board."

⁶⁸ University of Manitoba Faculty Association Newsletter 1 Feb. 1973: 1.

maintained its request for voluntary recognition and would have willingly accepted that option.

The reasons given by the board for rejection of voluntary recognition were only a part of the picture. The senior management had also discussed the UMFA request for voluntary recognition and, on the advice of their lawyer, Roy Gallagher, had come to the conclusion that voluntary recognition of the association was tantamount to legal recognition. They were loathe to step into the realm of collective bargaining without the rules and binding legislation that regulate collective bargaining, believing that it would be inappropriate and probably dangerous. However, the university president, Ernest Sirluck, maintains that the decision to oppose voluntary recognition was based on the belief that had the administration accepted voluntary recognition, they would have denied many academic administrators the right to choose, since voluntary recognition would have included all academics at every rank and position in the bargaining unit without providing them with an opportunity to vote.⁶⁹ The senior administration was opposed to a bargaining unit that would include all academic staff, including the deans, the vice-presidents and the president and would later argue and win this point in the certification hearings. The board of governors and senior administration's opposition to UMFA's certification was not so much a philosophical opposition to the idea of unionization, although that is what they were saying in their letter rejecting voluntary recognition,

⁶⁹ Ernest Sirluck, personal interview, 16 February, 2001.

but a desire to do business in a different way, and to continue to operate as they had been doing.⁷⁰ In fact, Dr. Sirluck maintains that the administration was neutral to the idea of faculty certification. However, the academic administration, the president and vice-presidents were committed to maintaining the role of the senate as the supreme academic decision making body and that commitment was what governed their positions and their actions over the next three years. They believed, and rightly so, that any attempt to move the academic decision making from the senate, as constituted by the University of Manitoba Act, to the academic departments or faculties would result in a diminution of this academic decision making body. The board of governors was also concerned that collective bargaining would diminish its power in academic matters. While there was some apprehension that certification might lower academic standards and a perception that unions were equated with mediocrity, the senior academic administration believed that it was their job to ensure that this did not happen.⁷¹

What then were the issues and conditions that prompted a clear majority of faculty members⁷² to vote in favour of certification? Like most complex and difficult

⁷⁰ Donald Wells, personal interview, 16 November, 2000.

⁷¹ Donald Wells, personal interview.

⁷² In the vote held in January 1973, 562 faculty members voted in favour of certification and 415 voted against. Approximately 85% of those eligible to vote did so. Eligible to vote were all full-

decisions, this one was not taken lightly. The UMFA executive was well aware that while there was very strong support among the faculty in the humanities, social sciences and education, there was less support among faculty in the sciences and professional schools. The New Democratic Party (NDP) government of the day was at the very least neutral, and by some accounts, sympathetic to the idea of the extension of unionized labour. Dr. Sirluck recalled the NDP government as being not merely neutral, but overtly pro-union and that part of its campaign message had been to declare its support for unionized labour. The government's appointees on the Manitoba Labour Relations Board would have also been sympathetic to unionized labour. Although the Labour Relations Board would have included representatives of employers and employees, it was thought at the time that traditional trade unionists were not very anxious to have faculty members among their numbers.⁷³ Winnipeg is a labour-oriented city and its citizens are split between those who favour organized labour and those against it and even those for labour did not necessarily support faculty members as trade unionists. There were members on the Manitoba Labour Relations Board who were known by UMFA's lawyer as sympathetic to the faculty cause. In addition, the government had just passed a new Labour Relations Act in the

time academics and professional librarians employed by the university. Excluded from the list of eligible voters were about 90 members of the medical faculty who did not wish to be part of the union.

⁷³ During the strike in 1995 the CUPE local was supportive of UMFA and offered their members meeting rooms and picket signs.

Manitoba Legislature that did three things favourable to UMFA: it made check-off mandatory, so that all who benefit from the outcome of collective bargaining must pay,⁷⁴ it appeared to solve the problem of allowing academic administrators to be members of a bargaining unit and it reduced the minimum percentage of votes required before a bargaining unit can receive recognition from 50% to 35%. The legal framework was in place to make certification of the faculty association possible.

One main issue and one important human factor were pivotal in pushing the faculty to seek certification and gain the right to bargain collectively. The issue was a desire for shared governance, a share in the responsibility for the academic decision making at the departmental, faculty and university levels. The faculty wanted their fair say in the decisions that governed their lives—appointment; reappointment, promotion and tenure—and they wanted to have their voices heard at the departmental and faculty levels. The UMFA executive was of the opinion that it was time for the faculty to take responsibility for themselves and to act in their own behalf rather than complaining about the decisions made by middle aged, conservative, administrators. They perceived that during the last two or three years the bureaucracy had become heavier and the management styles more autocratic with little or no faculty

⁷⁴ In the fall of 1945 the United Auto Workers struck the Ford Motor Company to win guaranteed dues check off from every employee. The struggle ended in arbitration and Justice Ivan Rand, the arbitrator ruled that while no employee should be forced to join a union, all must pay union dues because all benefit. This became known as the Rand Formula.

consultation about matters that concerned them. There was no one issue, but a general dissatisfaction with the way things were going and the very real desire to be an equal player at the bargaining table.⁷⁵ The faculty had a sense that an ever increasing and powerful bureaucracy was whittling away their residual powers. They had secured representation on both the senate and the board of governors but soon realized that this representation was only marginally useful as the senate was too large to be effective and was dominated by a bloc of ex-officio members who were unlikely to take positions differing from those of the administration. As early as 1971, rumblings of dissatisfaction among the UMFA members had been heard and a tentative call to unionization made⁷⁶. However by late summer of 1972, UMFA seemed to know what it had to do. There were executive members in place who were committed to change and who had decided that any further attempts at collegial discussions to achieve that change was useless. They had determined to make changes either by voluntary recognition or by legal certification. They were prepared with mechanisms to inform members and had founded the University of Manitoba Faculty Association Newsletter.

The human factor, which influenced the issue, was the university president. Dr. Ernest Sirluck had come from the University of Toronto to assume the Presidency

⁷⁵ Ian Kerr, personal interview, 7 November, 2000.

⁷⁶ Anon. "Unionization and the University of Manitoba Faculty Association." 18 August, 1972.

of the University of Manitoba in 1970. Although Sirluck was a native Manitoban who had taken his undergraduate degree in English Literature at the University of Manitoba, he was considered to be “from away.”⁷⁷ Sirluck had gone on to do graduate work at Toronto and had taught for fifteen years at the University of Chicago. He was a Milton scholar with an international reputation and at the time of his appointment to Manitoba, was Dean of Graduate Studies at the University of Toronto. Sirluck had won the position over Dr. Harry Duckworth whom Dr. Hugh Saunderson, the incumbent, had groomed and prepared to take over the presidency. When the search committee did not appoint Duckworth, it seemed that Saunderson had little, if any inclination to brief the incoming president.⁷⁸ Harry Duckworth, the Vice-President, Academic with whom Sirluck did have some briefing sessions, went on sabbatical leave the moment Sirluck assumed full responsibility for the university. He subsequently informed Sirluck that he would not be returning, as he had accepted the presidency of the University of Winnipeg. In all likelihood the Winnipeg position had been in the works for some time and Duckworth had been less than frank with Sirluck about his plans to continue at the University of Manitoba. Whether it was because Sirluck was a very difficult man with whom to relate and interact, or because those around him at Manitoba simply resented his presence and refused to give him any

⁷⁷ Nora Losey, personal interview, 1 December, 2000.

⁷⁸ Ernest Sirluck, First Generation: An Autobiography (Toronto: University of Toronto, 1996)

assistance in establishing himself, it appears that no one had informed Sirluck of the serious financial deficit of about two million dollars that the university was facing, nor had he been warned that the University Grants Commission (UGC) was planning to cut university funding for the coming year. Sirluck was of the impression that the board of governors expected him to manage the University of Manitoba in much the same manner he had managed the graduate faculty at the University of Toronto. That is, to encourage growth and development in both the academic programmes and the physical plant of the university. When they interviewed him for the position, they neglected to inform him that, unlike the Ontario provincial government that supported the University of Toronto both philosophically and financially, the goal of the Manitoba provincial government was to reduce spending in education, especially, post-secondary education.

However, the piece of information that was most damning to Sirluck concerned a new pension plan that the former administration had offered to the university staff without the approval of the University Grants Commission or the government. According to Dr. Sirluck, the board of governors had bypassed the UGC in an act of defiance against the NDP government without concern that they were using the university as a political weapon. Sirluck believes that Hugh Saunderson, the former president, must have known how dangerous this action was and may have realized that the board of governors was playing right into the hands of the provincial government that wanted nothing greater than to control the university. The UGC had refused to support the plan because it required a disproportionate contribution from

the university and guaranteed unrealistic pension benefits. The UGC and the government had been preparing a new act that would put the faculty on the province's civil service plan and strip the university of its autonomy in such matters. Sirluck was given no choice but to renegotiate a less advantageous plan with the staff and seek the approval of the UGC for the new plan. The faculty were furious and many of the more senior faculty members realized that the renegotiated plan would seriously affect their pension benefits. Years later they would blame Sirluck, when in fact, he had had nothing to do with the initial discussions. Some months after his arrival at Manitoba, at a reception, the treasurer of the province of Manitoba confirmed Sirluck's suspicion that the university was about to lose its autonomy, when he told Sirluck, "oh, you've lost it [your autonomy], it is just a matter of when we announce it."⁷⁹ Thus Sirluck began his term of office in less than ideal circumstances. Upon leaving the university in 1976, Dr. Sirluck claimed that the settlement of the pension plan had been done "at great cost to my popularity within the university."⁸⁰

Some of those who knew and worked with Dr. Sirluck claimed that he had an aloof personality and that he was authoritarian and autocratic. Others simply suggested that he was not a "people person" and had no idea how to deal with the faculty, the staff, his colleagues or the board members. Dr. Sirluck's experience had been with a very different kind of university, one that had a unicameral system with

⁷⁹ Ernest Sirluck, personal interview.

⁸⁰ Ernest Sirluck, First Generation 379.

one governing body for both academic and financial responsibilities. The University of Toronto faculty were not unionized, nor was unionization ever a realistic consideration there. The Toronto model was the one he knew best. However, to his credit, he worked hard to make senate work and would encourage long senate debates on academic issues.⁸¹ Despite this effort, it was suggested that he was paranoid as he found fault with everyone, saw enemies under every bush and believed that whatever was done either to him or for him had as its basis a sinister ulterior motive. By his own admission, he was acutely sensitive of his Jewish heritage and had accepted the position at Manitoba at least partly because “it would be interesting to become the first Jewish president of a Canadian university.”⁸² According to Donald Wells, Vice-President, Administration, there was some feeling of anti-Semitism present both in Winnipeg, and at the University and Dr. Sirluck may have been a victim.⁸³

There were those who supported Sirluck and believed that he had good ideas but that the university was not ready for change.⁸⁴ However, by most accounts, including his own, he was not the right person for the presidency at the University of Manitoba at the time. The faculty sensed this and proceeded to take a route by which

⁸¹ Nora Losey, personal interview.

⁸² Ernest Sirluck, First Generation 300.

⁸³ Donald Wells, personal interview.

⁸⁴ Nora Losey, personal interview.

they felt certain that their collective voice would be heard. I do not believe that Ernest Sirluck was the reason that the faculty decided to seek certification but I do believe that his inability and unwillingness to talk to the faculty association in any meaningful way were defining factors in their decision. Over the lengthy period from February 1973 to November 1974 when the Manitoba Labour Relations Board granted certification, there is no evidence of the president meeting with representatives of the association in an attempt to resolve their differences or to understand the other point of view. He believed that there ought to be a real distinction between management and employees and rather than incorporating a “first among equals” leadership style, he created layers of bureaucracy between himself and the faculty and refused to participate in or even sanction many of the open meetings or political discussions that took place on campus.

Other issues played a role in the faculty’s decision to seek certification. By 1972 the University of Manitoba Faculty Association was quite mature. It had existed as an association for many years and had excellent and strong ties with the Canadian Association of University Teachers (CAUT). Its members had become executive officers of CAUT and they were relied upon to serve on important CAUT committees such as the Academic Freedom and Tenure Committee and the newly created Collective Bargaining Committee. By serving CAUT the UMFA members gained valuable experience and knowledge about collective bargaining. Internally at UMFA, the executive of UMFA had passed from members of the Faculty of Medicine to

members from the more radical and probably more financially disadvantaged and dissatisfied Faculty of Arts.

There was a growing awareness that faculty salaries had fallen behind those at other western Canadian universities, and during negotiations comparisons were made with the two other universities in Manitoba, Winnipeg and Brandon as well as with the University of Calgary. Given the difficult financial situation of the university and the commitment of the UGC⁸⁵ to reduce spending by cutting the grants to the universities, there were serious doubts that faculty would receive adequate salary increases. This was coupled with a problem of attracting new faculty members and retaining them. The university was in a period of growth and more faculty members were needed to meet student demands. Faculty at the University of Manitoba believed that if they were to be competitive in recruiting excellent faculty members they would need to pay competitive salaries. The question of adequate salaries for the new

⁸⁵ The University Grants Commission (UGC) was the body charged with distributing the government funds to the universities in the province of Manitoba. The mandate of the UGC was to assure that adequate post-secondary educational resources of the type normally provided by universities and colleges were available to the citizens of the province of Manitoba. Its authority was basically restricted to financial matters and the Act which created the UGC recognized that the UGC should not interfere with the basic right of a university to formulate academic policies and standards. The UGC was, in effect, a buffer between the universities and the government where each university would go to present their spending proposals for the coming academic year and receive a share of the total funds available.

assistant professors was a key factor in the certification equation. When the President, Dr. Sirluck, refused salary increases for the junior faculty in 1973, UMFA declared that it would certify and go out on strike if necessary to get adequate salaries.

One of the issues that galvanized the faculty in their resolve to certify was tenure. In October of 1972 the administration announced that they were considering setting quotas on the number of tenured faculty members and that the faculty deans would be the ones to define those limits.⁸⁶ The university was facing dropping enrolments particularly in the faculties of arts, engineering and science. The Faculty of Commerce, however, was growing rapidly and needed both space and new faculty members to meet the increased student demand. In what he now regrets as a logical decision but not a politically astute one, President Sirluck acquiesced to the demands of the Faculty of Commerce and announced a new staffing and tenure policy related to enrolment. What it meant was that there would be no new appointments in those faculties where enrolment was declining and that any vacancies created by resignation, dismissal or retirement would be moved to the growth faculties and filled there. In addition the new policy did not provide for tenure track positions in the non-growth areas; any needs that they had would be filled by sessional appointments. The new policy was duly taken to senate and to the board of governors where it was approved.

⁸⁶ "U of M May Set Limits on Number of Tenured Positions," University of Manitoba Faculty Association Newsletter 20 Oct. 1972: 1.

Sirluck believed that since the senate and the board of governors had the opportunity to debate the new policy there was no need to discuss it separately with the faculty association. He now sees this as another missed opportunity to communicate with the faculty and a great failure on his part. In retrospect, he understands that by introducing a policy that linked tenure to enrolment he inadvertently reawakened memories of the draconian measures taken in the university during the Depression when all faculty members were forced to take salary cuts and tenure track appointments were converted into one-year appointments with no expectation or promise of permanence.

The announcement of the new policy disturbed UMFA because while the faculty members had an understanding of the meaning of tenure, they had no confidence that the administration shared that understanding. UMFA feared faculty members with long service, particularly those in arts and science, might be dismissed without cause in order to move positions to the growth faculties. The faculty did not believe that, without being part of a recognized legal union, it had any real security of employment or that “tenure” had any real legal status.⁸⁷ Although it had taken place some fifteen years earlier, the case of Harry Crowe at United College⁸⁸ in Winnipeg was still in the minds of those involved. Many of them remembered all too clearly how a tenured faculty member could be dismissed without reasons or a hearing for

⁸⁷ Roland Penner, e-mail to author, 27 November 2000.

⁸⁸ United College had become the University of Winnipeg.

“disloyalty.” More recently there had been other cases of dismissals and denial of tenure where the procedures had been found to be questionable that had caused the faculty association concern.⁸⁹ The anxiety created among the faculty in those disciplines who were already sympathetic to unionization may have tipped the scales in favour of certification.

The University of Manitoba also had a practice of hiring many “sessional” faculty members, who had no promise of tenure and were kept on year after year, with no security and in the knowledge that at any given moment they could be let go and replaced with a younger, presumably cheaper instructor. UMFA wanted security for its members and a tenure process that was fair and could be appealed.

When the board of governors rejected UMFA’s request for voluntary recognition, UMFA was prepared. During the previous summer, the UMFA executive had planned for what was to come and had begun to educate its members and informed them of its plans. The executive had already passed a motion calling for a vote of the faculty on the issue of certification⁹⁰ and it had individuals in place that would canvas the various faculties to recruit the votes necessary. The UMFA executive realized that the faculty was divided on the issue, not with clear lines of delineation drawn between disciplines but “rather like a series of concentric circles

⁸⁹ Nora Losey, personal interview.

⁹⁰ University of Manitoba Faculty Association Newsletter 2 January, 1973: 1.

with support diminishing as one moved from the center to the outermost circle.’⁹¹

Affirmative votes would be easiest to assure in the faculties of Arts, Education and Social Science; Science would be more difficult and the professional faculties of Law, Engineering and Medicine would be the most resistant to certification. During January 1973 faculty members signed union cards, and at the end of the sign-up period more than 85% of the eligible faculty had voted, with 562 for certification and 415 against certification. Most of the negative votes were from the professional faculties, and the ninety members in the medical school had not been included in the population of eligible voters. Based upon this positive outcome, the UMFA executive petitioned the MLRB for certification as a bargaining unit.

Although the university administration claimed to be neutral to the concept of faculty unionisation,⁹² the process before the MLRB was neither easy nor quick, taking almost nineteen months until the MLRB was prepared to certify the association. When they received official notification that UMFA had filed its request with the MLRB, the board of governors decided that all interaction and discussion with UMFA would cease. The annual semi-social meeting of the board and UMFA executive was delayed and then finally cancelled by Mr. Justice Dickson, chair of the board of governors. He said that since UMFA had gone forward with the request to certify, they could not meet, and would henceforth be governed by Manitoba Labour

⁹¹ Ian Kerr, personal interview.

⁹² Ernest Sirluck, personal interview.

Relations Rules.⁹³ Despite UMFA's continued offer to hold a meeting and discuss, among other things, voluntary recognition, the board of governors remained firm in their resolve not to meet. This policy reflected Dr. Sirluck's firm contention that the two paths to the reform of university governance—collegial discussion and certification—are mutually exclusive. This unwillingness to meet with UMFA was instrumental in establishing the pattern of confrontation and mistrust that has continued over the years.

During the winter of 1973, while their request was pending before the MLRB, UMFA approached the administration with its annual request for salary increases. Again the administration refused, because they were before the labour board and could not act without the labour board's approval. The matter was argued in writing before the labour board with the lawyer for the board of governors, Mr. Roy Gallagher, arguing that salary increases should not be given while the parties were before the MLRB as this could prejudice the employer's case. Mr. Mel Myers, the attorney for UMFA argued that provided both parties agree, there is no law forbidding the changing of working conditions while a case is before the labour relations board. Myers cited, as precedent, the case of Manitoba Hydro, where the same Mr. Gallagher had argued for the hydro workers and their interim increase while their case remained before the MLRB. The issue of the salary increase became another obstacle in the way of amicable relations and any kind of civilized understanding between the parties.

⁹³ University of Manitoba Faculty Association Newsletter 5 February, 1973.

Eventually the ruling of the MLRB persuaded the board of governors and the administration that payment was possible and legal. The board of governors then complicated the issue farther, possibly in an attempt to stall the inevitable and encourage faculty to consider decertification, by using the salary increase as a negotiation tactic. They offered a percentage increase plus merit pay if the faculty would agree not to bargain for more during the negotiations for the 1972-73 year. UMFA finally settled for a 5% increase with no constraints on the bargaining to come. Gaining a salary increase for the members to ensure that the members would remain committed to the union was important for UMFA but keeping all of their options open was more important to them as they approached negotiations.

The salary increase was just one obstacle that faced UMFA in the certification hearings. The lawyer for the board of governors objected to the certification request on the technicality that UMFA had omitted to deposit the minutes of the founding meeting of UMFA. This caused a delay while it was decided if the hearings could go forward while the minutes were located and deposited. In their desire to maintain collegiality, UMFA had included all academic administrators, faculty members and professional librarians in their bargaining unit. The board filed objections based on community of interest and demanded that 192 academic administrators, including departmental chairs be excluded from the bargaining unit. The board also made the argument that faculty members share in the management of the university and

therefore are not eligible for membership in a union.⁹⁴ However, probably the most disturbing threat came from within the membership itself. Several members of the Faculty of Law petitioned the MLRB to exclude all professionals from the bargaining unit claiming that they did not have the community of interest with the other faculty members. Not only did this complicate the case before the labour board but it also caused dissension among the faculty ranks.

In November of 1973, ten months after UMFA had filed its request before the MLRB, the board decided to conduct its own vote to decide what faculty members should be represented by UMFA. UMFA welcomed this positive step forward and wrote to their members saying that the crux of the question is

[. . .] do we, or do we not individually or collectively have the rights we ought to have. The University of Manitoba Act indicates that we do not, and recent faculty experiences demonstrate that we do not [. . .]. So long as we do not have such rights, we do not have control over our academic

⁹⁴ In 1978 a decision was made concerning the eligibility of faculty members at Yeshiva University in New York to certify. In that decision, the court decided that since faculty members carry out many functions that are considered to be managerial they are not eligible for membership in a bargaining unit (N.L.R.B v. Yeshiva University, 592 F. 2d 686 (1978)). That decision was upheld on appeal to the Supreme Court of the United States by a five to four decision (N.L.R.B v. Yeshiva University, 78 U.S. 857, 997 (1980)).

lives [. . .]. Certification will oblige the board of governors to meet with us.⁹⁵

The situation dragged on for some more months and finally the hearings resumed in early March of 1974 and on 21 March 1974, the MLRB heard the final arguments from UMFA, the University of Manitoba and the objecting faculty members. On April 16, 1974, the MLRB wrote to UMFA stating that they “intend” to certify UMFA but will conduct a vote among the professionals to decide if they will be in the bargaining unit.⁹⁶ The MLRB had also ruled that the bargaining unit would be composed of all full-time faculty members and professional librarians and that department heads or chairs would be in the bargaining unit but that associate and assistant deans and all those holding academic administrative positions above that were considered not eligible for membership. It was perhaps a mark of the naivety of UMFA that they believed they could include all academics, including the president, in the bargaining unit when one of the reasons that they were seeking legal certification was to override the authoritarian attitude and the bureaucracy imposed by the president. The administration had won on the issue of eligibility for membership but the association had won the big issue, the right to certification. The vote was not completed until the fall of 1974 and when it was counted, it was announced that the

⁹⁵ University of Manitoba Faculty Association Newsletter 15 November, 1973: 1.

⁹⁶ Manitoba Labour Relations Board, letter to University of Manitoba Faculty Association, 16 April, 1974.

professionals had voted to be out of the bargaining unit.⁹⁷ On November 15, 1974, UMFA was the first major English Canadian university faculty association to be legally certified as a unionized bargaining unit.⁹⁸

UMFA was now at the end of the beginning, but it had a long way to go before it would celebrate its first collective agreement. On December 4, 1974, UMFA issued a newsletter to its membership titled “The Right-The Means-The Will” in which the president wrote:

It is the beginning of an improvement in the morale both of the faculty and the administration, of an increase in our educational effectiveness as individuals and as a corporate university [. . .] and in our working conditions [. . .] We must have the will to use the means [at our disposal] [. . .] Certification gives us the legal rights, collective bargaining provides the means. We must and shall provide the will.⁹⁹

⁹⁷ A few years after certification, UMFA took the daring and unprecedented step in re-opening the composition of the bargaining unit and allowing another vote of the membership. This time the professional faculties participated in the vote and the results were overwhelmingly in favour of the union (Trevor Dandy, personal interview, 5 November, 2000). By 1979 UMFA was bargaining for all faculty members at the University of Manitoba except for the medical faculty.

⁹⁸ The Université de Québec à Montréal had certified in 1971. Nelson, B.C. had certified in 1973 and St. Mary’s in Nova Scotia had just certified in 1974.

⁹⁹ University of Manitoba Faculty Association Newsletter 4 Dec. 1974: 1.

UMFA was poised and ready to begin collective bargaining. It remained to be seen whether or not UMFA had the will to succeed. The stakes were very high for both sides, and both parties went into the negotiations determined to make gains and to preserve their rights. They were both aware that the other Canadian universities were watching their activities and that what they would bargain would set a standard for the rest of the country. The lengthy certification process had given UMFA plenty of time to establish committees mandated to prepare position papers on all aspects of working conditions and economic benefits which would put them in a strong position when bargaining actually started. UMFA had the advantage of association with the Canadian Association of University Teachers. In 1971 CAUT had established a Collective Bargaining Committee, at first with only a limited investigative and recommendatory mandate but by 1972 it had begun to take a more active role as a resource center for faculty bargaining.¹⁰⁰ Roland Penner, a professor in the Faculty of Law at the University of Manitoba had been Chair of that CAUT committee. The CAUT also had a team of professionals, known as the “flying circus” ready to help faculty associations with information, advice, on-site preparation and negotiation that were, in the words of one UMFA negotiator, “formidable.”¹⁰¹ Other members of the UMFA executive did not feel that the support from CAUT was sufficient and had the

¹⁰⁰ Roland Penner, "Faculty Collective Bargaining in Canada: Background, Development and Impact," Interchange: Ontario Institute for Studies in Education 9.3 (1978-1979): 71

¹⁰¹ Roland Penner, personal interview.

impression that CAUT thought “we were way the hell out there.”¹⁰² However, the executive director of CAUT, Dr. Donald Savage, became involved in the negotiations and spent considerable time with UMFA in preparation and negotiations.

The administration, on the other hand, had been dragged into collective bargaining and felt that they were inventing the wheel. There was little or no assistance to be had from the Association of Universities and Colleges in Canada and there were no other Canadian universities the size of Manitoba that had any experience. There was also the sense, at least among the faculty, that Ernest Sirluck would take little advice on any issue. The administration did seek advice or at least solace, from their colleagues at Carleton University in Ontario who were also beginning the process of certification. Dr. Wells recalled that he had taken a trip to Carleton to meet his counterparts there. “That was helpful, not because either one of us knew what we were doing, but at least it was someone to talk with [. . .].”¹⁰³ Internal problems between Sirluck and the board of governors plagued the negotiations. Some members whom the NDP government had appointed to the board were naturally quite sympathetic to the union and others on the board had been put there by the government because it was believed that they would deal effectively with the president. The dissonance between the president, his administrative team and the board of governors was palpable. Dr. Sirluck recalls that many of the members of the

¹⁰² Nora Losey, personal interview.

¹⁰³ Donald Wells, personal interview.

board were opposed to his point of view and openly supported the union position. He also believed that because members of the administrative team knew that they would eventually return to, or enter the bargaining unit, they were more willing to support the union position. This caused considerable conflict amongst the members of the administrative team and made it extremely difficult for the administration's negotiators to work out positions and present a solid front at the negotiations table.¹⁰⁴ The administration's negotiators were forced to walk a fine line between Sirluck's desire to maintain the status quo and the board's desire to make changes and come to an agreement with UMFA.¹⁰⁵

Collective bargaining began in earnest in the winter of 1975. The university was represented by Mr. G. Boucher, Roy Gallagher, Q.C., Dean I. Cooke, Dean J. Mundie, Vice-President D. Wells, Mr. B. A. Fijal and Mr. P. Kremer. UMFA was represented by M. Debicki, Professors M. King, R. Lunden, N. Loewan, G. Paul, R. Penner, E. Shapiro and I. McKenna (CAUT). The teams began to meet weekly but bargaining was slow and arduous. Typically there were complaints from the faculty side that the administration was not prepared, was refusing to put substantive articles on the table and was purposefully delaying negotiations. On the administration side, they were frustrated that UMFA would not put all of their demands, including salary on the table at once and had been advised by one member of the board, a former

¹⁰⁴ Ernest Sirluck, personal interview.

¹⁰⁵ Donald Wells, personal interview.

United Auto Workers organizer, not to talk to UMFA until all of the demands were known.¹⁰⁶ The administration was also unwilling to put its financial positions on the table until they had received and studied the provincial grant for the year; typically, UMFA interpreted this as stalling and were incensed.

While improved salaries were important to the UMFA members, it became clear at the start of bargaining that rights issues and governance would be the most hard-fought and contested issues. The faculty wanted and demanded a complete collective agreement and were not prepared to settle for less, although they had the sense that the administration would have been pleased to bargain salaries and other economic conditions, a grievance article, (because that was required by law), and little else. The faculty wanted articles to govern hiring, promotion, reappointment, tenure, financial exigency and, of course, salaries. The administration with its commitment to maintaining the authority and power of the senate in all academic matters and the board in all fiscal matters, was clearly on a collision course with the faculty who were seeking faculty control over the academic issues by introducing a system of peer review and decision making in all aspects of the working conditions of faculty members.

This commitment to maintaining the powers and authority of the senate and the board of governors was very important to the president and while he believed that

¹⁰⁶ Donald Wells, personal interview.

Canadian universities needed reform, he preferred a collegial system of reform as worked through at the University of Toronto to the certification route that University of Manitoba had taken. In a recent interview, he said:

[. . .] it is really not possible to use both routes simultaneously but the professors at Manitoba did not understand [. . .]. They said, surely you want collegial government. Of course I did, but that isn't consistent with a management-labour division.¹⁰⁷

By the spring of 1975 both sides were despairing of ever completing negotiations. Each side had anticipated that once the association was certified, bargaining would be a rapid denouement. This was not happening. UMFA began to send newsletters to the faculty expressing their distress with the situation and suggesting that if things did not improve UMFA might need to consider “different means that would increase the speed of negotiations.”¹⁰⁸ This was not exactly a call to strike but was a bold step forward for the new union. The possibility of a strike in the early fall gave the faculty some measure of hope and “something to hold onto”¹⁰⁹ over those summer months. Finally on April 15, 1975, UMFA applied to the MLRB for conciliation stating that “the board of governors had refused to table a salary position

¹⁰⁷ Ernest Sirluck, personal interview.

¹⁰⁸ University of Manitoba Faculty Association Newsletter 6 March, 1975.

¹⁰⁹ Roland Penner, personal interview.

or substantive positions on tenure, academic freedom, promotions, hiring, dismissal and redundancy.” UMFA also claimed that there were “indications that the board of governors’ team is conducting delaying tactics and may not be bargaining in good faith.”¹¹⁰

Negotiations continued to drag on through the spring and positions became ever more entrenched. On May 16 1975, negotiation documents were leaked to the Winnipeg Tribune and it headlined the resulting story: “\$25 million total for academics--Profes demand \$9 million.”¹¹¹ UMFA denied the claim and reassured the community “the academics are most definitely not trying to bankrupt the university; our interest is to maintain the present academic standards,”¹¹²

About a month later Donald Savage, executive director of CAUT, and Trevor Dandy, president of UMFA, had a meeting with the dean of the Faculty of Arts, Dr. D. J. McCarthy. Although McCarthy was not on the administration’s bargaining team, he was thought of as reasonable and there was some optimism that he could influence others in the senior administration. During that meeting, and confirmed in a follow-up letter to Dean McCarthy, UMFA explained its positions. Departmental governance

¹¹⁰ University of Manitoba Faculty Association Newsletter 15 April, 1975.

¹¹¹ Silvio Dobri. "\$25 Million Total for Academics: Profes Demand \$9 Million," Winnipeg Tribune 16 May 1975: A1.

¹¹² Silvio Dobri. " \$25 Million Total for Academics."

was a key topic of the meeting and the issues of hiring, promotion and merit were discussed at some length. The issue of faculty involvement in hiring of new faculty members was one to which UMFA gave priority. It had initially demanded that departmental members should formally share authority with the departmental chair in the decision making. At this point in the bargaining it was prepared to settle for a formal consultative process but insisted that the right of the department to choose such a consultative committee be written into the collective agreement. The administration opposed this and wanted terminology that would only vaguely require chairs, if they wished to seek consultation, to do so through an elected departmental committee. UMFA had reduced their demands for departmental promotions committees to one in which elected faculty would be in the minority but the administration opposed even this interference. The board would only support a final appeal mechanism if the appeal decision upheld an initial negative decision. In the case where the appeal board would overturn the original decision, presumably a negative one, the appeal board decision would not be final but the final decision would go to the president and the board. The UMFA/CAUT delegation also pointed out that the position of the board of governors was contrary to the general development of university governance in Canada.

The letter to Dean McCarthy made it clear that UMFA members believed that they had moved a considerable distance and accommodated many of the demands of the board of governors. I would also suggest that at this stage in the negotiations the board of governors and the senior administration believed that they too had moved considerably in the direction of accommodating UMFA. After all, their position was

that there was to be no diminution in the powers of the board or senate. The president and the members of his administration believed that since the University of Manitoba Act had granted the power to manage all aspects of faculty working conditions to the board, those powers could not be bargained away.¹¹³ Moreover, a year earlier senate had considered the question of how the altered status of the faculty association would affect the senate as the university's major decision making body.¹¹⁴ Senate had set up a committee to review its powers as defined in the University of Manitoba Act namely:

[. . .] to make recommendations to the board of governors with respect to academic planning, campus planning, a building programme, budget policies, procedures in respect of appointments, promotions, salaries, tenure and dismissals and any other matters considered by the senate to be of interest to the university.¹¹⁵

Senate members had expressed concern that these powers might be subject to negotiation and had established a committee to make clear the senate's legal position. The committee was to include three members of the board of governors, three

¹¹³ Roland Penner, personal interview.

¹¹⁴ University Affairs July, 1974: 10

¹¹⁵ University Affairs July, 1974: 10

members of senate, including one student, and three UMFA members. UMFA declined to sit on the committee and decided to send an observer instead.

That senate wanted to maintain its position of authority over the academic matters of the university was understandable; that they did not realize that collective bargaining with a certified faculty association would, by definition, change their status was naive. The struggle for academic power was at the very heart of these negotiations. While both parties went to the bargaining table to claim control over academic issues, the faculty association had to argue its right to take away those rights that had traditionally been vested in the university administration, the senate and the board of governors; while the board negotiators had only to hold onto what they already considered was theirs. In this first round of bargaining the faculty had little to give up and everything to gain; the board on the other hand, believed that it had much to give up and little to gain. The unknown was feared. What happened at the University of Manitoba happened to a greater or lesser degree at every Canadian university where the faculty association decided to certify and bargain in a legally binding mode. Once precedents had been established, it was easier for those who came after to make the same sort of demands, but in that first round of bargaining, one side, the faculty, was trying to gain control over rights and powers the board and senate traditionally and historically controlled.

The negotiations at Manitoba did not go well. There was too much at stake and there were probably too many players. The UMFA team was reporting to the UMFA Executive on an almost daily basis following each negotiation session. Many

newsletters were prepared and mailed to faculty so that they would be informed of any progress. On the administration's side, the chief negotiator, Donald Wells was reporting on a daily basis to Ernest Sirluck and the other vice-presidents. They went to the board of governors with only the broad issues and the principles that they were trying to maintain. While the board did have some members that were sympathetic to the union, the board had to be careful not to be seen to oppose the rather conservative position of the president. Dr. Wells trod the high wire between the two.¹¹⁶ UMFA negotiators believed that the board was not getting full information and even suggested at one point during the early summer that a board member ought to be at the table to see what was happening first hand. While the provincial government continued to hold the purse strings very tightly, as far as I can determine, it kept its distance from the actual negotiations, doubtless watching from the sidelines.

Both sides were concerned that if they did not reach an agreement by the time that classes began in the fall term, the faculty would be demoralized, or worse, go out on strike and the students would suffer. There was little creativity at the table and relationships were strained to the extreme. The president, Dr. Sirluck, had announced that not only would he not seek reappointment, but that he would leave as of 30 June 1976, one year before the end of his contract. He had not had an easy time at Manitoba and by 1975 he was tired of fighting with the government, the board and the faculty, and wanted to return home to Toronto as quickly as possible. Sirluck recalls that at the

¹¹⁶ Donald Wells, personal interview.

time of his resignation announcement there were six collective agreements pending, the most difficult and important of which was with UMFA.¹¹⁷ He was angered that UMFA had accused the administration's team of bargaining in bad faith and satisfied that the board of governors had refused to meet with a delegation from UMFA¹¹⁸ He was unwilling or unable to see that this was yet another missed opportunity for conciliation or collegial decision making. He maintained his position that:

[. . .] the faculty's right was uncontested and actively exercised, but vested in departmental and faculty councils and senate, as well as senate's elective representation on the board which never in my time rejected senate's advice; we could not wrest faculty rights away from where the statute placed them and lodge them in a labour union whose primary role must be to look after the economic interests of its members, not the health of the whole.¹¹⁹

Tenure became the crux of the disagreement. Sirluck wrote,

A particular point of contention was that UMFA insisted on writing tenure decisions into the contract. Our concern was that if tenure became

¹¹⁷ Ernest Sirluck, First Generation 370.

¹¹⁸ Ernest Sirluck, First Generation 370.

¹¹⁹ Ernest Sirluck, First Generation 370.

a matter of management-union negotiation it would cease to be one of academic judgement, and might one day be negotiated away in favour of some other system of job security.¹²⁰

Such statements make it clear that Sirluck had no idea what negotiations were about and had no understanding that what UMFA wanted were clear criteria and procedures for the tenure process and a fair appeal process with such criteria and procedures to be interpreted and implemented by appropriate groups of faculty peers. Sirluck was unable and unwilling to separate his belief in the ultimate and supreme importance of academic evaluation for tenure from the union's demand for fair, open procedures that could be appealed for that academic evaluation. He felt that if tenure procedures were enshrined in the collective agreement that would mean the union was the one to grant tenure. His position was a paradox: on the one hand he was committed to the concept of tenure as a necessity in the university but was unwilling to consider that such recognition could ever be recommended or granted by an individual's academic peers after an open process. Sirluck had a vision of an industrial model labour union and was unable to comprehend that the faculty model was quite capable of "looking after the health of the whole."¹²¹ In addition, Sirluck believed that the president ought to have the authority and the right to grant tenure and promotions in order to recruit and retain excellent faculty. As testament to his

¹²⁰ Ernest Sirluck, First Generation 370.

¹²¹ Ernest Sirluck, First Generation 370.

tenacity on this issue, the University of Manitoba Collective Agreement states clearly that all faculty members who hold tenure “shall have and hold tenure independently of the existence of this Agreement.”¹²²

In addition to his problems with UMFA, the University Grants Commission had also criticized Sirluck¹²³ for the manner in which he had managed the university’s finances. In April of 1975, despite having been warned by the UGC that they expected a balanced budget at year end, the university was still 1.9 million in deficit and could see no way to reduce that debt. Consultation took place between the UGC, the premier of the province, the minister of education and the university officials. The UGC and the government finally agreed to provide special funding for one year to cover the deficit. The UGC also recommended that management consultants be engaged to survey the university’s budget estimates procedures.

Sirluck’s resignation may or may not have been a factor in what happened next, but in one of the few moments of compromise and foresight, the parties agreed to move to one-on-one negotiations. There would be no more grandstanding and no more audiences for the academic rhetoric. Both sides take full credit for the idea to

¹²² "Collective Agreement Between the University of Manitoba and the University of Manitoba Faculty Association.", April 1, 1975 to March 31, 1976. Article XIX.5.e.
(This statement had appeared in every University of Manitoba Collective Agreement to 2001).

¹²³ Lynda Woodcock, "University of Manitoba President Resigns," University Affairs (1975).

move to one on-one negotiations, and in a sense both sides deserve full credit for what happened. According to Donald Wells, the administration felt that bargaining had gone on too long and that there was too much grandstanding at the table. Dr. Sirluck had a private meeting with Leon Mitchell, a member of the board of governors, and Roy Gallagher, the university's legal counsel. Mr. Mitchell had been a United Auto Workers' organizer and had access to influential members of the board of governors. At that meeting the proposal was made that Mitchell should find a way to approach UMFA and suggest that bargaining continue with only one member of each team.¹²⁴

Roland Penner put a different slant on the story. He believes that the board of governors, frustrated with Sirluck's intransigence and fearful of a September strike, instructed Sol Kanee, the chair of the board of governors and Leon Mitchell to approach Penner to see if there was some way to move the negotiations forward. Penner suggested one-on-one negotiations with Donald Wells.¹²⁵

The administration had decided that Donald Wells would be their negotiator and Wells specifically recommended that Roland Penner be the UMFA negotiator. Penner and Wells had worked together as president and vice-president of the Senate Planning Committee and were respectful and compatible colleagues.

¹²⁴ Donald Wells, personal interview.

¹²⁵ Roland Penner, personal interview.

However it happened, the strategy was effective and on July 22, 1975, UMFA announced to its members that they would begin negotiating in the revised format. Despite some hiatus periods for vacations over the summer, by September 4, 1975 the parties announced to their principals that they had agreed on all issues. According to Donald Wells, some in the administration feared that Penner, a skilled lawyer and negotiator would “pick my pocket”¹²⁶ and some faculty saw Wells as their “bête noire.”¹²⁷ Nevertheless, these two men were able to make concessions and forge an agreement that both sides would claim as a victory. In fact, the collective agreement that they negotiated relied heavily on the previously existing senate and board policies on faculty working conditions that Donald Wells had been instrumental in developing prior to his appointment as vice-president administration.

Each side had come to grips with the issues and decided that there was more to be gained by compromise and conciliation than by bloody-minded stubbornness. UMFA declared that considerable progress had been made and that:

It is much preferred that a clause be included in compromise form than that it be excluded. This consideration is particularly apt in regard to

¹²⁶ Donald Wells, personal interview.

¹²⁷ Trevor Dandy, personal interview, 5 November 2000.

several clauses pertaining to university governance, a vital and controversial issue.¹²⁸

UMFA had taken the position that to have all of the issues concerning working conditions in the collective agreement was of paramount importance and they were prepared, in the first round of bargaining, to be flexible on the content. In the case of the tenure clause, the administration insisted on a long “preface” setting out faculty rights, duties and responsibilities (responsibilities as a teacher, as a scholar, administrative and community responsibilities) followed by the tenure procedures. The contract establishes tenure committees and states that tenure recommendations must be based on assessment of academic attributes by a faculty member’s peers and there is provision for several stages of appeal in the case that tenure is not recommended. Substantive issues may be grieved to a faculty committee whose decision is final; procedural violations can also be grieved and may proceed to arbitration. Each side got what it wanted, the administration wanted the preface and the faculty wanted the tenure clause. There was also agreement that tenure decisions for those not members of UMFA would be brought into line with the UMFA regulations. As an author of the collective agreement, Roland Penner said:

It is a good solid agreement that the faculty is happy about in many respects. By persevering we achieved an agreement that is recognized by

¹²⁸ Gloria Pierre, "A Breathing Spell on Negotiation Front," University Affairs (November 1975).

the faculty association, deans and administrators and the board of governors, as not having created an adversarial position but as having given real meaning to the concept of shared authority within the university.¹²⁹

Penner's opinion was confirmed by CAUT,

The most important part of the agreement is that for the first time in Manitoba it provides a legal basis for true shared authority. UMFA was able to negotiate a comprehensive agreement which ensures the most relevant parts of the terms and conditions of a faculty are governed by a negotiated contract which has legal validity that cannot be changed by the unilateral action of either the president or the board of governors.¹³⁰

In a recent personal interview, Dr. Sirluck said that had he known or understood what the faculty really wanted, the negotiations may have been settled more quickly and with less acrimony. This is yet another indication of the gulf that existed between the administration and the faculty.

¹²⁹ Carolyn Masleck, "Manitoba Negotiates Collective Agreement," CAUT Bulletin 24.2 (1975).

¹³⁰ Carolyn Masleck, "Manitoba Negotiates."

The faculty ratified the agreement, effective from 1 April 1975 to 31 March 1976, in September and it was officially signed on 26 September 1975. The euphoria could not last long for as soon as the ink was dry on their first collective agreement they began bargaining their second collective agreement.

Having made inroads on all of the “rights” issues in the first contract, or at the least having articles dealing with all of the important rights issues, it was a matter of refining and editing the text and the second negotiations proceeded reasonably well. This time by July 14, 1976 agreements had been reached on every outstanding issue except salaries. UMFA had settled for modest salary increases in the 1975-76 contract and now was prepared to fight for salaries that would be in line with other western Canadian universities. It became obvious to both parties that there would be no agreement at the table so they decided to move to binding arbitration.¹³¹ The arbitral method is risky at best and may prove disastrous for one side or the other. In a sixty-page brief UMFA argued the validity of its salary demands. UMFA established the important role that the University of Manitoba played in the province as the center of graduate education, research and the professions. It argued that this pivotal role in the community would be harmed if the university could not attract and retain the best faculty members. UMFA reminded the arbitrator of Manitoba’s healthy economy but argued that relative to the Gross Provincial Product, faculty salaries at the university

¹³¹ In cases of “binding arbitration” the arbitrator, after hearing both sides, writes a decision which binds both parties.

had fallen steadily relative to the marketplace. They showed that faculty salaries were lower than those of teachers in high schools and community colleges with similar education. In arguing about the university's ability to pay, UMFA gave credit to the administration and stated that it was its impression that the University does not disagree with the need for a salary increase for faculty that would bring salary levels here more into line with at least Western Canadian universities of comparable size and character. UMFA credits the former president, Dr. Ernest Sirluck with making this point to senate in October of 1975.¹³² However, UMFA goes on to argue that while the University may be willing to give the salary increase, they are unwilling to alter their budget plans to enable them to do so. UMFA claimed that there is an operating reserve in the budget of more than \$5 million. UMFA suggested that if the university cannot fund an increase from its operating funds then the onus is upon the administration to seek additional funding from the provincial government. However, one of their strongest arguments was "the faculty should not be called upon either by the government of this province or by the administration of this university to subsidize the cost of higher education through inadequate salaries"¹³³ and they cited case law from a 1973 railway arbitration to support their position. In his arbitral decision, M.

¹³² University of Manitoba Faculty Association, Arbitration Between University of Manitoba Faculty Association and The University of Manitoba (Winnipeg, 24 August 1976) 9.

¹³³ University of Manitoba Faculty Association, Arbitration 11.

Justice Emmet Hall had declared that employees cannot be asked to subsidize the carrying out of a commitment made in the national interest.

In making their argument for salary increases, UMFA not only brought in data of salaries from other western universities but also data from the provincial and federal civil service, saying that those workers had received between 10 and 20 percent more for comparable work than had the faculty at the University of Manitoba. UMFA's salary demands were for an across-the-board percentage increase of 13.5% plus the merit component that had already been agreed upon between the parties. Merit as agreed was a fixed dollar amount dependent upon rank. UMFA also argued against the individual maximum that the university had proposed to keep the increases in line with the federal anti-inflation guidelines.

The university's argument was based almost solely on the ability to pay because of the funding constraints in which it was obliged to operate. The University Grants Commission had agreed to write off one half of the 1974-75 deficit on the understanding that the university would repay the remaining amount over the next ten years. The UGC also wrote off the deficit for 1975-76 on the understanding that the university would not incur any farther debts and would begin repayment. The UGC had advised the university that, with respect to the 1976-77 year, "the Commission will not make any representation to the government for the purpose of alleviating any

deficit for which an institution may budget or actually incur.”¹³⁴ The university claimed that the provincial government and the UGC had given it little flexibility in dealing with faculty and staff and argued that individual maxima for increases were necessary to stay within the anti-inflation guidelines.

In his decision, Carl Goldenberg found in favour of UMFA and awarded a percentage salary increase of 9.25% plus the merit amount to which the parties had agreed. However, he did cut the apple in two by imposing an individual maximum of \$2255, effectively levelling off salaries so that the more senior faculty received less while the junior levels received a larger percentage increase. Goldenberg encouraged the university to seek financial support from the government saying, “it is my opinion that the Government would be serving the best interests of the Province by increasing the 1976-77 operating grant accordingly.”¹³⁵ UMFA was satisfied with the outcome and had in two years managed to increase average faculty salaries about 20 percent. Once again, in violation of the UGC’s explicit order, the university budget was in deficit.

¹³⁴ H. Carl Goldenberg, Arbitration Award: In the Matter of an Arbitration Between The University of Manitoba Faculty Association and The University of Manitoba (Montreal, 14 September, 1976).

¹³⁵ H. Carl Goldenberg, Arbitration Award.

While relations between UMFA and the university administration were never collegial, they did reach some sense of understanding and over the next fifteen years bargaining continued on an annual or semi-annual basis with various governance and salary issues coming to the fore and being settled more or less amicably and more or less to the satisfaction of both sides. However, on some occasions the parties resorted to either mediation or arbitration to settle their contract disputes over financial matters. In 1979, the parties resorted to arbitration and because neither side would agree to an issue by issue approach, the arbitrator, Mr. Bryan Williams, was forced to follow final offer arbitration. In such cases the arbitrator is constrained to select the entirety of one proposal or the other. Mr. Williams chose UMFA's proposal and awarded the faculty an 8% salary increase to reduce the gap between salaries at the University of Manitoba and the average of the other western province universities. Again the ability to pay argument was presented by the administration and was rejected by the arbitrator. In his decision Mr. Williams said that to accept the ability to pay argument as the one important argument,

[. . .] would render the collective bargaining process meaningless [. . .].

The employees in such a situation would be given whatever the funding authority decided they should get rather than what they are able to bargain at the table [. . .]. In such a situation, the employees could well be the

victims of government pencil sharpening or the unfortunate pawns in a power play.¹³⁶

By 1990 the labour-management climate had deteriorated considerably and redundancy and governance issues reared their head. Bargaining was difficult and the administration and UMFA were again “at daggers drawn.”¹³⁷ Negotiations for the 1990-93 contract were prolonged and difficult. The faculty finally settled with the administration but there were no salary increases and little joy in the outcome. The faculty felt cheated and demoralized and the university appeared satisfied that they had managed to hold the line with the union. Relations during the duration of that contract were not good. When bargaining began for the 1993-95 collective agreement, the financial situation of the university was again poor and during the negotiations the government revised the grant, reducing it considerably. The faculty felt that the university had accepted the added budget cuts too readily and blamed the administration for not protecting the interests of the university. However the crucial issue in 1993, was not salaries or governance, it was the removal of a tuition fee waiver for dependents of the faculty. The faculty had, as a stated benefit, the right for tuition fee waivers for themselves and their dependents. The provincial government felt that this was the kind of benefit that was bad for public relations and instructed the university administration to remove this benefit in the course of collective bargaining.

¹³⁶ "U of M Faculty Awarded 8% Pay Increase," CAUT Bulletin 26.4 (1979).

¹³⁷ Roland Penner, e-mail to author, 27 November 2000.

This was a bitter blow to the faculty and one that festered. It was not just the removal of the financial benefit, faculty felt that the university was sending them the message that their dependents were not particularly wanted or welcome at the university. The faculty were unhappy and the UMFA executive and negotiators were desperate. Without adequate preparation and a certainty that they could win, the UMFA executive called for a strike vote. The vote did not carry and the result was that UMFA looked weaker than ever. UMFA believed that the administration took advantage of this weakness and forced a collective agreement that removed the tuition waiver for dependents,¹³⁸ omitted any progress through the ranks increase, and imposed numerous days off without pay. The 1993-95 collective agreement was finally settled but the membership was more demoralized and felt they had been “hammered.”¹³⁹

THE STRIKE OF 1995

When bargaining began for the 1995-98 collective agreement UMFA had a new executive in place, and a president who was quietly determined to exert UMFA’s full impact in the coming round of bargaining. Grant Woods was a union president

¹³⁸ The tuition waiver benefit was not re-instituted in any subsequent collective agreement to 2001.

¹³⁹ Ian Kerr, personal interview.

whose style it was to talk softly but to carry a big stick.¹⁴⁰ Other members of the executive were more radical and prepared to take whatever action necessary, including a strike to make progress. Woods realized that this round of bargaining could be crucial for the future of UMFA and he was determined to demonstrate to the administration that the faculty were united and that they would not accept another disadvantageous contract. He also realized that if there were to be a strike, it would have to take place in the fall term as the chances of getting even the most militant faculty members on a picket line during a Winnipeg January were slim.

The contract was to finish on 1 April 1995 and under Manitoba labour law the status quo would remain in effect unless either party signalled in writing to the contrary. In the past the university had never given such notice to the faculty association. This time, on the advice of their legal counsel, university president Arnold Naimark sent a letter to UMFA stating that if the parties did not reach a settlement within one year of the end of the contract, the faculty would cease to be governed by the collective agreement and would be governed instead by Manitoba labour law. The president assured UMFA that they were treating them exactly as the university treated all of the other labour unions on campus. Naturally faculty did not want to hear that they were “like everyone else,” so this was not a particularly wise move by the administration. The administration understood that UMFA saw this as a “suspicious move” but felt that it was a minor issue and, according to Dr. Naimark,

¹⁴⁰ Grant Woods, personal interview, 6 November, 2000.

“there was no possibility that the university would have changed anything with respect to tenure or the other important academic issues,” although he did admit that the administration may have looked at the hiring procedures.¹⁴¹ For UMFA this was a major change in the way things were done and it felt threatened and backed into a corner. At one point during the summer of 1995 Grant Woods and Sylvia Jansen of UMFA met with Terry Falconer, vice-president, administration and warned him that if you drive a rat into a corner and block his escape the rat will strike back.¹⁴²

The real issue, at least for the administration was the redundancy article. Once again the university was facing serious reductions in their operating grant. Unlike the NDP government of the early 1970s which had been at least neutral, the Conservative government of Gary Filmon was not sympathetic to the universities in the province and was even perceived by some as anti-intellectual. The provincial government had made it clear to the university administration that it would not tolerate deficit financing. The university had to find new means by which it could cut costs and save money. The provisions of the UMFA contract concerning redundancy and financial emergency made it clear that the smallest unit that could be declared redundant was a

¹⁴¹ Arnold Naimark, personal interview, November 6, 2000.

¹⁴² Grant Woods, personal interview.

full department.¹⁴³ The administration was convinced that having the flexibility to close units smaller than a whole department, for example, one section of a department or a particular academic area that had ceased to be viable was necessary.¹⁴⁴ UMFA saw this as a threat to the individual faculty member, who stripped of the protection of a department could be picked off and declared redundant. However, what probably angered UMFA more than the substance of what the administration wanted was the fact that the administration went to the table and proposed replacing the entirety of Article 28 (Redundancy) with a two-line statement giving the decision-making power to the administration. During bargaining some progress was made in fleshing out the administration's demands, but the proposed language never assured the faculty of protection for individuals. The faculty were very fearful of a malevolent university administration and the history of UMFA and the administration, coupled with the ingrained perceptions that tenure was at risk, did little to quell the fear. In addition, the faculty felt that they had allowed themselves to be badly represented in the previous negotiations. UMFA also sensed that the administration believed them to be weak and doubted that the UMFA executive really spoke for the membership.

¹⁴³ Redundancy was defined in the Collective Agreement as "the disestablishment of a department of the University containing Members"(University of Manitoba Collective Agreement, 1 April 1993-31 March, 1995).

¹⁴⁴ Arnold Naimark, personal interview.

According to Grant Woods, the negotiations were very confrontational with hawks and doves on each side of the table. On the UMFA side, Woods felt that they were moving toward a strike perhaps more quickly than he might have preferred but there were individuals both on the UMFA negotiations team and in the union who were pushing for strike action and they depended upon Woods' calm demeanour to convince the faculty that such action was necessary. On June 1, 1995, Woods wrote to the membership explaining the financial difficulties that the university claimed and detailing the administration's position on the redundancy article. He warned the membership that if they failed to reach a negotiated agreement, the university would impose an agreement on 1 April 1976, one year after the expiration of their current contract.

One of the key factors that influenced UMFA in its decision to strike was the relative comfort they took in their membership in the CAUT Defence Fund.¹⁴⁵ The CAUT Defence Fund had developed a national strike fund that had amassed funds sufficient to support a strike at any of its member universities. At the time of the Manitoba strike there was sufficient money in the strike fund to pay the striking faculty and at the appropriate moment, and with suitable press coverage, CAUT delivered a cheque for one million dollars to UMFA.

¹⁴⁵ The CAUT Defence Fund had been created in 1978 as a strike fund for its member associations. In 2002 there are 31 member associations and the fund has assets worth over 13 million dollars.

Over the next months UMFA repeatedly reminded the membership that a contract would be imposed if one were not negotiated by 1 April 1976. Woods offered three choices to the faculty:

1. Either we (UMFA) induce them to produce a better offer
2. We accept some version of the current offer
3. We go on strike

In an early proposal the administration had proposed to remove the department heads from the bargaining unit; by July 1995 the administration had backed down and was offering that department heads could stay in the bargaining unit provided there would be a letter of agreement stating that they were managers. This did not satisfy UMFA.

Tension continued to mount and UMFA kept pressure on its members by frequent announcements and reports of the administration's threats. On September 13, 1995 UMFA went to the membership and requested a strike mandate. This time UMFA had done their homework and on 4 October 1995 the faculty voted overwhelmingly to strike. Trevor Dandy has a theory, which I believe to be correct, that while faculty are usually fighting for increased salaries they need a high moral issue to legitimize their actions and mobilize the membership to take strike action.¹⁴⁶

¹⁴⁶ Trevor Dandy, personal interview.

Here, the high moral issue was academic freedom and tenure. The faculty association reasoned that if the administration had the right to declare very small units or even individuals redundant, then unpopular or difficult faculty member could be selected for dismissal on financial grounds and their tenured status could be terminated.

The academic community in Canada came out in overwhelming support for UMFA. CAUT's presence was very strong and the president of CAUT, Joyce Lorimer, visited several times during the strike. Other CAUT members either visited, sent messages of support, or financial aid for the strike. Redundancy was an issue that galvanized the Canadian academic community. However, while the Canadian faculty associations were watching the tenure and academic freedom aspects of the issue, the Canadian university administrations were watching the financial implications and the resolution of the redundancy question since this was a period when virtually every provincial government was attempting to reduce spending by cutting grants to social programmes such as education. Most Canadian universities with collective agreements had redundancy articles and the vast majority of those articles made it difficult to close programmes or units and lay off tenured faculty in any expeditious manner.

The morale of the strikers remained high as the UMFA executive did their utmost to keep the issues fresh in the minds of the strikers and to use the media and the press to get their message out to as wide an audience as possible. As in many other strikes there was a sense of camaraderie among those on the picket line as faculty from divergent faculties and disciplines walked the line together; there was hot

soup afterwards in the union headquarters and there were rallies with entertainment from the “Minstrels of Redundancy”. The strikers received support from other union locals, and members of the local chapter of the Canadian Union of Public Employees (CUPE) lent them picket signs. All of this was a psychological and moral high for UMFA. The support came in from across the international academic community and the faculty felt that they were fighting for the greater good of academics everywhere.

Throughout the negotiations and strike, UMFA continued to press for binding arbitration and the university continued to reject that possibility. On previous occasions, where the parties had sought an arbitral end to negotiation dilemmas, the UMFA arguments had swayed the arbitrator, at times placing the university in the difficult position of running a deficit budget in order to pay the faculty the arbitration award. Since then, an act had been passed forcing arbitrators to rely heavily on the ability to pay argument and tying their hands from handing down any decision that would put a public institution into debt. Despite the legal assurance, the administration remained reluctant to take this step until the strike had lasted for many days. Eventually the public pressure on the parties and the government did force them to agree to mediation and then the parties argued about choice of the mediator. The provincial government and Premier Gary Filmon, never neutral to the situation, were now openly involved in the fray. During the process of selecting a mediator, Filmon suddenly changed the rules of the game and demanded that union members return to work before a mediator would be appointed. The administration quickly disavowed this government move and UMFA was incensed—for a moment, the administration

and UMFA were on the same side of the fight. Each side was asked to give a list of acceptable mediators, from which a mutually acceptable mediator would be chosen. Grant Woods admits that by this stage in the events, “there was less than total honesty and good faith on either side.”¹⁴⁷ After much dickering back and forth the government attempted to impose as mediator a supporter of the Conservative government who had bargained against the Manitoba school teachers. He was summarily rejected by UMFA. Finally, John Scurfield, a Winnipeg lawyer acceptable to all parties, was appointed.

The strike lasted twenty-three days during which the faculty remained mobilized and used their newly-created web site to put the message of their situation out to the academic world. The Winnipeg Free Press recognized the strike as newsworthy and assigned their education reporter, Aldo Santin, to cover the story. As Professor Nora Losey remarked in a private interview,¹⁴⁸ the strike was a “big deal” in the city of Winnipeg because a large number of its citizens worked at the university, had children attending the university, or were students or former students and were anxious to have the details of the conflict and daily updates on progress, if any. The press did not disappoint them.

¹⁴⁷ Grant Woods, personal interview.

¹⁴⁸ Nora Losey, personal interview.

The administration used the newspaper to communicate its message to the public and to the faculty, believing that the public press was a much more effective way of communicating with the faculty than internal memoranda or messages. In an interview, Dr. Naimark acknowledged that the most effective way of communicating with the faculty was to put an announcement or a position piece in the local newspaper.¹⁴⁹ In fact, Dr. Naimark wrote an op-ed piece for the Winnipeg Tribune in which he put the blame for the current situation squarely at the door of the provincial government: “The current dispute at the University of Manitoba has its roots in harsh fiscal realities. We face the prospect of further serious revenue shortfalls in the coming years as governments cut back their expenditures on higher education.”¹⁵⁰ UMFA used the pages of the Winnipeg Free Press to explain the meaning of academic freedom and the need for tenure. Grant Woods, president of UMFA, wrote an article in which assured the Winnipeg community that faculty do understand the financial pressures the university is facing and would like to find a solution provided that solution does not threaten the university’s academic integrity, as do the proposals that have been put on the table by the administration. He declared that the reason the faculty have voted to strike is to “ensure that university decisions continue to be made

¹⁴⁹ Arnold Naimark, personal interview.

¹⁵⁰ Arnold Naimark, "Return to Work Urged While Awaiting Mediation: Fiscal Reality Root of Strike." Winnipeg Free Press 26 Oct. 1995: A15.

in an accountable, academically responsible manner.”¹⁵¹ Members of the faculty wrote op-ed pieces either supporting the union position or opposing it and urging everyone to return to work. According to the faculty members who authored these pieces, the strike was about “academic freedom and free inquiry,”¹⁵² “accountability,” “academic integrity,” and “downsizing,”¹⁵³ “power,”¹⁵⁴ “salaries,”¹⁵⁵ “nothing,”¹⁵⁶ “salaries and downsizing,”¹⁵⁷ “reputation.”¹⁵⁸

¹⁵¹ Grant Woods, "U of M Threatens Academics," Winnipeg Free Press 17 October, 1995: A11.

¹⁵² Jovan, V. Jovanovich, "It May Be a Long Strike Over Contentious Issue: Academic Freedom at Stake," Winnipeg Free Press 17 October, 1995: A11.

¹⁵³ Paul Phillips, "Faculty Wants to Ensure Academic Integrity, Freedom: Co-Operation Key to Talks," Winnipeg Free Press 24 October, 1995: A11.

¹⁵⁴ Anthony Waterman, "Faculty Strike Shows System Really Works Despite Rhetoric: Remedy: a Dose of Common Sense," Winnipeg Free Press 25 October, 1995: A11.

¹⁵⁵ Hymie Rubenstein, "U of M Faculty Union Actions Raise Pointed Questions: Profs Pose Threat to Themselves," Winnipeg Free Press 1 November, 1995: A11.

¹⁵⁶ A. G. W. Cameron, "Agree to Tenure or Lose Credibility," Winnipeg Free Press 5 November, 1995: A9.

¹⁵⁷ Peter Aitchison, "Academic Freedom Offer Not Seen by Faculty: Protect Quality of University," Winnipeg Free Press 5 Nov. 1995:A9.

Throughout the summer and early fall of 1995 UMFA had pressed for binding arbitration as a solution. The administration had refused this proposal because it believed that governance issues should not be arbitrated; the union position threatens the powers of the board; arbitrators tend to find with the status quo and the administration wants change; the administration doesn't want to be bound by an arbitrator. Part of the administration's reluctance to agree to binding arbitration stemmed from a previous round of bargaining when binding final offer arbitration had been imposed. In that case, the arbitrator had found for UMFA and had awarded them a large salary increase despite the university's argument that it could not afford to pay. The arbitrator had rejected the university's ability to pay argument saying that if unions could get only what the employer said it could afford, this would jeopardize and render meaningless the collective bargaining process. It had been a costly experience for the indebted administration and they were loath to have the same thing happen again. On 23 October, 1995, just five days into the strike, UMFA placed a large announcement in the *Winnipeg Free Press* stating that the strike could be over the next day, if the board of governors would agree to binding arbitration. UMFA stated publicly that: the strike was not about money, protecting incompetent members or guaranteeing jobs for life; it was about academic integrity and the need for the board of governors to open its books before a financial emergency could be declared;

¹⁵⁸ John O'Neil, "Academically Sound Strike Resolution Needed: Save the University's Reputation," *Winnipeg Free Press* 8 November, 1995: A11.

it was about academic freedom and the university's future. The announcement implored the public to act to end the strike by phoning either the president of the university, Arnold Naimark or the premier of the province, Gary Filmon, or by clipping and sending the form on the bottom of the page to Filmon.¹⁵⁹ UMFA presented itself as the champion of the university, committed to fairness and equity. UMFA now claimed that the board is threatening the future of the university and creating a university where "students and professors will be afraid to speak their minds" and creating a "second-class" university.

It is difficult to determine if the extensive press coverage had any effect on the length or the outcome of the strike. It is true that the amount of the coverage, 115 articles over about 23 days, or almost five articles a day, helped to make the strike prominent in the minds of the citizens of Winnipeg and the members of the academic community in that city. The parties deny that the press had much influence on the outcome. Professor Woods said, "I am tempted to think that the press was not a big influence [. . .]. They were an irritant but ineffective."¹⁶⁰ Dr. Naimark said that the

¹⁵⁹ University of Manitoba Faculty Association, "The University of Manitoba Strike Would Be Over Tomorrow If the Board of Governors Would Let the Dispute Be Settled by Binding Arbitration," Winnipeg Free Press 23 October, 1995: A10.

¹⁶⁰ Grant Woods, e-mail to the author, 15 January, 2001.

public press did not influence the administration “a lot”¹⁶¹ but he did credit the press for being the most important means of communication during the strike.

It appears that both UMFA and the administration were concerned about the effects that the strike would have on campus relationships and how it might damage the social fabric of the university. Dr. Naimark made a point of speaking to the community whenever he could and at convocation being sure to include those on strike in his acknowledgements. What was important was that when the strike ended, both UMFA and the administration cooperated to get faculty back into the classrooms as quickly as possible to save the fall academic term. Grant Woods wrote a newsletter to the members reminding them that during the strike everyone had acted on their own sincere convictions and that now it was time for everyone to cooperate to make the University work.¹⁶²

The strike ended, as most strikes do, with both sides claiming victory. UMFA got a definition of “programme” that was sufficiently circumspect to meet their needs and the administration got the right to lay off tenured faculty after an elaborate and careful process of evaluation and proof of the *bona fides* of the redundancy. However the question remains was the strike really necessary or was it a result of a build up of hostilities and mistrust that had gone too far to be resolved in any other way? Dr.

¹⁶¹ Arnold Naimark, personal interview.

¹⁶² Grant Woods, personal interview.

Naimark accepted the strike as an episode in the course of events. He believes that the very strong antipathy that developed in the early 1970s between UMFA and the president at the time, Dr. Sirluck, set the tone for the union-administration relationship. His feeling is that there is a core of individuals in the union who believed that the administration is the enemy and not to be trusted and there is little that can be done to bridge that gap. A physiologist by training, he summarizes, “you establish a response pattern and a behaviour pattern that gets transmitted from generation to generation.”¹⁶³ Ian Kerr put it differently. He characterized the relationship between UMFA and the administration as “a bit like looking across a rather large chasm and a huge sense of cleavage and the inability to talk across that gap.”¹⁶⁴ The response patterns are on both sides of the table, as UMFA distrusts the administration, so the administration sees hard-liners and radicals in the midst of the union. Some intransigence at the table was probably unavoidable. Both sides were determined to hold their ground, and on each side the message was going from the negotiators at the table to the principals. A certain amount of dissonance was to be expected as those who were at the bargaining table held onto the positions that they had put forward. At one point Terry Falconer, vice-president, administration, claimed that the strike was being orchestrated by a group of Marxist-Leninists within the

¹⁶³ Arnold Naimark, personal interview.

¹⁶⁴ Ian Kerr, personal interview.

union. Grant Woods worried that he might be letting himself be used by the more radical members of the association.

I do not believe that the strike was about either redundancy or academic freedom. It was about entrenched positions and preconceived perceptions by both parties. The faculty association felt that they had to prove to the administration that they were a united, strong voice and would not make any concessions to the administration. The memory of the previous negotiation, when they believed that they had not presented themselves as well or as forcefully as they might have done, was still fresh in their minds. They were carrying baggage from the early 1970s when they had had such a difficult time to certify and bargain a collective agreement. In 1995 UMFA sincerely believed they had to strike or cave in. Had UMFA not felt backed into a corner, things might have been different. The administration felt that the union was simply an element to be dealt with and had little sensitivity to the individual faculty members who constituted the union. The financial situation of the university played a central role in the events of 1995, for had there not been serious government imposed budget restrictions; the administration would have had little reason to attempt to negotiate more flexibility into the redundancy article. Dr Naimark recalls that the government of the day was quite anti-academic and anti-university and what was put on the negotiating table for the faculty was dictated by that government's demands; the financial package was entirely related to the university's financial

circumstances.¹⁶⁵ It may be that the two sides were closer in positions than they believed. Each side wanted a redundancy article that would make it difficult to shut down units and lay off tenured faculty members. The administration had no preconceived agenda for cuts and in all likelihood wanted to hold onto the status quo. Dr. Naimark claimed to have taken considerable care to consult with senior faculty members on the board of governors about the university's position with respect to redundancy. Professor Losey, a faculty member on the board of governors at the time, suggested in a personal interview, that Dr. Naimark neither listened to what they had to say nor heard what they said¹⁶⁶ although he claimed that their opinion was important to his decisions.¹⁶⁷ The very hint that the administration would tamper with academic freedom and tenure was the alarm bell that the faculty had been waiting for as they knew that this would be a call to arms for all academics. They were tired of always settling for less than they wanted, but they needed some moral high ground on which to climb. Academic freedom and tenure was that moral high ground.

Unionization brought change to the governance of the University of Manitoba but, perhaps, not as much change as the early unionists wanted or dreamed of when they began the certification campaign in 1973. The collective agreement is a very

¹⁶⁵ Arnold Naimark, personal interview.

¹⁶⁶ Nora Losey, personal interview.

¹⁶⁷ Arnold Naimark, personal interview.

powerful weapon that creates boundaries within which the administration and the faculty must work. However there have been occasions when both sides have felt that constraint to be detrimental. During the strike in 1995, Dr. Naimark would have liked to sit down with someone from the UMFA executive to try to resolve the difficulties but the structures, partly imposed by the collective agreement and partly by the administrative bureaucracy, made that impossible. On the faculty side, Grant Woods wanted to speak to Naimark but UMFA colleagues warned him of the dangers of a one-on-one meeting with the president. However, when a tentative date for such a meeting was found to be unacceptable to Dr. Naimark due to a commitment out of town,¹⁶⁸ it was interpreted by UMFA as a lack of interest and understanding of the problems.

According to Ian Kerr, the faculty association remains reactive, seldom driving the agenda. Even during a strike the faculty association knows that at some point they must be prepared to settle.¹⁶⁹ There are only a few moments in time, usually during negotiations, when the faculty association can really drive the agenda and force the administration to listen. Faculty associations learn the lesson that management has the initiative but that initiative is now constrained by the legal document.

¹⁶⁸ Dr. Naimark's daughter was being married in Toronto.

¹⁶⁹ Ian Kerr, personal interview.

Dr. Naimark believes that unionization has changed the University of Manitoba for the better. He said:

[. . .] there was a tendency to be paternalistic and perhaps not as even handed as one ought to be, allowing favouritism and lack of due process to creep into decisions and that there were times when individuals may have been unfairly treated.¹⁷⁰

His sense is that there is a core of people who have a built in algorithm that makes them want to be involved and to be consistent in how they represent their views. However, he continues, it would be a mistake to think that the relationship between the administration or the board of governors and the union is totally defining of the atmosphere in this university.¹⁷¹

In 1996 the University of Manitoba named a new president, Emöke Szathmáry and when bargaining for the 1998-2001 collective agreement began there was a sense of co-operation and a desire to reach agreement from both sides of the table. However, agreement was only reached after the faculty had threatened a strike and was within hours of the strike vote. In the latest round of bargaining, there was no agreement on the financial issues and a decision was taken to seek mediation. When the mediator's report recommended support of the faculty association's position, the

¹⁷⁰ Arnold Naimark, personal interview.

¹⁷¹ Arnold Naimark, personal interview.

university refused to accept the report. UMFA took a strike vote and received over 60% support. The strike lasted only three days before an agreement was reached.

After existing as a union for over twenty years, the University of Manitoba Faculty Association had gained the right to bargain collectively, they had demonstrated that they could use the means at their disposal to bargain effectively and they had the will to take whatever action they believed necessary for the benefit of its members and the University. Did they set the model for the other Canadian universities and was their story of confrontation between two solitudes necessarily repeated across the country?

CHAPTER 4 THE EVOLUTION OF THE COLLEGE BY THE SEA: CERTIFICATION AT DALHOUSIE

Dalhousie University is located in Halifax, Nova Scotia. Founded in 1818 on the spoils of the 1812 war by George Ramsay, 9th Earl of Dalhousie, the university was modelled on the University of Edinburgh, Scotland and like that institution was intended to adhere to the principles of religious toleration. Lord Dalhousie invested £7,000 as an endowment for the college and allotted £3,000 for the construction. The university had a rocky start when the Earl of Dalhousie left Halifax to become Governor General of Canada and the Board of Governors lost interest in the college. Religious arguments erupted and the college was allowed to founder. In 1863 the college reopened and its first degrees were granted in 1866. Dalhousie has been fortunate throughout the years to attract major benefactors and individuals such as George Munroe, Lady Dunn, later, Lady Beaverbrook, Dorothy Killam and the McCain family who have made possible the endowment of chairs and the construction of major university facilities. From a student body of 28 in 1863, Dalhousie has grown to over 13,000 full-time students and a faculty of over 700 in 2002. Its undergraduate and graduate programmes have expanded and now include a wide variety of graduate programmes in addition to medicine, dentistry and law. In 1997 the Technical University of Nova Scotia (TUNS) amalgamated with Dalhousie to become DalTech, the engineering faculty of the university.

BACKGROUND–THE HICKS ERA

When Henry Davis Hicks was invited to join the academic staff at Dalhousie University as Dean of the Faculty of Arts and Science in the fall of 1960 a new era began at Dalhousie University. Upon the retirement of the Dean of Arts, Frederick Kerr, the president, did not invite nominations or create a search committee to replace him but instead, as was the practice of the time, chose to make the appointment decision himself.¹⁷² Kerr approached at least one Dalhousie faculty member and

¹⁷² Peter Waite, The Lives of Dalhousie University Vol. Two: The Old College Transformed (Montreal: McGill-Queens, 1998) 235.

tentatively offered him the position, but before any arrangement could be made, Kerr changed his mind and, probably upon the advice of C. D. Howe, the Chancellor of Dalhousie, opted to approach Henry Hicks. Hicks, leader of the Nova Scotia Liberal party, had just been defeated as premier of Nova Scotia by a Conservative, Robert Stanfield, and had decided to leave politics and return to the practice of law. Howe believed that Hicks would be a valuable addition to the university.¹⁷³ Reluctant to accept the position at first, Hicks was eventually convinced that he could make more of an impression on society by becoming an academic administrator, and perhaps president of Dalhousie, than he ever could as a lawyer. Although Hicks had no formal experience either in teaching at the university level or in university administration he did hold four bachelor's degrees and had received a Rhodes scholarship in 1937 that had enabled him to study law at Exeter College, Oxford. While in the Nova Scotia government, Hicks had twice served as provincial Minister of Education, first in the government of Angus MacDonald from 1949-1954 and later in his own government from 1954 to 1956. During his tenures as Minister of Education he had urged both Dalhousie and Mount Allison to improve their admission standards, partly to force the Nova Scotia high schools to improve the quality of the education of students graduating, and partly to enhance the standards of the

¹⁷³ Peter Waite, The Lives of Dalhousie University 234.

universities.¹⁷⁴ Hicks was perhaps a better candidate for the position than he had first appeared.

However the faculty members were not ready to accept that Hicks, essentially an outsider to Dalhousie, although a staunch Nova Scotian, was the one for the job. They were concerned because they had not been consulted in any way about the decision and even when Professor Mowat, secretary of the faculty association, urged the president to consult some other faculty members before making the appointment, the president did so only in a perfunctory way.¹⁷⁵ The notion that the faculty were not consulted about major academic or planning decisions was to become one of the main factors that would push the faculty to explore new avenues by which they could make their collective voice heard.

As Dean of the Faculty of Arts and Science, Hicks took the work seriously and set about to make changes to the faculty. However, when he made his first report to the president telling him of the serious financial deficiencies in the faculty, he was met with silence from the president. President Kerr was reluctant to make public, even to the board of governors or senate, any problems or deficiencies, fearing that such an admission would provoke reprisals upon his administration. When President Kerr refused to submit Hicks' budget report to the senate, Hicks responded with a scathing

¹⁷⁴ Peter Waite, The Lives of Dalhousie University 236.

¹⁷⁵ Peter Waite, The Lives of Dalhousie University 238.

memo in which he questioned the president's understanding of the true financial situation and the low morale in the Faculty of Arts and Science.¹⁷⁶ At the same time, some members of the board of governors were also of the opinion that Frederick Kerr was not serving the university as ably or as pro-actively as he might. Senate, composed mainly of senior faculty members, wanted more influence in Dalhousie's governance procedures and took the unprecedented step of creating a Committee on University Government with a mandate to "review the present structure and practice of government at all levels within the university and to make recommendations [. . .]."¹⁷⁷ Kerr found it increasingly difficult to cope with the pressure of the position and suffered a mild stroke. Ready and waiting was Henry Hicks who stepped in as acting president in September of 1962. By November Kerr had submitted his resignation and the board of governors began to consider how they would proceed to search for a new president.

There were no established search procedures for senior administrators. However, before any search process could be put into place, the executive committee of the board decided that Hicks was the candidate that they wanted and without any faculty consultation or further searching, the executive committee went to the full board with the recommendation. Years later, Hicks would recall that he would have been disappointed if he had not been asked. On September 1, 1963, Hick was

¹⁷⁶ Peter Waite, The Lives of Dalhousie University 240.

¹⁷⁷ Peter Waite, The Lives of Dalhousie University 240.

appointed president of Dalhousie University. The terms of his appointment were rather open-ended and assured him the position, with no formal reviews of his performance, until 31 August following his sixty-fifth birthday, that is until 1980. Thus began the Hicks era at Dalhousie.

The seventeen years of Hicks' presidency were marked by generous benefactors, numerous building projects and a cavalier attitude towards the day-to-day workings and problems of the university. The historian and political scientist, David Cameron, characterized Hicks as "a real 1960s builder [. . .] he really did, to give him his due, some wonderful things. He took a college and turned it into a real university but he did it in a very flamboyant way [...]."¹⁷⁸ Hicks' colleague and vice-president, Andrew Mackay, saw him as a highly intelligent man of eclectic tastes who could discuss almost any topic with authority.¹⁷⁹ According to MacKay, Hicks was a leader in the truest sense of the word, a man who decided what he wanted to accomplish and then set to work to achieve his goals with little or no regard for the wishes or sensitivities of others. Hicks saw himself not so much as a planner but rather "a pragmatic doer of things that seemed to be necessary."¹⁸⁰ He enjoyed being president in the 1960s and 1970s when growth and expansion were happening and he could

¹⁷⁸ David Cameron, personal interview, 23 October 2001.

¹⁷⁹ Andrew Mackay, personal interview, 4 February, 2002.

¹⁸⁰ Derek Mann, "The Hicks Era, 1960-1980. Part One," Dalhousie News 10.17 (1980): 8,9.

react to those forces. He enjoyed the interactions with wealthy benefactors and clearly relished constructing new buildings for the university that would bear his mark. He was frustrated and annoyed when the Halifax community opposed any of his plans. The building of the sports complex, called the Dalplex, was held up for three years after Hicks took advice that he ought to present the plan to the community. When he did so, the Halifax community tried to block the building because they feared traffic congestion and crowding in a small area of Halifax. Hicks was forced to go to the Supreme Court of Canada to get the building permit.¹⁸¹ Years later, in an interview with Derek Mann of the Dalhousie News, Hicks was still annoyed and believed that the public should have appreciated that by spending over a million dollars a week in the community on building projects, Dalhousie was one of the biggest employers in the city and was contributing to the local economy, to say nothing of creating a better university for the local students. For Hicks, this was a personal defeat and he accepted it as a criticism of his leadership skills saying, “a true leader, in order to make a decision, would have listened to the advice of the others and then he would have made a decision the way he thought a decision should be made.”¹⁸²

Prior to Hicks appointment there had been some rumblings in senate about reforming its composition but when Hicks became president the push for senate reform and greater autonomy and influence for the faculty in the academic decision

¹⁸¹ Derek Mann, "The Hicks Era, 1960-1980. Part Three," Dalhousie News 10.19 (1980): 6,7.

¹⁸² Derek Mann, "The Hicks Era, 1960-1980. Part Eight," Dalhousie News 10.24 (1980): 6,7.

making dissipated somewhat. Hicks assumed his role as both president of the university and president of senate. Senate continued to be composed of all tenured full professors, a large group of elected assistant and associate professors as well as all of the academic administrators such as deans and vice-presidents. It was an unwieldy body and one that left much of its business to an executive committee known as the senate council. Senate council had been created in 1963 “because Senate was not taking hold of its responsibilities, as it was believed it should.”¹⁸³ However with the president of the university assuming the role of chair of both senate and senate council there was very little opportunity for any objective debate or opposition to the president’s agenda.

As president, Hicks had an administrative style that was rather secretive and authoritarian. He alone decided the path that the university would take and the faculty were meant to follow his lead. This was especially true in the case of academic hiring. Hicks would decide, based upon his sense of how the budget for the year was progressing whether or not to hire new faculty. He would then inform the chairs of his chosen departments to look for a new faculty member, confident that only perhaps two of three would actually find a suitable candidate and further confident that he could find some reason to eliminate one of those candidates, thus hiring only one person.¹⁸⁴ In fact, he ran the university as his personal fiefdom, taking little advice

¹⁸³ Senate Council Dalhousie University, Meeting Minutes, 13 April 1978.

¹⁸⁴ David Cameron, personal interview.

from others but relying heavily upon his vice presidents for support of the day to day work.¹⁸⁵

In 1972, less than ten years into his mandate, Henry Hicks was invited by Paul Martin, then government leader in the senate of Canada, to join that body. He was momentarily concerned about the workload and sought approval from the executive committee of the board of governors. The executive committee was quick to approve, believing that even 60% of Henry Hicks was “quite good enough.”¹⁸⁶ Thus for the remainder of his term as president, Hicks divided his weeks during the sitting of Senate between Ottawa and Halifax. He would leave Halifax on Tuesday in time to arrive in Ottawa for the evening sitting of Senate and would return to Halifax on Thursday evening. Later in his term, Hicks accepted a position with UNESCO which kept him away from Dalhousie for even more time. Mackay recalls that during this period he effectively managed the university, phoning Hicks only occasionally to consult on certain issues. Often the only time Hicks could meet with his senior administrators was on Saturday evening. There was a sense on campus that most of the administrative decisions were made at the Hicks home on Saturday evenings when his administrators were invited for a drink and a chat.

¹⁸⁵ Typically the provincial government would announce the budget to the university only in July for the academic year that had passed. This system of retroactive budgeting continues to this day.

¹⁸⁶ Peter Waite, The Lives of Dalhousie University 240.

By the mid 1970s it was becoming clear on campus that many of the faculty, while admiring Hicks for the changes that he had brought to the university, including the buildings, the graduate programmes and the millions of dollars of Killam¹⁸⁷ money, believed that his style was no longer appropriate.¹⁸⁸ The faculty wanted more autonomy in the governance of the university, more control over the academic affairs and a president who would be on campus.

CHANGE

By the mid 1970s the Dalhousie faculty was ready for change, and there were two contending routes to change that were becoming interesting and potentially viable – senate reform and collective bargaining. Work on these two routes began almost simultaneously and was interconnected in some ways although many faculty members would declare themselves to be in one camp or the other. In 1977 members of senate, who were also faculty members and members of the Dalhousie Faculty Association (DFA), sought solutions to what were perceived as common problems, such as lack of representation in decision making, little control of academic matters such as hiring and promotion of faculty, and no consultation or information on financial matters. The first route, and the one that was preferred by many of the senior faculty and those

¹⁸⁷ Dorothy Killam donated over thirty millions of dollars to the university. In addition the Sir James Dunn estate provided the funds to build the physical sciences building, the law school library and endowed some professorships.

¹⁸⁸ David Cameron, personal interview.

of the administration who supported any change at all, was senate reform. The demand for some reform of the senate that had emerged during President Kerr's time had never completely disappeared although it had waned a little over the years of Hicks' presidency. Indeed, in collaboration with the DFA, the senate had crafted policies for appointments and tenure for faculty that were accepted as viable procedures by the parties concerned. In addition, it is very probable that support for senate reform was bolstered by the Duff-Berdahl report on university government in Canada.¹⁸⁹ The Duff-Berdahl report had recommended sweeping changes to university senates that included powers to recommend to boards on any issue of academic concern, long-term academic planning, graduate programmes, and budget. Duff-Berdahl had also recommended that senate members be elected by each faculty by secret ballot and that efforts be made to ensure elected representation from among the junior ranks of faculty members. Perhaps more importantly, the Dalhousie faculty wanted to see some division between the president of the university and the chair of senate. There was widespread feeling that the president of the university ought not to be in control of senate as its chair. Well intentioned and academically focussed as the senate reform proponents were, there were at least three factors that would cause this route to ultimately fail: the cumbersome nature of the reform process and the slow speed at which the senate reform committee acted; the resistance of the senate

¹⁸⁹ James Duff and Robert Berdahl, University Government in Canada: Report of a Commission Sponsored by the Canadian Association of University Teachers and the Association of Universities and Colleges of Canada (Toronto: University of Toronto Press, 1966).

members themselves to any alteration or diminution in their perceived authority and, perhaps more importantly, immediate and pressing financial difficulties in the university that would see the deficit increase and the buying power of faculty member's salaries significantly decrease as stagflation consumed the economy.

The second route, more radical, and preferred by many of the younger faculty members, was some form of collective bargaining. In the mid-1970s the faculty were unsure what form bargaining should take. The example of St. Mary's University which had certified under Nova Scotia labour legislation in 1974 was still in the minds of many Dalhousie professors. Certification at St. Mary's had been a contentious affair with the Canadian Union of Public Employees (CUPE) and the Canadian Association of University Teachers (CAUT) each vying for the opportunity to represent the faculty association. It was only by a narrow margin that CAUT won the vote and St. Mary's was affiliated to the CAUT, an umbrella body that represented a majority of Canadian university faculty members rather than CUPE, a union that represented mostly blue collar public employees. This experience had not encouraged Dalhousie to follow the certification route and there were those at Dalhousie who had a rather "lordly view" of St. Mary's and believed that it was the kind of blue collar place that unionizes¹⁹⁰ whereas Dalhousie was definitely not that kind of university.

¹⁹⁰ Michael Cross, personal interview, 24 October, 2001.

However, discontent with the current management style continued and discrepancies in salaries, especially between the senior and junior faculty members were substantial. The methods by which salaries were adjusted or increases given were opaque at best. The country was in the midst of severe economic cutbacks and individuals, including faculty, saw their salaries eroded. The tremendous growth at Dalhousie over the past ten years had taken its toll and faculty no longer knew everyone on campus and few had any personal relationship with either the president or the senior administration.¹⁹¹ The large amounts of money that had come to the university had been earmarked for buildings and highly visible programmes, not faculty salaries or maintenance of existing physical plant. In fact there had been little or no consultation with individual faculty members or faculty groups on the allocation of the donated monies. Faculty discontent grew and faculty members began to see some form of collective bargaining as a viable solution to their economic and governance woes.

SENATE REFORM

At the senate council meeting of 3 October 1977, the secretary of senate reported that the Committee on Composition of Senate and senate council had been “reactivated.”¹⁹² However that committee was slow to get started and report to senate.

¹⁹¹ Michael Cross, personal interview.

¹⁹² Senate Council Dalhousie University, Meeting Minutes, 3 October, 1977.

In March 1978, now in direct response to DFA's campaign to seek certification as the sole bargaining agent for the faculty under the Nova Scotia Labour Relations Board, an ad hoc committee on the university constitution was established to:

[. . .] negotiate such changes or clarifications of the present constitutional arrangements as might restore confidence among faculty and elsewhere that rational government through those arrangements, including self-government is possible and can be made to work in this university.¹⁹³

The members of this committee were the chair, Dr. John Graham (Economics), Dr. Dennis Stairs (Political Science), Dr. J. Aldous (Pharmacology) and Dr. D. Yung (Pharmacy). The committee was to consider and report on the following issues:

(a) that all financial information be made available to senate which it may find necessary in order to carry out its proper role in planning and in determining priorities within the university

(b) that the authority of senate in relation to regulations concerning appointment and tenure be recognized, and in particular that changes in existing regulations should require the approval of senate, not merely consultation with senate;

¹⁹³ John F. Graham, "A Smaller Elected Senate and No Council," Dalhousie News 1.1 (1978):

(c) that there be an understanding with the faculty association concerning the relationship between senate and faculty association on responsibility for questions concerning appointment and tenure; and other matters it deemed appropriate.¹⁹⁴

On March 31, 1978 there was a special meeting of senate held to discuss unionization and possible alternatives. As far as senate was concerned the most interesting alternative was some sort of senate reform that would satisfy the faculty that they had more autonomy but not sufficient reform or change to really alter the composition or mandate of senate. The main objective of the meeting was to discuss a document entitled "Oppose Certification: An Open Letter to All Members of Dalhousie Faculty and Professional Librarians."¹⁹⁵ The points raised in the meeting had little to do with change and much to do with maintaining the status quo of senate and opposing certification. After some rather awkward discussion concerning why there was such unrest on campus, and as to whether or not the current difficulties were a direct result of Hicks regular absence from the university, senate agreed that Professor Graham, the author of the senate reform document and a staunch opponent of faculty unionization, should be allowed to ask the pertinent questions of the president. There were eight main points to which Hicks was asked to respond. Among them were senate's primacy in appointments, promotions and tenure; senate's control over priorities; and senate control of issues concerning job security and

¹⁹⁴ John F. Graham, "A Smaller Elected Senate and No Council."

¹⁹⁵ Senate Dalhousie University, Meeting Minutes, 31 March, 1978.

redundancy. The senate statement included two concessions to the DFA: that the DFA was to be the bargaining agent for salaries and fringe benefits, and that there would be binding arbitration on salaries and fringe benefits but nothing else. Hicks basically agreed with some form of senate reform but cautioned that the administration must retain control over the management of the university. The meeting ended without any clear decision on the eight points but agreement to circulate the minutes to all faculty.

On April 13, 1978 there was a special meeting of senate council¹⁹⁶ called:

[. . .] to give an opportunity for members of council to express their views on such matters as the composition, power and structure of the senate

[. . .] and the relationship of the Dalhousie Faculty Association with the senate and the relationship of the senate to the board of governors.¹⁹⁷

The ensuing debate touched on various issues including the function of senate, whether senate dealt with “big issues” or minor ones,¹⁹⁸ whether or not senate was open to any liberal point of view. In question also was the university budget and the

¹⁹⁶ Senate Council Dalhousie University, Meeting Minutes, 13 April 1978.

¹⁹⁷ Senate Council Dalhousie University, Meeting Minutes, 13 April 1978.

¹⁹⁸ The “big” issue that one senator wished to discuss was a 6% increase for faculty; the minor issue was the colour of academic hoods.

funding for the coming year; the inadequate information given to senate council; and the need for senate to be more representational of faculty in general. One of the main topics for discussion was the question of how senate would stand in negotiations with the DFA. Senate repeatedly emphasized that it must have control over appointments, tenure and promotions and that “the DFA must work within senate policies.”¹⁹⁹ One senator had even expressed the concern that “the existence of a union would make faculty members employees of the board,” a status which he felt was undesirable.²⁰⁰ The content and tone of this special senate meeting illustrate how it was out of touch with the reality of the Dalhousie situation and lacked a understanding that faculty members were already in the employ of the board of governors and that senate, for purposes of legal collective bargaining, would not be considered as the employer or have any legally legitimate place at a bargaining table with the DFA.

The reform committee assumed throughout its deliberations that the achievement of genuine academic self-government was and always had been the goal of the university and that the purpose of this committee was to elaborate how senate could better assume this role. In addition, and keeping in mind that the faculty association was hard on senate’s heels in its demands for reform of one kind or another, the committee adopted the following objectives of principle in an attempt to shore up senate’s authority:

¹⁹⁹ Senate Council Dalhousie University, Meeting Minutes, 13 April 1978.

(a) that senate is the body responsible for determining academic policies and priorities;

(b) that senate, in its exercise of this responsibility, and without restricting the generality of (a), participates fully and pervasively in the conduct of academic, physical and financial planning and in the development of practical policies of implementation; and

(c) that in fulfilment of (a), and in addition to its other functions, senate has full practical control (notwithstanding the ultimate legal authority of the board of governors) over policy with respect to appointments, promotions and tenure.²⁰¹

It is clear from these “principles” senate was concerned that should Dalhousie faculty ultimately decide upon some different route to reform, senate’s authority over academic decisions such as appointments, promotions and tenure would be threatened. The committee members had only to examine the collective agreements of universities already certified such as Manitoba, Ottawa, or St. Mary’s to realise that these issues were legitimate bargaining issues.

The committee also made recommendations on more fundamental issues such as composition and governance of senate. In a rather daring change it recommended

²⁰⁰ Senate Council Dalhousie University, Meeting Minutes, 13 April 1978.

²⁰¹ John F. Graham, "A Smaller Elected Senate and No Council."

that a majority of the senate membership be elected, but that departmental chairs, because they were selected by a “consensus-oriented process,” should have automatic membership, as should deans, vice-presidents and the president. However the most striking recommendation was the abolition of senate council in favour of an elected senate executive which would, in turn, elect the chair of senate.

In April 1979, months after the DFA had been granted certification as a union and as the first collective agreement between the DFA and the board of governors was being negotiated, the members of senate voted against the proposed reforms. The margin of the vote was slim. There were a total of 277 members of senate and the University Act stated that a change in the composition of senate must be approved by a majority of senators, not a majority of those voting. In the April vote, 124 voted in favour of the changes; 27 voted against changes and there were 27 spoiled ballots. The total number of those who voted against, 27, plus the number who did not vote, 99, was sufficient to defeat the proposition. One hundred and thirty-nine positive votes were required to carry the vote.

Discussion continued over the summer months and in October 1979 a second vote on senate reform was held. On 8 November 1979, the Dalhousie News published two articles. Printed side by side on the front page of the paper, the two articles, “DFA, university ratify first contract”²⁰² and, “Move to change make-up of senate

²⁰² “DFA, University Ratify First Contract,” Dalhousie News 10.8 (1979): 1.

defeated again”²⁰³ presented a telling commentary on the political state of the university. This time senate had 280 members and a clear majority of members was required. There were 119 votes in favour of reform; 48 votes opposed and 16 spoiled ballots. However, the number who did not vote, 97, plus the number opposed, 48, totalled 145, enough to defeat the proposal. By this stage it no longer mattered; the faculty association had chosen its path and successfully negotiated a collective agreement. The senate reform proponents had lost their chance to change the university governance without a union. Their task now was to make sure that the collective bargaining process did not usurp any senate power. Eventually senate would change its composition and structure but these changes would not alter the fact that the Dalhousie faculty had opted for collective bargaining.

COLLECTIVE BARGAINING

In 1977 the Dalhousie Faculty Association (DFA), led by its president, Dr. Philip Welsh from the Faculty of Medicine, decided to explore the possibility of some form of collective bargaining. In the early stages, the DFA was not totally committed to the notion of collective bargaining under the laws of Nova Scotia but anxious to investigate the possibilities by which they might bargain better salaries and working conditions for the faculty members under a voluntary recognition arrangement. The DFA was aware that the Dalhousie Staff Association had requested and been granted the right to bargain under voluntary recognition and DFA wanted no less for the

²⁰³ "Move to Change Make-Up of Senate Defeated Again," Dalhousie News 10.8 (1979): 1,2.

faculty. The DFA asked Michael Cross, a professor in the History Department who was teaching labour history, to work with an economist, Professor Robert Comeau, to survey the faculty and determine how they wished to establish relations with the administration.²⁰⁴ The questionnaire asked members if they would like to establish a legal union like St. Mary's. The result of that survey was that 44 percent said yes; 36% said no and 20% were undecided. However, over 50% of faculty members wanted some form of bargaining with formal consultation and arbitration procedures, but outside of the formal trade union act.²⁰⁵ The faculty were, for the most part, rather conservative and although many did not believe that senate reform would provide them with the voice and security that they wanted, they were still unwilling to unionize and establish what they believed to be a confrontation situation between themselves and the university administration.

In 1977 inflation was running at an all-time high and faculty salaries at Dalhousie were among the lowest in Canada. Dr. Welsh, president of the DFA, believed that money that had recently been identified to reduce the university deficit should, instead, go to increasing faculty salaries. The board was caught between the rules set down by the Maritime Provinces Higher Education Commission (MPHEC) which stated that part of any year's budget allocation had to go towards paying down the debts of the previous year, and the demands of the DFA. Vice-President MacKay

²⁰⁴ Michael Cross, personal interview.

²⁰⁵ Peter Waite, The Lives of Dalhousie University 382.

warned the board that a 5.5% increase would not be satisfactory to the faculty and that it would cause the salaries to slip even further behind those of academics at other Maritime universities. However the board was not prepared to change its mind.

During 1977 and the early part of 1978, at the same time as the senate was exploring some forms of reform, there were meetings held with the administration to see if voluntary recognition bargaining would be possible.²⁰⁶ The faculty were represented by a group which included Phillip Welsh, Michael Cross, and Susan Sherwin while the administration was represented by George Cooper, Nathan Green from the board of governors and Andrew MacKay, the vice-president.²⁰⁷ Their purpose was to establish a bargaining structure.²⁰⁸ By most accounts these meetings were rather informal and irregular and, from the point of view of the DFA, not particularly useful. Both sides were very inexperienced at bargaining in any kind of a structure and Susan Sherwin admits to sitting on the “wrong” side of the conference table without realizing her mistake.²⁰⁹ By all accounts, the discussions did not achieve

²⁰⁶ Senate Council Dalhousie University, Meeting Minutes, 30 October, 1977. There was some discussion at the Senate as to whether the Senate should appoint a representative to the faculty bargaining team.

²⁰⁷ Senate Council Dalhousie University, Meeting Minutes, 30 October, 1977.

²⁰⁸ Michael Cross, personal interview.

²⁰⁹ Susan Sherwin, personal interview, 26 October 2001.

much progress. The DFA felt that they had been insulted and dismissed by the administration's attitude²¹⁰ and the administration saw little purpose in continuing discussions with a group that they did not believe represented the entire faculty.

By early 1978 the DFA representatives requested a firm commitment from the administration to bargain. Henry Hicks' reply, perhaps written by Andrew MacKay, said that the administration did not believe the DFA had a mandate to bargain and therefore the board was not prepared to grant the DFA voluntary recognition. The administration did not believe that the DFA represented the majority of faculty members and they felt it would be irresponsible of them to agree to something that was not in the best interests of the university nor representative of the wishes of a majority of faculty members.²¹¹ This may have been because the administration tended to listen to the more conservative, senior faculty members, men of privilege with long family connections to the university who were less likely to support a union than were the more junior faculty who had neither the allegiance to Dalhousie nor the ties to the community. Many of the junior faculty hired in the late 1960s and early 1970s were American or Canadian from other provinces who were first generation academics, struggling to make a living wage²¹² and less enamoured of the older style

²¹⁰ Susan Sherwin, personal interview.

²¹¹ Andrew MacKay, personal conversation, 8 February, 2002.

²¹² David Cameron, personal interview.

and attitudes of politics that had characterised Nova Scotia to that time. The minutes of the senate council for 6 February 1978 reported that:

[. . .] in the near future there will be a need for the DFA to discuss the desirability of certification. There was some discussion as to whether this is a matter which should be considered by senate [. . .] and it was agreed that Mr. W. A. MacKay should consult with Mr. J.P. Welsh.²¹³

It was indicative of the divergent and conflicting sentiment concerning unionization on campus that the question of debating the DFA's decision would even be mentioned at senate, let alone raised as an issue for senate to debate.

While President Hicks had defended the rights of Dalhousie faculty members to decide for themselves whether to unionize he had previously gone on record in a speech to the Canadian Senate saying that "Parliament made a mistake when it gave members of the public service, utilities and other essential services the right to strike, and that right should now be removed."²¹⁴ Although he was speaking in the context of legislation passed in the Canadian Government to order postal workers back to work, his thinking as a conservative Liberal is evident:

²¹³ Senate Council Dalhousie University, Meeting Minutes, 6 February, 1978.

²¹⁴ Henry Hicks, "Public, Essential Services' Right to Strike Should Be Removed," Dalhousie News 1.2 (1978): 2.

I am afraid that if the representative parliamentary democratic process which we all believe in and value so highly in this country cannot keep the institutions of our society operating smoothly, including the relationship between management and labour, that even in a country like Canada people may choose an authoritarian government which will ensure order at the expense of liberty.²¹⁵

It was natural for him to apply the same standards to his own university.

In addition to refusing to grant the DFA voluntary recognition, and in a move that may have guaranteed the formation of a union, President Hicks reneged on an arrangement concerning faculty appointment procedures that had been worked out at senate. The agreed upon procedures stated that “normally” faculty hires would be offered three-year appointments, followed by, if appropriate, a three-year renewal, prior to the granting of tenure after due process. In 1978, Hicks suspended the agreement on the grounds that the circumstances were not “normal” due to budget cuts and serious financial problems. His intention was to make short-term appointments that could easily be terminated at the end of the appointment period. This would prevent long-term budget commitments. He did this precipitously, and without any discussion with the DFA or putting any alternative procedures in place. The faculty were outraged and felt threatened, especially the probationary employees

²¹⁵ Henry Hicks, “Public, Essential Services Right to Strike Should be Removed.”

who were counting on three-year contract renewals prior to tenure consideration. They immediately joined the union camp and increased the pressure on the DFA to seek a vote for formal unionization. Hicks' action had made it clear that any arrangements or agreements reached outside of a formal, legal process could be rescinded by the administration on a moment's notice.

In January 1978, the DFA asked for collective bargaining by voluntary recognition; however the DFA put three conditions on the voluntary recognition, binding arbitration of salary and fringe benefit disputes and individual grievances; recognition of the association as the sole bargaining agent for the faculty, and the sharing of all relevant information by the board. The board refused all three conditions outright at first, then, in a last minute attempt to save the situation, softened its position and offered arbitration on salaries, recognition of the DFA as the primary but not the sole bargaining agent and a reasonable release of information. Clearly this was too little too late and the group pushing for unionization had "such a head of steam that there was no stopping it."²¹⁶

The DFA were holding meetings to inform members of any progress made in the negotiation discussions with the administration. Some faculty believed that the DFA was using intimidation tactics to make its point and raised the issue at senate. Rather surprisingly President Hicks replied that there was nothing that he would or

²¹⁶ David Cameron, personal interview.

could do and that this was a matter for the faculty to decide and that he would accept their decision.²¹⁷ The DFA decided to hold a vote to determine if the faculty was ready to seek legal certification. Professor Robert Roger of the Department of Psychology was asked to head that sign-up campaign. Something of a computer expert when few faculty members had that expertise, Roger was able to create a data base of the faculty members and to carefully manage the voting procedures so that within a short period of time the DFA had the needed vote. The important issue for the DFA to resolve was who would be included in the bargaining unit. From the start it was clear that in the medical faculty there was a very real split between the clinicians and the basic scientists; in dentistry the split was between the dentists and the dental hygienists. Care had to be taken to identify and include the right categories of members to ensure as positive a vote as possible. Those involved knew that the final vote depended very heavily on how the bargaining unit was “jigged.” In the end it was decided that the clinicians in both medicine and dentistry would be excluded but the basic scientists and dental hygienists would be included in the bargaining unit. The law faculty, long identified with the working class of Halifax, was supportive of the union and hence part of the potential bargaining unit. The lawyers readily agreed to be part of the bargaining unit provided that a salary differential would be worked

²¹⁷ Senate Council Dalhousie University, Meeting Minutes, 6 February, 1978.

out for them.²¹⁸ The vote when counted was very close, with the pro union side winning about 55% of the votes cast.

The debates continued but by February it was clear that the DFA would ask for the right to form a legal union. The president of the DFA was very conservative and did everything in his power to assure the members that the union would be to their benefit and that the chance of the association ever going on strike would be minimal. Despite their desire to bargain collectively for better salaries and benefits, the conservative faculty were loath to do anything that would damage the third party in the equation, the students. However on February 16, 1978, after several former DFA presidents testified to the membership on the difficulty if not the impossibility of getting what they wanted through any type of informal discussion, the faculty voted 119 to 29 to direct its executive to seek certification under the Nova Scotia Labour Relations Board.²¹⁹

The administration had played hard ball with the faculty association believing that the association did not have the support of its membership. The margin of the faculty vote now made it clear to the administration that the only way to defeat unionization would be at the Labour Relations Board hearings and the administration began to marshal its arguments. Senate met several times in special session to debate

²¹⁸ Susan Sherwin, personal interview.

²¹⁹ "Certification at Dalhousie," CAUT Bulletin 25.8 (1978).

the issue and to discuss a document prepared by one of the senators entitled, "Oppose Certification: An Open Letter to All Members of Dalhousie Faculty and Professional Librarians."²²⁰ As discussed previously, the document expressed eight points which senate believed to be essential if senate was to continue to maintain its authority. The first of the eight points concerned senate's right to control the conditions of appointment, tenure and promotion and that any departures from the normal arrangements would require the approval of senate. Senate had no intention of allowing these academic decisions to become bargaining issues outside its control.

Perhaps because he had already announced his plans to retire within the year, President Hicks in addressing senate made it clear that the faculty, "not the administration must decide on the question of a union. It would be improper for the administration to lead a movement either for or against certification." He also expressed belief "that the present discontent arises, at least in part, from the difficult times in which the university now finds itself [. . .] that these hard times will continue for some time to come, but, as an eternal optimist,[. . .] feels the prospects for the future are favourable."²²¹ As a lawyer Hicks would have understood that the administration could not be involved in any way in either supporting or opposing the union but his statement in senate indicated that he truly believed that the faculty had reasons for their discontent and the right to make their own decision. His statement

²²⁰ "Certification at Dalhousie"

²²¹ "Certification at Dalhousie"

begs the question of why the administration was so adamant in rejecting voluntary recognition, refusing adequate salary increments and questions the power and role of the board and their instructions to the administration. In effect, the administration had misjudged the situation and the power of the DFA.

On April 21, 1978 a special session of senate council was convened to discuss the university's reply to the DFA's application for certification. There were two main items on the agenda, an "Outline of basic principles for reply by Dalhousie University to application for certification by the Dalhousie Faculty Association for 1978" and a list of personnel who might be excluded from the bargaining unit. However the debate focussed on the membership of any potential bargaining unit with senate clearly wanting to exclude as many positions as possible including the clinicians, departmental chairs, associate and assistant deans, part-time and session faculty members and directors of various programmes. Much of the discussion was arbitrary and proposals for exclusion or inclusion were made based on size of discretionary budgets and the average teaching load. At the end of that meeting the senate had approved a series of principles for exclusion plus a list of twenty-five positions that they would wish to have excluded.

The Labour Relations Board heard the DFA application in June 1978 and both parties had an opportunity to state their case. The university used the Yeshiva argument in the hope that they could convince the NSLRB that faculty were

management and therefore not eligible for the protection of collective bargaining.²²²

However the precedent had been set four years earlier in Nova Scotia when St. Mary's Faculty Association had been granted union status in 1974 and the Yeshiva argument which presumes faculty members are management, could not hold up under the Nova Scotia labour laws. Abandoning the Yeshiva argument, the university administration argued for exclusion of as many of its administrative positions as possible. After many sessions of arguing the parties reached agreement that the clinicians in medicine and dentistry, deans and associate and assistant deans, and directors would be excluded from the bargaining unit but that department chairs and professional librarians would be included. It was very important to the DFA that the clinicians be

²²² In 1978 the faculty association at Yeshiva University petitioned to the National Labour Relations Board (NLRB.) for the right to unionize and to bargain collectively. In keeping with its policy that faculty members were professional employees and therefore entitled to the protection of collective bargaining, the NLRB supported the Yeshiva faculty request. The university administration opposed the certification and appealed the decision of the NLRB. In finding for the university administration, the Appeals Court concluded that while the faculty were professional employees in accordance with the National Labour Relations Act (NLRA.), they were managers and therefore not entitled, under the terms of the NLRA. to unionize and bargain collectively. The Appeals Court had said in its decision, "the extensive control over academic matters and the crucial role of the full-time faculty in determining other central policies of the institution give faculty members so much power that they are, in effect, substantially and pervasively operating the enterprise." Baruch College, "The Yeshiva Case: The impact of the Supreme Court decision." Newsletter of the National Center for the Study of Collective Bargaining in Higher Education. 8:1 (1980), p. 2.

excluded from the bargaining unit as the DFA knew that it had little support among that group and their inclusion could seriously alter the results of the vote.

The faculty association had maintained its desire to have the instructors, a large group of faculty whose main function was to teach undergraduate courses, in the bargaining unit. The administration argued that if instructors were included, then departmental chairs would be excluded because they had the power to hire and fire the instructors. The administration won the argument but the DFA made an arrangement to negotiate a separate agreement for the instructors and when it did so, the instructors' agreement closely paralleled that of the full-time faculty.²²³ Had the bargaining unit been composed differently, the results of the final vote would have also differed but in the end, of the 636 member of the bargaining unit, 489 had voted, 265 in favour of unionization and 217 opposed, with seven spoiled ballots.²²⁴ Of those voting 54.2% had voted in favour of the union; however this was only 41.7% of those eligible to vote and was a slim margin upon which to base a union. David Cameron recollected that:

²²³ Some years later the parties were once again before the NSLRB on the question of the instructors. When the labour commissioner examined the two collective agreements he found them to be almost identical and ruled that the two units should be one bargaining unit. Robert Roger, 2001.

²²⁴ Peter Waite, The Lives of Dalhousie University 384.

[. . .] had the union been jigged differently, the vote would have been different. It would have been different until the next time if one or another group had been included or excluded or even if everyone had voted. But that was it, when it was decided we were into it.²²⁵

On November 24, 1978 a certificate of certification was granted to the Dalhousie Faculty Association and collective bargaining began shortly thereafter.

COLLECTIVE BARGAINING: ROUND ONE

Bargaining began on December 19, 1978 and continued for almost a year, until an agreement was finally reached on October 19, 1979. By all accounts the first round of negotiations was laborious with various extraneous factors influencing the atmosphere at the table. The DFA was well prepared for the negotiations and had a strong team which included Michael Cross, Susan Sherwin and Robert Roger. They had all gained experience during the abortive attempts at voluntary recognition bargaining and had further honed their skills during the hearings at the NSLRB. They also had the assistance and support of the CAUT. The DFA had established various back-up teams and the special interest groups such as the librarians had their own research teams preparing positions and documentation. They had also kept their computer data base up to date. The administration was not nearly as well prepared and only constituted its negotiating team days prior to the start of negotiations. The

²²⁵ David Cameron, personal interview.

administration's team was lead by Vice-President Andrew MacKay and included Mr. N. Horrocks from the School of Library Service, Mr. D. H. McNeil, the university's financial advisor, and Professor David Cameron, the Director of the School of Public Administration. MacKay recalls that David Cameron was really the only person on the administration's bargaining team who had any knowledge of the collective bargaining process. As Director of the School of Public Administration and a supporter of senate reform rather than collective bargaining, Cameron had worked to ensure that directors would be excluded from the bargaining unit. He now admits that there were few differences between directors and departmental chairs²²⁶ but that he preferred to remain outside the union because of his inherent opposition to faculty having the power to strike.

According to David Cameron the administration was "utterly unprepared."²²⁷ Andrew MacKay had a mandate to maintain the status quo with respect to the senate policies on tenure and promotion that had been accepted and to bargain some reasonable dispute resolution mechanisms. To get prepared, they invited someone from the administration at the University of Ottawa to come to Halifax as an advisor the day before formal negotiations were to begin. To the union team, with the

²²⁶ David Cameron, personal interview.

²²⁷ David Cameron, personal interview.

exception of David Cameron, they were a “ragtag”²²⁸ group that had difficulty in making decisions. Some time into the negotiations, Cameron realized that it was essential for the administration to get better organized so he gathered as many of the available collective agreements of other Canadian universities as possible and prepared a pro-administration draft of the major issues including appointment, promotion and tenure. Cameron’s faculty colleagues were “appalled at what he had done.”²²⁹ That was the most preparation that the administration did although Cameron does believe that Vice-President MacKay had some idea of the outcome that he and President Hicks desired. MacKay was in close contact with Hicks and also received some direction from the board of governors but little direct or indirect instructions from the Nova Scotia government except with respect to the bottom line of the budget.

Just as the administration was getting ready to begin bargaining with the DFA, the union which represented Dalhousie’s cleaners, caretakers, drivers and porters went on strike.²³⁰ Negotiations had been difficult and bitter. The number of cleaners had

²²⁸ Michael Cross, personal interview .

²²⁹ David Cameron, personal interview.

²³⁰ President Hicks’ opinion of public service strikes and his support for blue collar labourers was made clear in his speech in the Canadian Senate in October 1978. Senator Hicks stated clearly that “we made a mistake when we gave the right to strike to members of the public service...I think it ought to be a condition of employment in the public service, as well as in some of these other essential

been cut back, shifts had been changed and much of the work had been contracted out to a local cleaning company. When the workers went on strike in November 1978, Louis Vagianos, the Vice-President Administration organized the senior administrators into work details to do the cleaning and then bragged how much more efficient they were than the regular workers. Dr. MacKay recalls that he “never cleaned so many toilets.”²³¹ While the workers who were affiliated with CUPE were on strike, Dalhousie signed a deal with Modern Cleaners to take over all of Dalhousie’s cleaning on two conditions: all employees currently on strike would be offered jobs and that Modern Cleaners would pay CUPE and Dalhousie rates. Vagianos claimed that this move would save Dalhousie \$300,000 per year. CUPE and the Dalhousie workers were not pleased and went to the NSLRB. Faculty protested the treatment of the workers and the Chair of the Political Science Department, Dale Poel, wrote to President Hicks on behalf of himself and eleven other faculty members:

You are probably aware that the two main reasons why unionization [of the Faculty] succeeded at Dalhousie were the widespread concern among junior faculty about low pay and future job security, and the equally widespread concern

services, that there should not be a right to strike...History has shown that in times of disorder and chaos men have continually chosen order and security at the expense of individual and political liberties..(Hicks, Henry. Senator. "Public, Essential Services' Right to Strike Should Be Removed." Dalhousie News 1.2 (1978): 2.).

²³¹ Andrew MacKay, personal interview, 8 February 2002.

among senior faculty about the uncertainties of the University's administrative processes, particularly at the higher levels. The way in which the decision to contract out cleaning has been handled served to reawaken and reinforce these doubts and fears [. . .].²³²

The January issue of Dalhousie News published a tongue-in-cheek article entitled, "University contracts out professors."²³³ Written by Roland Puccetti, a professor of philosophy and a former president of the Dalhousie Faculty Association, the scathing article drew the analogy between the cleaners and the faculty, suggesting that if the cleaners could be contracted out, so too, could the faculty. After all, their work could easily be done by management and supervisory personnel. The actions of the administration with respect to workers on campus were having a profound effect upon the relationship of the administration to the DFA and a sense of distrust and worry was developing on campus.

The CUPE strike continued and conciliation was ordered by the Nova Scotia Department of Labour but the Dalhousie administration refused to budge on the issue of their right to contract out work. CUPE continued to accuse the administration of strike breaking and union-busting. On January 24, 1979 strikers and supporters from across the province converged on the Dalhousie campus for a day of protest. Talks

²³² Peter Waite, The Lives of Dalhousie University 388.

²³³ Roland Puccetti, "University Contracts Out Professors," Dalhousie News 1.4 (1979): 7.

resumed with CUPE and the university finally agreed to engage Modern Cleaners only as the manager but said that the workers would remain Dalhousie employees. The settlement included substantial salary increases and essentially eradicated the savings that Vagianos had predicted. The CUPE workers agreed to the new terms of the contract and on 4 February 1979, they returned to work. The memory of the strike and the administration's treatment of those union members lingered and darkened the labour relations atmosphere. MacKay vowed to keep Vagianos away from the faculty negotiations.

Meanwhile, negotiations with the DFA had begun in December 1978. The issues negotiated included salary scales, status issues concerning the non-teaching component, performance evaluation tied to career development increments, dismissal, and non discrimination. According to Michael Cross, the fine hand of the board of governors was at work in the non-discrimination clauses and the right-wing philosophy of that body was evident in their reluctance to acknowledge the rights of various special groups and cultures. In particular the spousal rights of gay faculty were in question. The question of the minority groups, such as the librarians, was hotly debated with the DFA wanting some form of faculty status for the librarians and the administration viewing them as a pool of cheap and expendable labour.

The faculty association played its cards well and argued not for salary increments, but rather for a salary model that would define for each faculty member,

in accordance with an agreed-upon formula,²³⁴ his or her fair salary. The strategy of the DFA was to establish for all faculty members a “Y” value for their salary that subsequent rounds of bargaining would focus upon achieving. By having the “Y” value set and agreed upon by a joint DFA-administration committee, the DFA would make it difficult and embarrassing for the administration to oppose subsequent salary increments designed to enable members to achieve the “Y” value despite the impact on the university budget.

The senate continued with its reform but remained an interested party to the negotiations and both Robert Roger, a faculty member of senate, and Andrew MacKay made regular reports to senate on the status and progress of the negotiations. Early in the negotiations, senate requested and was granted observer status at the negotiations and during the ensuing sessions the parties sat on either side of the negotiating table with the senate observer at the end of the table. The parties now claim that they agreed to the senate observer partly because they did not want to anger senate and partly because they wanted the process to be seen as an open and transparent one. It is also claimed that both sides accepted senate as a player in the negotiations. One also suspects that any attempt at the table to abrogate the power of senate with respect to tenure would have been instantly reported and retaliation would have been swift despite the rules of confidentiality adhered to at the bargaining table.

²³⁴ Formula for salary model: $Y=S+E+PhD$ (expected salary=current salary+years of experience+academic credentials).

The tone of those early negotiations is remembered by the administration as “civilized” if a bit theatrical and the DFA remember Andrew MacKay as someone who was “very much a university man and was not prepared to damage the university to scotch the union.”²³⁵ The management was bothered by the DFA newsletters that often ridiculed the behaviour at the table and took “cheap shots” at the administration. The administration, on the other hand, was not opposed to writing and distributing newsletters of its own to convince the members of the validity of its position.

On October 19, 1979, after nine months of bargaining, the parties agreed to a contract. The Dalhousie Faculty Association ratified the agreement on November 5, 1979 and it was approved by the board of governors shortly thereafter. Typically, both sides claimed success and extolled the values of the new collective agreement and the spirit of co-operation although their comments appear to have been somewhat restrained and cautious about the future. Susan Sherwin, president of the Dalhousie Faculty Association called the agreement, “a reflection of healthy co-operative negotiations between the parties and I hope it will be a mark of even better relations in the future.”²³⁶ Henry Hicks, the president of Dalhousie University commented:

²³⁵ Michael Cross, personal interview.

²³⁶ Derek Mann, "DFA Agreement an Acceptable Compromise," Dalhousie News 10.9 (1979): 1, 2, 6.

We believe the agreement is a good one provided it is administered with good will on both sides and that the interests of the whole university will be regarded as of prime concern. Concessions were made on both sides. We look forward to continuing good relations with the members of the Dalhousie faculty.²³⁷

In speaking with Derek Mann of the Dalhousie News some months later, Hicks was less guarded in his opinion of the collective agreement and revealed his paternalistic attitude towards the faculty when he said:

I am glad that the collective agreement [. . .] requires the faculty to continue to assume quite a lot of responsibility. Obviously if they will not assume that responsibility in a serious manner and directed towards the best interests of the university, then they can't continue to have this kind of collective agreement [. . .].²³⁸

Responsibility for their own academic affairs was exactly what the DFA wanted and their newsletter assured members that the new agreement "entrenches collegial processes and ensures a forum and mechanism for co-operative decision

²³⁷ Derek Mann, "DFA Agreement an Acceptable Compromise."

²³⁸ Derek Mann, "The Hicks Era, 1960-1980. Part Nine," Dalhousie News 10.22 (1980): 6,7.

making in many crucial areas.”²³⁹ There were, of course, some faculty members who were opposed to the new contract and a group of the more disgruntled circulated a letter to faculty urging them to vote against ratification on two specific issues, “each sufficiently compelling,” the payment of dues to DFA for those conscientious objectors and perhaps worse, “the encroachment on the powers and responsibilities of Senate.”²⁴⁰ Those who supported senate reform would not easily accept the new collective agreement.

One of the crucial areas concerned was academic appointments, where now the department concerned had a real mandate to make recommendations and without such departmental approval, no appointment could be made. In this case the president had lost some of his power. Promotions would require standardized processes and procedures across the university, removing faculty or even departmental differences or biases. However, in the case of tenure, the parties agreed to refer to the senate tenure policy, thus leaving the granting of tenure basically in the purview of that body.²⁴¹ However, it would be many rounds of bargaining and many years before the text of the tenure policy would become an integral part of the text of the collective

²³⁹ Derek Mann, "The Hicks Era, 1960-1980. Part Nine."

²⁴⁰ Derek Mann, "The Hicks Era, 1960-1980. Part Nine."

²⁴¹ The tenure policy was referenced in the 1979-80 collective agreement but the text of the policy was not included in that agreement.

agreement and thus eligible for negotiations.²⁴² Perhaps because of the CUPE experience, the faculty also insisted upon an article guaranteeing a certain number of full-time positions and a limit on the numbers of part-time faculty that could be hired. The DFA also bargained a clause requiring the replacement of any member who resigned, retired or left the university for other reasons. The intent of this clause was to ensure that the number of full-time faculty members holding tenured and tenure-track appointments would remain stable. This would later be known as the “complement” clause and would be the cause of much debate, discord and disagreement between the parties and among the members of the DFA.

Perhaps the most important gain for the faculty in 1979 was the creation of the Career Review Committee and the allocation of \$275,000 to an anomalies fund to adjust salaries of those who could be proven to be inadequately paid. The committee was composed of faculty members and board representatives and the process provided for individual applications, assessments and an appeal process. Bob Roger, one of the authors and negotiator of the scheme, remembers it as a “great success” because for the first time salaries would be established in a fair and equitable way and taking into account academic credentials and relevant experience. It was also a step towards equalizing the salaries of men and women faculty members but it would prove to be costly to the university.

²⁴² In 2001, for the first time, there were negotiations between the DFA and Dalhousie University concerning the text of the tenure article.

Immediately after the bargaining for the full-time faculty was completed, the DFA bargaining team turned its attention to the group of instructors for whom they had promised to bargain a collective agreement. Initially the DFA had wanted to include the instructors in the bargaining unit but the administration had opposed them and had been upheld by the NSLRB. DFA promised the instructors their own contract. Susan Sherwin led the instructors' team and within four months had a ratified and approved collective agreement covering the instructor and demonstrator employees. Dr. Sherwin pronounced it a "good" collective agreement and expressed the hope "that it will make for good relations between the instructors and the board of governors."²⁴³ Within a few years the DFA would be strong enough as a union to re-open the question of membership, conduct a new vote, and include the instructors in their bargaining unit.

In 1980, Andrew MacKay replaced Henry Hicks as president of Dalhousie. He was chosen by a selection committee jointly established by senate and the board of governors. For the first time the DFA had demanded and been given a place on the selection committee provided that the DFA members would comply with the confidentiality regulations. All went well until a short-list was established, at which time the DFA demanded that the short list be made public, saying that it was essential that the faculty know who was on the short list before a final recommendation went to

²⁴³ Derek Mann and Gina Wilkins, "Instructors Ratify Agreement," Dalhousie News 10.23 (1973): 1.

the board of governors. The committee chairs refused, and the DFA members resigned from the committee in protest. However, the names of the short-listed candidates were leaked to the Dalhousie News and published. DFA denied that their office was the source of the leak. Two of the four candidates withdrew. From the remaining two, one external to Dalhousie and Dr. MacKay, the search committee chose Andrew MacKay. The DFA's insistence upon transparency in the process had influenced the outcome of the selection and set the tone for future confrontations. It had also established itself as a force to be reckoned with on campus.

Henry Hicks was a hard act to follow. He had been a flamboyant and charismatic leader who had won the respect and support of the board of governors and had single-handedly transformed Dalhousie from the college-by-the-sea into a modern, comprehensive Canadian university. He had done this by fundraising enormous amounts of money and pouring that money into buildings and visible improvements. He had paid little attention to the underpinnings of the university, to the care and maintenance of the buildings, to support services or to the rejuvenation and support of the faculty. MacKay recalled that Hicks was "a great president, but from another time."²⁴⁴ The buildings and improvements were his legacy to the university, but they were left at the cost of an enormous capital debt that had to be paid.

²⁴⁴ Andrew MacKay, personal interview.

When Andrew MacKay became president there were three issues on his desk—the new collective agreement with the DFA, the deficit budget, and senate reform. He did two things to help to ensure that the collective agreement with the faculty association would be administered well. He invited David Cameron, his former colleague on the administration’s negotiating team, to accept a position as Executive Director of Policy and Planning. His intention was that Cameron would take responsibility for the management of the collective agreement. Unfortunately, he did not make that intention clear or public. The appointment of Dr. Cameron was never formally announced, nor was the DFA ever informed of his position or responsibilities. Cameron, who had made no secret of his preference for senate reform over collective bargaining was respected by the union but not necessarily trusted. The DFA took to treating Cameron as “an administrative underling” allowing him to attend meetings of the Academic Programme Committee as an observer, but never “warming” to him as a liaison between the DFA and the senior administration. The DFA wanted to receive their information and have discussions directly with either the president or the vice-president academic.²⁴⁵

The second appointment that MacKay made was almost as irregular. He invited Brian Crocker, of the Faculty of Law to spend a day a week in the president’s office assisting the administration with the handling of DFA grievances. At this point Dr. Crocker was a faculty member in the Faculty of Law and a member of the DFA.

²⁴⁵ David Cameron, personal interview.

To have a member of the bargaining unit advising the administration on how best to win grievances against fellow members was strange at best. At worst it could be considered a direct and blatant conflict of interest. Dalhousie's acceptance of its schizophrenic nature allowed the president to make such an appointment without any compunction about conflict of interest. Crocker was never at a loss for work and by 1983 there were numerous grievances to handle because the university had invoked the financial constraint article and the union had grieved the implementation process. There were also grievances stemming from denial of career development increments since three denials could instigate dismissal procedures. Dr. Crocker's workload continued to increase and by 1985 his position was excluded from the bargaining unit and he was working in the president's office full time, charged with bargaining the next collective agreement.

As for Senate reform, Dr. MacKay had been a proponent of the reforms proposed by Professor Graham and his committee and despite the dire warnings of Henry Hicks that the senate reforms would complicate issues and put too many decisions into the hands of too many committees, Mackay was content to implement the changes once they had been finally approved by senate. He was also prepared to relinquish his position as chair of senate council in favour of an elected executive committee and chair.

The expert assistance in the president's office did little to improve the relations with the DFA. Probably the most serious threat to any kind of reasonable relationship between the faculty and the administration was the dire financial situation

in which the university found itself in the mid-1980s. The accumulated deficit was about forty million dollars and rising and the operating deficits were almost out of control. Poor financial management had allowed the operating funds to be used to fund capital debts. In addition, there were those who blamed the financial situation on the faculty union, claiming that salary increases and scale changes to faculty salaries which had been bargained at one hundred thousand dollars had, in reality, cost nearly a million, and had bankrupted the university. MacKay embarked upon his next challenge: to remedy the financial situation. He instituted a fund raising programme and set its goal at something over thirty million dollars. He also tried to find a means by which the interest on the endowment fund could be used to pay down the deficit. When legal advice said that such a plan was not possible in Canada, although apparently it had been used at some universities in the United States, MacKay had little choice but to tighten the belt and begin to pay off the debt. MacKay sought and received the board's approval to take a pension plan holiday²⁴⁶ and use that money to

²⁴⁶ In the case of defined benefit pension plans, the institution pays in an amount equal to a percentage of the salary mass, and the individuals pay in a percentage amount of their individual salaries. The institution guarantees that the pension to the employee will be a set amount, in accordance with a pre-agreed upon formula at retirement. If the surplus or amount of money in trust is sufficient to cover all possible pension guarantees, then the employer can stop making payments for a period of time. Usually in such plan holidays the employee continues to pay their portion. In the case of an institution such as Dalhousie, the savings for the university would be in the millions of dollars for any such holiday.

pay down the deficit. This was imposed unilaterally across the university and was met with great disagreement from all unions, including the DFA. Twenty years later MacKay admits that this was “not well handled.”²⁴⁷

The financial situation, bad when the parties began to bargain in 1979 only became worse. The agreement to fill vacant positions as well as the salary increases cost more money than the administration had counted on or budgeted. In the first year the deficit was about one million dollars; by 1981 it was close to three millions dollars. David Cameron recalls that:

[. . .] the world had changed under our feet and quite frankly no one, including the vice-president finance, could have or did anticipate what would happen. We had no choice but to declare financial constraint. The faculty would not accept that they had caused the deficit by unionization. There was no way that they would let management make them suffer.²⁴⁸

This move spelled the beginning of the end of MacKay’s presidency and a new militancy on the part of the DFA. In the second round of collective bargaining they took a strike vote but lost as the faculty were simply not ready or sufficiently mature as a union to take that step. The administration capitalized on the apparent weakness and made some gains in the agreement. In the third round of bargaining in 1985 the

²⁴⁷ Andrew Mackay, personal interview.

²⁴⁸ David Cameron, personal interview.

faculty were again pushed to the wall over financial issues but this time they were prepared. The strike vote carried and in January of 1985 the faculty walked out for one day. President MacKay was surprised by the faculty's action and spent time on the picket line with the faculty trying to figure out what had gone wrong. He understood that no matter what would happen, the faculty and administration would have to continue to work together after the dispute was settled. Andrew MacKay also has a clear sense of the need to separate process from personalities and looked upon the job action of the faculty as one of the steps in the process towards a settlement rather than a statement of lack of confidence or trust in his management team. Perhaps had he paid more attention to the reasons for the strike, the dissatisfaction of the faculty, and the widening chasm between the two parties he might have forged a better relationship with the DFA. Although a settlement came soon after, the one-day strike galvanized the union and gave it a renewed strength and purpose. The gulf between the management and the union was widening.

The first decade of the unionized faculty association brought some stability to the campus. Contracts were negotiated, salaries were increased and there were relatively few problems with respect to the administration of the contract. The first contracts were precise in intent and language and the interpretation was fairly simple and clear.²⁴⁹ In successive rounds of bargaining precision in the language of the

²⁴⁹ Alan Andrews, personal interview, 22 October 2001.

collective agreement diminished, and left more to interpretation and to committees to administer.

In 1986 Howard Clark replaced Andrew MacKay as president of Dalhousie. While he appeared to be a better and more prolific communicator, his management style did not bring conciliation to the rift between the administration and the DFA. In 1987 tension between the DFA and the administration reached intense proportions as they argued the article concerned with the faculty “complement.”²⁵⁰ Faculty were told that if all complement positions were to be filled, there would be no money for increases. The administration’s negotiators pushed to move the question of complement reduction from one of the options possible if, and only if, financial constraint had been declared, to a routine budgetary measure. The consequence of this change in the collective agreement was to allow the management to decide if and when vacant positions would be filled. The DFA negotiators finally acquiesced, agreeing to leave the filling of positions to the discretion of the administration and taking their salary increase. This decision caused a serious rift in the union. A group lead by former negotiators Robert Roger and Michael Cross tried to convince the

²⁵⁰ “Complement” is the total number of full-time positions that are approved. Complement positions may be filled or vacant. The DFA argued that all complement positions should be filled when they are vacated as a result of retirement, dismissal, resignation or death. The administration preferred to leave complement positions vacant, meeting the teaching needs with either sessional or part-time appointments which cost much less and carry no long-term commitment for salary or benefits.

membership that in approving this arrangement they would very likely see their numbers decline as the number of sessional and part-time appointments increased over the coming years. However the membership was hungry for a raise and ratified the agreement. From that time forward, “complement” would be a battle cry at negotiations and would always become a trade-off against salary increments.

1988-1998: THE YEARS OF STRIFE AND STRIKES

With the complement issue as a backdrop, negotiations began in 1988 for another collective agreement. Labour management relations were not good. Some progress was made on the non-monetary issues but the monetary articles became a major stumbling block. At issue was the discrepancy in salaries between the male and female professors, salaries for the more junior faculty and the salaries of the non-teaching members such as librarians. In addition, the question of the complement was again on the table as was workload, a result of the dwindling complement.

Bargaining began during the summer of 1988 but did not go well and by September both sides were calling for government labour conciliation. On September 21, 1988 both the president and the DFA used the pages of the Dalhousie News to communicate with the community at large and the faculty in particular. President Clark stressed his desire to conclude a new collective agreement “without animosity,

within a reasonable time period and without disruption of normal activities.”²⁵¹ He wrote in some detail of the salary equity analysis comparing the salaries of men and women faculty members and assured the faculty that once all of the appropriate steps in the analysis had been completed, the university would begin to pay the increases to faculty members. The stumbling blocks were the librarian and instructor members and since they had not been included in the original study, the president was not willing to include them in the current pay-out. He offered to have another study but within the context of provincial legislation. Clark also pointed out that the DFA’s salary demands would increase the faculty salary budget by 25% over two years whereas the board was only prepared to offer 7% in light of the \$8 million dollar operating deficit. In an information paper prepared for the community, the DFA explained its demands for salaries comparable to other Canadian universities and a cost of living allowance that would bolster the value of the faculty salaries. The DFA was also adamant that salary redressment should be applied to librarians and instructors as well as faculty.

In early October the faculty association called for a strike vote. Eighty percent of the faculty voted; 79 percent of those voting, voted to strike. The DFA had a mandate to strike at noon on November 4, 1988 if sufficient progress towards a settlement was not made. The parties were receiving bargaining assistance from a provincial labour conciliator and some progress was made, however, not enough. The

²⁵¹ Howard Clark, "President's Notes: Matters Relating to Negotiations," Dalhousie News 19.2 (1988): 4.

university administration published Statistics Canada data showing Dalhousie salaries in comparison to other Maritime universities such as St. Mary's and the University of New Brunswick and to the Canadian national average. The numbers show Dalhousie to be slightly worse off than UNB and slightly better off, on average than St. Mary's. Had the administration focussed on dealing with the salaries, things might have been worked out. However, the president decided to write an article for the Dalhousie News in which he discussed the workload article and blamed the faculty, who during a period of increased numbers of students and decreasing numbers of faculty, had opted to offer new programs, program expansions and new courses. He called upon the faculty to share the responsibility for the increased teaching loads.²⁵² The faculty were not prepared to accept blame for doing their jobs. On November 4 the faculty walked out to begin what would be a two-and-a-half week strike. The Dalhousie News reported the following:

At the crux of the dispute is money. The DFA wants more. The University says it doesn't have more to give. The provincial government says it doesn't have any more to help settle the strike, although no one at Dalhousie had asked for more.²⁵³

²⁵² Howard Clark, "President's Notes: Salaries Are a Major Issue," Dalhousie News 19.2 (1988): 4.

²⁵³ "Money Key Issue in Faculty/Board Talks," Dalhousie News 19.6 (1988): 1.

The last phrase of the statement is important. The faculty had been pressing to go with the administration to the ministry officials to ask for increased funding but their offer had never been accepted. The vice-president of finance, announced that the board of governors was not permitted to “siphon off any of the capital funding it receives annually from the province in order to boost striking professors’ incomes.”²⁵⁴ The DFA were demanding salary parity with other Canadian universities and could not understand why their individual salaries are consistently lower than salaries at either St. Mary’s or Acadia where it was claimed that professors earned between \$3500 and \$9000 more.²⁵⁵

Two weeks into the strike the faculty and administration were both calling for the government to launch an industrial inquiry into the Dalhousie situation to see if a settlement could be reached. The administration had offered binding arbitration but the DFA had refused because the board of governors refused to allow the faculty to bring a cost of living clause before an arbitrator. The board continued to press for binding arbitration as the only way out of the impasse and the president, Howard Clark, told students that the university is “financially worse off than any other Canadian university.” He continued to communicate that message to the community and more importantly, to the Maritime Provinces Higher Education Commission in an

²⁵⁴ James Latter, "Dal Can't Siphon Capital Funding to Boost Salaries," The Chronicle-Herald 12 Nov. 1988: A2,3.

²⁵⁵ James Latter, "Dal Can't Siphon Capital Funding to Boost Salaries."

attempt to improve the funding formula by which Dalhousie received its operating grant. The strike closed down the campus, forced some students to return to their homes to wait it out and others to threaten to sue the university and the faculty association for lost time.

Finally on November 22 the DFA and the administration reached a tentative deal. The new contract offered substantial increases for women and junior faculty members, but less for the rest of the bargaining unit. The faculty backed down on their cost of living demand but agreed to percentage increases of about 3.7% in the first year and 3.5% in the second year. Both sides claimed it was a fair settlement and classes resumed. However, in the aftermath of the strike, President Clark finally spoke out saying that he now realized the need for “effective communication” and pledging to bring about “some overall correction to Dalhousie’s financial condition and to ensure that a more favourable funding formula is in place for 1989-90.”²⁵⁶ In addition, Clark reminded the community that the operating deficit was \$8.5 million and the capital debt was \$25 million. He told the board of governors that “it is now essential to develop a long-term approach, because the university cannot carry its debt

²⁵⁶ Howard Clark, "President's Notes: Greatest Concern Is for Students," Dalhousie News 19.7 (1988): 4.

load.”²⁵⁷ The resulting board motion established a ten-member committee charged with a mandate to “develop a five-year strategy.”

Dalhousie was not the only Maritime university struggling with financial difficulties and the Association of Atlantic Universities called for an 11.1 percent increase in base funding for all Maritime universities. Such an increase “would enable the universities to maintain current levels of operation and provide for the recovery of a portion of the shortfall experienced over the last decade.”²⁵⁸ The AAU was not optimistic however, since in the previous year they had demanded a 9.8 per cent increase in base funding which was reduced to 6 per cent by the government ministry and translated into a 4.9 per cent increase for Dalhousie. Not enough to meet the expenses.

In the same issue of the Dalhousie News, Howard Clark reminded the Dalhousie community that the settlements reached with the faculty through collective bargaining “lead in 1988-89 to expenditures in excess of budget, and in 1989-90 will

²⁵⁷ "Board Ratifies Three Union Contracts; Votes for Five-Year Financial Strategy," Dalhousie News 19.8 (1988): 1.

²⁵⁸ "AAU Recommends Funding Increase," Dalhousie News 19.8 (1988): 1.

worsen still further our deficit position."²⁵⁹ Faculty were again blamed for the university's poor financial situation.

In 1990 the DFA was back at the bargaining table, this time with more salary demands and the cost-of-living increase was back on the table. The planning process and the pressure on the provincial government had done little, if anything, to improve the situation. According to the DFA chief negotiator, Alan Andrews, bargaining at the table was civilized and successful and the administration was wary. As soon as they began to discuss the monetary issues the administration asked for conciliation. Alan Andrews was surprised by the administration's demand because he did not think that the negotiations were going badly. DFA agreed to conciliation because it knew that it could demonstrate to the conciliator the reasonableness of its position on a cost of living increase tied to the consumer price index. The DFA told the conciliator that they would go on strike again to get the cost of living increase. When the administration agreed to a COLA, there were some individuals who believed that the close relations between the government officials and senior members of the Dalhousie board and administration had been influential. The conciliated settlement was a generous one with faculty receiving wage increases of 4 per cent in the first year, 4 per cent in the first half of the second year and a cost of living increase (COLA) in the second half of the second year and a COLA in the third year. There was also a fund of

²⁵⁹ Howard Clark, "President's Notes: Financial Position Is Very Precarious," Dalhousie News 19.8 (1988): 4.

\$200,000 to adjust the salaries of associate and full professors to levels comparable to other Canadian universities. However, before the increases could be implemented, the government rolled back salary increases and suspended all collective bargaining. There were those who said that the administration had known of the government's plans when it bargained the increase. The administration got credit for being cooperative, but was off the hook. There would be no further collective bargaining in Nova Scotia until 1996.

In the winter of 1998 the DFA was again pushed to the wall. Collective bargaining had begun and Dalhousie was bargaining its second contract after the freeze. By now the issues were well known—salaries and complement. The DFA was demanding a 13 per cent increase over four years, the administration was offering 9.5 per cent. This would not appear to be an insurmountable difference. However the second issue, complement, the demand of the DFA that all positions that became vacant during the life of the collective agreement be filled, was the sticking point. The administration, now led by a new president, Tom Traves, said that it could not afford to fill all of the vacant positions and refused to budge on this item. In February the faculty had taken a strike vote and had a mandate to strike should the conciliator's report not be acceptable. The DFA did not want to strike and the administration did not want to adversely affect the students.

When the conciliator's report was received it was not satisfactory to the DFA and they served notice that they would exercise their legal option to strike on March 25 should agreement not be reached. The students were angry and worried that the

disruption would postpone graduation and push classes into the summer session when many of the students already had jobs planned. The students were ready to blame the provincial government for its lack of funding and persistent cuts to post-secondary education and the faculty whom some saw as self-seeking in their demands for higher salaries. The students had been warned that any increase in faculty salaries would translate into a tuition increase. By March 25 there was no settlement in sight and the faculty struck and were simultaneously locked out by the administration. The students threatened to sue both the board of governors and the faculty association for time lost and demanded a seat at the bargaining table. The students believed that since their tuition fees were paying the faculty salaries they had a right to be present at the table. In an effort to placate the students, the DFA agreed to allow the students at the table but the administration refused, saying that negotiations were at a very delicate point and to bring in a third party would alter the dynamic.

The faculty were very aware that the strike was taking place at a crucial time in the academic year and they were concerned for their students. According to Andrew Wainwright, there are those faculty members on campus who would argue that the DFA caved in too quickly under the pressure from the students to finish their academic year.²⁶⁰ After eight days a settlement was reached that gave the DFA a four-year agreement, retroactive to 1997, with a 13 per cent increase over the four year period. The question of the complement was put aside to be examined by a joint

²⁶⁰ Andrew Wainwright, personal interview.

committee that would report to senate. The faculty had won their salary demands but the question of complement, or how many faulty members there would be in probationary appointments to meet the needs of the rapidly growing student body was left in abeyance. The issues would recur in 2001 when bargaining began for that contract.

ANOTHER STRIKE–2002

In the summer of 2001 the DFA and the university administration began negotiations for a new collective agreement for the period 2001-2004. Most of the issues were familiar to both parties–salaries, complement, faculty autonomy. The issue of complement had been festering since 1987 and the DFA was determined to begin to restore the number of full-time faculty positions. Coupled with the union’s salary demands, the administration saw “complement” as a huge, and unaffordable, monetary issue. Although the debt of the past had been effectively eliminated by a combination of tuition increases, pension holidays and complement reduction,²⁶¹ the administration continued to argue that any increase in the complement or any substantial salary increase to the faculty would cause a shift in the financial balance that would be unacceptable. The board of governors accepted that the government of

²⁶¹ According to Colin Studdart, DFA President Elect and Member of the DFA Negotiating Team, the complement has been reduced by 88.5 positions since 1987 and at the same time the student enrolment has increased from eight thousand to fourteen thousand full-time equivalent students. Colin Studdart, “The Question of Complement.” DFA Forum.

Nova Scotia would not be coming forward with any new money for the universities. The board of governors claimed that the union's salary and benefits demands would mean a 17 per cent tuition increase, raising the already high tuition rate of about \$4000 by about \$900. This increase would likely drive away some potential students. Of course the union argued that the more students are enrolled, the more faculty members are needed to provide a quality education. The administration's solution was to use part-time and sessional lecturers to fill the gaps since those categories of faculty require no long-term commitment or investment.

In addition, this time a new issue was added to the mix, tenure and the right of the president to veto the decision of the university tenure committee, a peer committee. While the question of the president's decision making power in the case of tenure was not new, a recent court case had inflamed the issue. In a Court of Appeals judgement handed down in January 2002, the Nova Scotia Court of Appeal upheld the claim of a faculty member that tenure be granted to him against the negative decision of President Traves. At question was the jurisdiction of the original arbitrator, Daniel Soberman, and his right to make the decision to grant tenure to Dr. Mattheson. While the decision was positive for the DFA, in all likelihood it had angered President Traves and the other members of the senior administration to the point where they may have refused to bargain any of the issues on the table.

Indicative of the troubled relationship between the DFA and the administration, the first issue to be tabled was DFA's procedures governing a return to

work after any strike or lock-out.²⁶² The DFA wanted to settle how such an eventuality would be handled “while heads are cool.”²⁶³ This step indicated to the administration that the DFA was prepared, once again, to take the ultimate labour action in order to get resolution of the important issues. However, this signal did not improve or expedite the negotiations.

By early autumn, very little had been resolved with the administration refusing to discuss complement and the tenure issue made more complex by the administration’s demand that tenure consideration be delayed by a year, to six years after appointment. It appeared that both sides were already contemplating strike and lock-out possibilities as inevitable. DFA announced that there would be a strike vote and set the dates for November 28-30. When the administration responded with an improved salary offer, conditional upon the removal of the union’s complement replacement demands and a refusal to discuss complement, the union leadership was confident that the membership would not accept to table complement and would deliver a positive strike vote. Indeed, 71% of the faculty voting, voted in favour of a strike. This would normally be taken as a clear sign to the administration of the seriousness of the union’s demands. However, it seems that this message had little effect upon the Dalhousie administration.

²⁶² Alan Andrews, "Negotiating Report," Negotiating Report 10.1 (2001): 1-3.

²⁶³ Alan Andrews, "Negotiating Report".

Negotiations continued into December but little was settled and after 35 negotiating sessions, the administration announced that it would seek conciliation. Suspicious that the administration would use this as a stalling tactic, the DFA followed suit but demanded the immediate appointment of a conciliator. In January, Charles Weir was appointed. The parties met with Mr. Weir on January 22 and 23 in an attempt to reach a conciliated settlement. Complement remained the prime issue with the administration demanding flexibility and the right to hire more part time and session faculty to meet the growing needs of the expanding student body without hiring more full-time tenure track faculty. The DFA refused to put aside the complement issue; the administration refused to bargain if complement were not put aside. The conciliator's report, confidential to the parties, apparently indicated the stalemate. The DFA would be in a legal position to strike fourteen days after tabling of the conciliator's report. On March 4, 2002 the DFA went on strike.

Anxious to return to the bargaining table, the president of the DFA, Andrew Wainwright wrote to the chairman of the board of governors, urging co-operation. The parties returned to the table. Complement remained the overriding issue with the administration pressing to retain the 1987 wording and the union demanding changes that would increase the complement. At one crucial point, in an effort to save the discussions, the DFA suggested sending complement to binding arbitration so that other issues could be negotiated. The administration, understandably, refused to let complement be arbitrated.

Although the issues of complement and salaries were important, by March 2002 the DFA was most concerned about the non-resolution of non-monetary issues. Questions of fairness and equity and giving the faculty a reasonable say in the governance of the university were stonewalled, showing the board's continued reluctance to share any of its power with the faculty. Andrew Wainwright put it this way, "the visible part of this apparent impasse between the DFA and the board consists of issues that are not without solutions; but they are the tip of an iceberg whose underside is a huge and unchanging board attitude that faculty are mere employees who should stay in their classrooms and research areas, and that the Collective Agreement is an unfortunate nuisance document that is too thick and too much of an infringement upon management rights."²⁶⁴ At that time the university administration refused to discuss the situation, preferring to wait "until the dust settles."²⁶⁵

The strike lasted nearly four weeks during which time students close to examinations and graduation were left without professors or library services. A settlement was finally reached on the night of March 27. Complement was resolved by the parties agreeing to a formula which would ensure at least 684 filled positions and an ideal complement of 760 full-time positions; salary increments were improved, and

²⁶⁴ Andy Wainwright, "President's Message: Seems Like We've Been Down This Road Before." DFA Dialogue 15. (2002).

²⁶⁵ Sam Scully, private correspondence, 20 March 2002.

an accelerated procedure for arbitration of tenure decisions was agreed upon. The administration did not give up the president's right to decide on tenure but it did agree to an accelerated arbitration procedure that would improve the situation for affected members. Dr. Wainwright was correct; none of the issues were unsolvable.

When the dust had settled on Dalhousie's fourth faculty strike²⁶⁶ both sides were chastened. A four-week strike is never easily endured and Dalhousie's was no exception. While, on the public level, the issues have been settled, at least for the next three years, there remain deep seated issues of mistrust and misunderstanding that continue to define the relationship between the DFA and the university administration. In a telephone interview after the strike was settled, The Vice-President, Academic, Dr. Sam Scully said that he believes that the adversarial nature of the relationship and the mistrust that have been created over the past twenty-four years may be coming to a resolution.²⁶⁷ He understands that the paradigm that has persisted over the years has allowed and even encouraged, each side to take offence and mistrust the smallest slight or oversight of the other party. He believes that a concerted effort must be undertaken by both sides to eradicate that automatic adversarial reaction and to introduce some positive problem solving mechanisms to the relationship. He is optimistic that by acting in a different way and demonstrating positive results that

²⁶⁶ Dalhousie Faculty Association struck in 1988, 1995, and 1999. It is the first Canadian Anglophone institution to have back-to-back strikes to settle collective agreements.

²⁶⁷ Sam Scully, personal interview, 10 October 2002.

directly affect the faculty members, the relationship between the DFA and the administration can begin to improve. He cites as an example of such positive action a new salary anomalies committee, created as a result of the most recent collective agreement, that is composed of only three members—a DFA representative, a board representative and a third party chosen by those two members. Already this committee appears to have had success. Dr. Scully hopes that this initiative can continue.

While it is evident that there is mistrust between the parties, there is also considerable mistrust among the parties with members of the faculty not completely trusting the DFA executive and members of the board and senior administration not completely trusting those who negotiate for them. This makes it difficult, if not impossible, for any one-on-one problem solving meetings to occur and is perhaps a problem that is endemic to the unionized situation. Perhaps because so much rests on every solution and every solution can be seen as precedent setting, unions and management are reluctant to trust negotiation of any matter to one person. In some cases this may be a mistake as it may prevent frank and open discussions.

HAS UNIONIZATION CHANGED THE FACE OF THE COLLEGE BY THE SEA?

Dalhousie is a university steeped in tradition and reluctant to incorporate change for change's sake. After trying unsuccessfully to achieve some form of faculty autonomy and decision making through senate reform or special plan collective bargaining the Dalhousie Faculty Association opted for its third choice, collective bargaining under the Nova Scotia Labour Relations legislation. The worsening financial situation of the province which translated into decreased operating grants to

the university, huge deficits in the capital budget occasioned by expansive and ambitious building programmes and steady increases in student enrolments has created a labour-management climate that is confrontational, unimaginative and unproductive.

Four strikes to date since 1985 and numerous agreements reached only through government conciliation have taken their toll on that relationship. There is a sense on both sides that matters cannot be settled between them without outside intervention or industrial action to make their point. The DFA feel that without a strike vote in their pocket the administration will not take them seriously and will not accept that they represent the wishes of the faculty.²⁶⁸ During the past several rounds of bargaining, beginning in 1985, the administration has chosen to send negotiating teams led by legal counsel rather than a senior academic to the table. This decision has caused negotiations to drag as discussions are awkward and slow. In the 2001-02 round of bargaining the administration admits that they could not identify a dean “who would be an effective presence at the table.”²⁶⁹ If this is indeed true, it reflects a sorry state of affairs in a large research university with numerous faculties that not one dean or associate dean could be spared or trusted to negotiate a collective agreement with the

²⁶⁸ Andrew Wainwright, personal interview, 25 October 2001.

²⁶⁹ Sam Scully, personal interview.

faculty. This decision is taken by the DFA as a symbol of the administration's disdain for the union.²⁷⁰

In a very practical way the union has caused the administration to dedicate more resources and personnel to the faculty issues and the management of the collective agreement. There is accord that record keeping has been vastly improved and there is a level of transparency in the handling of personnel matters. Human resource professionals have been hired to take care of the daily management of the collective agreement perhaps to the extent that the university is now run much more like a corporation than it used to be. A turf war has developed with the union defending the collective agreement and management taking the offensive. For this situation to change the current DFA president, Andrew Wainwright believes that:

There would have to be a fundamental self assessment by management and the board of the university as to what it is about and this would be impossible because there is a corporate mind set in the administration and the board that the faculty are good at what they do but have no role in how the place should be run. Faculty believe that what they do is related to how the place should be run. It has to do with class—there are class distinctions at Dalhousie—the wealthy people who sit on the board as opposed to the faculty members; there is anti-intellectualism, people who

²⁷⁰ Susan Sherwin, personal interview.

come from educated backgrounds but they are not intellectuals and they don't understand what we do [. . .]. There needs to be an inter-cultural discourse at the university rather than different cultures sitting at either side hammering at each other.²⁷¹

The days when the board of governors, on the advice of the president or the chairman of the board could appoint a dean or a president are gone. There are search committees mandated and appropriate numbers of faculty members are elected to those search committees. The DFA is consulted about appointments and invited to offer an opinion before the decision is taken. The DFA believe that their opinion is often ignored.

The amount of political clout or influence that a faculty union has with respect to campus decisions is some measure of the influence of that union on the general life of the university. At Dalhousie one gets the distinct impression that the DFA has very little political clout outside of the collective agreement. The current vice-president, academic, attempts to be open and to consult the president of the DFA, "from time to time." Senate remains a forum where the DFA can raise questions and seek information. There are pockets in the university such as the political science department where the union influence is hardly felt; in other areas it is more of a factor and people consider the collective agreement before acting.

²⁷¹ Andrew Wainwright, personal interview.

Perhaps the real problem has been expressed in two different but similar ways. Alan Andrews, the chief negotiator for the DFA, said that “Dalhousie fancies itself”²⁷² and David Cameron put it this way:

Dalhousie is close to an unmanageable institution which goes right back to the cause of certification. It lives a cognitive dissonance; it has an idea of itself and what it wants to be which is out of kilter with its finances. It is funded on the same bases as other universities in Nova Scotia but sees itself closer to University of Toronto or more probably Queens. It is always fighting.²⁷³

Dalhousie has lived in that state of “cognitive dissonance” since the early 1970s. Part of Dalhousie was content to remain the college by the sea. That was a comfortable situation where everyone knew everyone and the administrators and the faculty were, for the most part, “old boys” with roots deep in the Halifax community. There was a sense of comradeship and trust on campus. All that changed in the 1960s. New faculty members from “away” were hired who had no inherent allegiance to either Dalhousie or Halifax. Administrators arrived who had new visions and plans for the university who ran the institution as their personal fiefdom with little or no consultation on any decisions. Large donations made building and advancement

²⁷² Alan Andrews, personal interview.

²⁷³ David Cameron, personal interview.

possible but little thought was given to the future management of the new facilities and programmes. It was sufficient just to have them so that Dalhousie could be seen to take its place among the major Canadian universities. All of this change took its toll, and coupled with severe financial problems in the 1970 and 1980s it spelled the end of the college by the sea, and the beginning of a large corporate model university without the funding, the management skill or co-operative spirit necessary to achieve that goal. Only time will determine whether the paradigm created over twenty years ago, and reinforced with each round of bargaining and seemingly maintained by each new university administration, can or will be changed.

CHAPTER 5
THE QUEEN'S WAY: THE TENSION BETWEEN A COLLEGIAL SYSTEM AND
COLLECTIVE BARGAINING

Like Dalhousie University, Queen's University had its origins in Scotland. In the early part of the nineteenth century the Church of Scotland wished to expand its horizons and decided to found a university in Canada to train clerics and to teach science and literature. Thomas Liddell, entrusted with Queen Victoria's Royal Charter, was sent to establish such a university at Kingston, Ontario. Liddell, with the assistance of Professor Peter Colin Campbell, taught the first students and in 1847, the inaugural class was graduated. In 1869 Queen's accepted its first women students, but there would be no women graduates until 1884. In 1912 Queen's received a new constitution as a secular college but retained its Faculty of Theology as Queen's Theological College which would later join the United Church of Canada. During WWII the Faculty of Applied Science expanded greatly to meet the war time needs for expertise in physics and engineering. Medicine and Engineering begin accepting female students. In 1957 a Faculty of Law was added to the university and other changes and expansions made it possible for Queen's to meet the needs of the expanding student population. By 2000, Queen's had a combined undergraduate and graduate student enrolment of more than 13,000 students and close to 1000 faculty members. The operating grant in 2000 was \$171.4 M.

When the Queen's University Faculty Association made its decision in the fall of 1995 to seek certification as a labour union under the terms of the Ontario Labour Relations Board, it validated what many members of the university had suspected for some time, that the collegial management system was no longer sufficient to handle adequately the complex problems, both academic and financial, of the latter years of the twentieth century. The notion that faculty members ought to be willing participants in their own financial demise by graciously accepting salary reductions and loss of benefits and privileges in order to maintain the university was simply no longer tenable or viable. Many faculty members were tired of the numerous committees which debated issues for years but never reached any conclusions or recommendations to implement change. More importantly, in an attempt to give some

weight to the salary discussions that occurred between the faculty association and the administration, the faculty association had been discussing the possibility of implementing a formal Dispute Resolution Mechanism (DRM) with the administration. In 1995, the DRM discussions had been going on for two years with no resolution or convergence of opinion in sight. When the administration finally rejected QUFA's preferred form of DRM, the faculty voted to seek certification. However, when the faculty did vote overwhelmingly in favour of certification, the membership gave the Queen's University Faculty Association a mandate to bargain a collective agreement that would constrain the union's right to strike, and the management's right to lock-out, by mandating a dispute resolution mechanism for financial matters. Ironically, there are those who believe that QUFA would have called a strike vote in order to get the DRM it so wanted. Seven years after that decision there remains a sense among the faculty at Queen's that nothing really has changed and that the faculty association does not perceive itself in the clothes of a trade union, but rather bargaining with its employer under a special plan which has some legal clout and under which resolution to financial disputes can be sought from an outside party. The dispute resolution mechanism has been used only once, namely to settle the salary agreement for 2001-02 but the threat of implementing final offer selection arbitration encouraged settlements in both 1997 and 2002. Queen's appears to want to maintain at least the facade of gentility and seamliness that it perceives

exists at its two non-unionized sister universities, the University of Toronto²⁷⁴ and McGill University, but at the same time have the power to bargain salary increments that are in line with comparable universities within the province of Ontario and across the country.

As was the case with both the University of Manitoba and Dalhousie University, the issues that moved the Queen's University Faculty Association to seek legal certification were long-term and multifaceted. They included both external influences and internal distrust, dissatisfaction and conflicts. The most important external factor was the victory of Bob Rae's New Democratic Party government in 1991. Rae swept to power in the province of Ontario on a platform that promised more efficient and effective use of public funds. In order to make certain that new levels of efficiency were reached and that "restructuring" would take place, Rae introduced his "Social Contract" whereby all public service employees, including those teaching in post-secondary institutions would be forced to accept salary rollbacks equivalent to eight unpaid days or 5% of salary each year. In addition, there were serious cutbacks to the operating grants at all of Ontario's post-secondary

²⁷⁴ The University of Toronto Faculty Association bargains working conditions and compensation with the Board of Governors under a Special Plan arrangement. Salary disputes can go to arbitration. The McGill Association of University Teachers does not bargain but does have discussions with the administration concerning salary increments. There is no formal dispute mechanism.

institutions. In 1995 the province voted against Bob Rae and replaced his government with Mike Harris' conservatives in the hope that this would bring some financial relief to the social fabric of the province. Equally unfriendly to academia and despite the advice of a government-commissioned study on post-secondary education, Harris proposed further cuts to the education sector and to the post-secondary sector in particular. Faculty members at Queen's could see no light at the end of the very dark, narrowing tunnel.

Internally, discontent with financial matters and frustration at the unwillingness and slowness of the Queen's Senate to recognize and resolve problems specific to the faculty caused a chasm between the administration and the faculty. Eventually the level of discontent was galvanized by two particular management decisions, the first, in 1991 was to impose an unacceptable salary settlement on the faculty, and the second, in 1994, was to refuse to bargain with QUFA under a special

plan²⁷⁵ arrangement after having given QUFA an indication that they would be likely to do so.²⁷⁶

PROVINCIAL GOVERNMENT INTERVENTIONS:

Two successive provincial governments, the first, the New Democratic Government of Bob Rae, 1991-1995, followed by that of Progressive Conservative Mike Harris, 1995-2002, imposed serious and debilitating financial cuts on the Ontario education system in general and on the province's universities in particular. The provincial government policy forced the university administration to behave as responsible corporate citizens and to toe the line when it came to spending. Simply put, the universities were not permitted to spend more than authorized in their operating grants; deficit budgeting was not to be tolerated. In the period, 1991-95, the grant to Queen's University was cut by about 30%, which meant that the university

²⁷⁵ Special Plan bargaining allows the parties to negotiate working conditions and compensation under terms and conditions to which both parties have agreed. Special Plan bargaining is outside the jurisdiction of both labour legislation and of labour relations boards. It can build in grievance and arbitration procedures, but in the final analysis it can only be enforced through the civil courts.

²⁷⁶ John Scott Cowan, letter to the author, 12 June, 2002. Part of the problem was a clear misunderstanding between the administration and QUFA concerning the negotiations of a dispute resolution mechanism. The principal had implied to QUFA that whatever arrangement resulted from the Task Force would be implemented, QUFA thought of it as a promise.

had to find ways to implement major budget cuts or to face the ire and censure of the provincial government.

Bob Rae's mission had been to force greater fiscal responsibility and to reduce spending across the province. He intended to achieve those goals by forcing all public sector employees to buy into a social contract whereby that sector would find ways to decrease spending or would accept a government imposed salary cut equivalent to eight unpaid days, a wage reduction of 5%, in each year from 1993 to 1996. In 1991 the provincial government had proposed increases to the operating grants of the province's universities over the next three years of 1% (1991-92), 2% (1992-3) and 2% (1993-94), however, by June of 1992, the government announced an operating grant freeze to all universities and proposed, instead, an agreement to allow university tuition to increase by 7%.²⁷⁷ The government's top priority for the period was "economic renewal" and on a visit to Queen's in March 1992, Rae underlined his premise that "there is room for more efficiency in all public sector institutions [. . .] and universities have shown a tremendous reluctance to change."²⁷⁸ His government was determined to force change, regardless of consequences.

In February 1993, Rae announced that the provincial ministries of Education, Colleges and Universities and Skills Development would be amalgamated under a

²⁷⁷ "Freeze in '93 Chills Budget Makers." The Whig-Standard 27 Nov. 1993: 1.

²⁷⁸ "More Efficiency Needed." Queen's Gazette 1992: 1.

new minister, David Cooke. This move put academic study and research in the same portfolio as practical learning and technical training. This forced union would cause serious repercussions down the road as the disparate groups competed for the same monetary envelope. Early in 1993 the Rae government began discussions with the public sector employees with a goal to cut \$7 billion from the deficit. Most of this reduction would have to come from salaries in the public sector. The discussions began at “sectoral tables,” groups of representative organizations in which post secondary education was initially linked with the elementary and high school groups. This forced linkage created conflict and animosity among the levels of the education sector. Later it was decided that a separate “sectoral table” would be more appropriate for the university²⁷⁹ sector and ultimately it was recognized that each university needed to bargain independently with the government. As a group, the universities put forward some guiding principles that they believed were essential to the outcome of the negotiations. Perhaps the most important principle was that the universities were autonomous institutions and each had to retain the right to manage its own affairs in a way that would best meet its particular mission and student needs. The Ontario university presidents wanted to retain as much autonomy for the universities as possible and suggested that the government should employ income tax surcharges rather than a structure of compensation on the institutions; the government should ease restrictions on tuition fee increases; and the government should have discussions

²⁷⁹ Queen's University Senate, Meeting Minutes 22 April, 1993.

with OCUA rather than directly with the universities. Most of these suggestions were ignored.

In the summer of 1993, the province opened discussions on its proposed “Social Contract” by which \$2 billion dollars would be saved annually from public sector salaries. Rae allowed institutions until 1 August 1993 to negotiate appropriate salary reductions with staff before imposing the eight unpaid days, or 5% salary reduction mandated by the social contract. Institutions that were successful in meeting this deadline would not be reduced by 20% of the proposed reduction, that is, 20% of 5%. However, this was still not enough savings for the government and in the fall of 1993, the Deputy Minister of Education and Training wrote to all universities warning them to begin planning for a further reduction in their operating grants. At least \$24 million would be cut from the annual operating grants to the province’s universities.²⁸⁰ In January of 1995, the federal government announced a proposal to reform transfer payments for post-secondary education for 1996-97, with the potential of eliminating them. The provincial education minister announced that there might be further cuts to post-secondary education necessitated by this announcement. Ontario universities had never been in worse financial conditions.

1995 was an election year for Ontario. Queen’s was reeling from the budget cuts of the past five years and uncertain what was to be financial policy for the coming

²⁸⁰ "What Was Said," The Gazette 6 December, 1993: 3.

year. A change in government might bring some new dollars into the public sector but there was no certainty of that. In fact, the financial situation of the province would only get worse and despite a report of the Advisory Panel on Post-Secondary Education²⁸¹ which recommended that the government increase funding to universities to at least the Canadian national average, Ontario announced that transfer payments would be “frozen” at the 1996-97 level. In 1996-97 the provincial government had cut funding for post secondary education by \$400 million.²⁸²

INTERNAL DECISIONS

According to Donald Carter, a former dean of the Faculty of Law at Queen’s, the decision to certify was all about “money” and not about “rights.”²⁸³ However, I would propose that central to QUFA’s decision was also the desire to be respected and taken seriously as an association of professionals. Faculty members were discouraged that their initiatives concerning faculty working conditions were too often either ruled out of order or defeated at senate. The decision by Principal David Smith in 1991 to impose a salary settlement on the faculty of 0% scale increase and 1% merit was the decision that laid the groundwork for much that would transpire between QUFA and

²⁸¹ Smith, David. Future Directions of Post Secondary Education in Ontario. Toronto: Ministry of Education and Training, 1996.

²⁸² "Ontario Goes Ahead With 1997-98 Funding Freeze," CAUT Bulletin 44.1 (1997): 9.

²⁸³ Donald Carter, personal interview, 20 March, 2002.

the administration of Queen's from 1992 to certification. This was a precipitous decision taken in the light of impending budget cuts and threats from the provincial government and created a very clear rift between the Queen's faculty and the administration.

During the spring of 1992, within Queen's, a consultative group, comprised of administration and faculty representatives had been attempting to come to an agreement on faculty salaries for the 1992-93 academic year as the current agreement would expire on 30 June 1992. By this time it was clear to the Queen's administration that the provincial operating grant would be \$1.2 million less than expected for the 1992-3 academic year. In May 1992, after considerable discussion within the consultative group, the administration believed that there could be no agreement with QUFA. The principal, exercising his authority, imposed a settlement of 0% scale increase and 1% merit. The faculty were incensed and realized that they would be entering a period of severe financial constraint at very low salary levels. In announcing this decision to the board of trustees, Dr. Fraser, the Vice-Principal, Resources, emphasized "that care had been taken to avoid cutting areas relating to the learning environment" and admitted to the trustees that "agreement had not been reached with the faculty association."²⁸⁴ It is unfathomable how a reduced operating grant and imposed salary freezes or reductions would not affect the "learning

²⁸⁴ Queen's University Board of Trustees, Meeting Minutes 8,9 May, 1992.

environment.” The Queen’s Gazette reported on 8 June 1992 that a three-year compensation agreement had been reached between staff and the university:

Discussions with faculty have ended without an agreement being reached. As a result, the university will impose the terms of this year’s compensation - a one per cent PTR-merit pool from which salary increases will be drawn.²⁸⁵

QUFA believed that going into the social contract, Queen’s salaries were substantially behind other faculty salaries in the province and that the effects of the social contract would make the situation even worse.²⁸⁶ This belief was even confirmed by the administration when, in speaking to the board of trustees on May 14-15, 1993, Vice-Principal Fraser admitted that salaries of Queen’s faculty members were behind peer institutions:

[. . .] in an environment in which its peer institutions last year were paying 5.5% -6% increases, Queen’s had provided a 1% increase for faculty. He noted that the average salary for Queen’s professors was about \$75,000, compared with \$81,000 in peer institutions.²⁸⁷

²⁸⁵ "Staff and University," The Gazette 1992: 1.

²⁸⁶ Donald Carter, personal interview.

²⁸⁷ Queen's University Board of Trustees, Meeting Minutes 14/15 May, 1993.

Despite this admission, Queen's pushed ahead with its budget restraints in order to end 1993 with a balanced budget.

1993 was a difficult year for Queen's. Early in the year, President Smith had indicated to senate that he was "aware that concerns had been expressed that some of the traditions of self-government were being eroded, and that too many decisions were being made centrally."²⁸⁸ To resolve these problems, he initiated discussion of collegiality and a review of senate operations. In March 1993, senate received a report from an ad hoc committee of the Alma Mater Society on hiring, promotion, tenure and leave²⁸⁹ that called into question the procedures and policies for these important faculty issues. The report indicated that the Queen's system allowed the principal not only to have a role in the decision, but also to be the final arbitrator of any appeal process. The committee wanted to see changes that would render the procedures more transparent and fair across the university. The debate proved to be long and tortured and called into question some time-honoured university traditions. In addition, in the course of the debate, the question of which university body was appropriate for discussion of faculty issues would be seriously challenged as some faculty members fought openly for the right to control the policies and procedures that affect their lives, such as promotion and tenure.

²⁸⁸ Queen's University Senate, Meeting Minutes 21 January, 1993.

²⁸⁹ Queen's University Senate, Meeting Minutes 25 March, 1993.

Early in 1993, QUFA, still smarting from the imposed salary settlement of 1992, had begun to look at dispute resolution mechanisms and in fact was suggesting that QUFA members should consider negotiating with the administration terms for a special plan under which they would bargain for salaries and other monetary benefits. At the heart of such a plan would be a clear dispute resolution mechanism that would provide the opportunity for a third party to resolve salary differences. Perhaps modelling themselves on the University of Toronto, the QUFA executive began to prepare information for the membership on various dispute resolution mechanisms that might be adopted. QUFA had not yet proposed this possibility to the administration but was working to inform its members first.

In April 1993, three CUPE locals on the campus finally reached agreement with the university on salaries for 1992-93. They had been bargaining with the assistance of a government appointed mediator for over a year. The settlement offered a 1% increase in the first year, followed by about a 3% increase, depending upon the union, in the second year of the contract. In the bargain, the employees lost their “no layoff clause.” There was some worry on campus that the administration’s insistence upon the removal of the “no layoff” clause was a sign of times to come.

In that same month, QUFA surveyed its membership to determine how discussions should proceed with the administration. The results of that survey showed that the faculty supported the idea that there ought to be some sort of dispute resolution mechanism in place. 79.3% voted in favour of implementing a dispute resolution mechanism, however, 51.8% voted for negotiations under a special plan,

while 45.1% preferred full certification. The president of QUFA wrote to Principal Smith requesting that negotiations for a dispute resolution mechanism begin. Unfortunately, the administration dragged its heels and neglected to respond and when it finally replied, the answer was a request to establish a committee rather than make a decision to act. Finally in June 1993, the administration agreed to establish a task force on dispute resolution mechanisms. QUFA immediately named two members to the task force. The administration, doubtless preoccupied with social contract negotiations with other units on campus did not name their representatives. It was October before Principal Smith replied to QUFA, only to say that the “terms of reference” for the task force needed clarification. Discussions on the terms of reference took place during the month of November. By December the administration and QUFA had agreed upon the terms of reference for the task force, but it was not until January 1994 that the task force finally began its work, nine months after it had been requested. Although the terms of reference for the task force were clearly identified, it is now evident that it was never made clear to the parties what action, if any, would be taken as a result of the task force’s recommendations. This was a mistake. David Smith had only a few months left in his term as principal and may have been reluctant to bind the university and a new principal to an agreement with QUFA.

During that nine-month period, a new principal, William Leggett, was named and was due to take office the following August. Social contract negotiations had been difficult, especially with the CUPE unions on campus and as soon the

negotiations had been completed, Queen's was informed by the ministry of the full impact of the budget cuts. Smith tried to renege on the negotiated salary settlements with the CUPE unions, indicating that he had little understanding or respect for negotiated labour settlements.

Negotiation of the social contract took the place of prominence in the university and the province. In the midst of the social contract discussions, the ministry asked the OCUA to review the provincial system for distributing operating grants to the universities and asked the universities to look at their governance structures and to recommend changes to membership on boards and senates such that those bodies would be more representative of the community and its needs. The questions for Queen's were how to improve staff and student representation on the governing boards, and where such representation would be most effective, on the senate or the board of trustees. As if the social contract had not been enough, now the very fabric of the university governance system was called into question. In addition, the ministry wanted a central body to examine new ways of cooperation between universities, resource sharing and rationalization. Locally, Queen's was in its own flurry of reviews as it examined its own programmes, mission and financial viability. The question of university governance was addressed by a special meeting of the board of trustees held on December 3-4, 1993. The theme session, entitled, "Governance, Accountability and Strategic Planning" took place over two days and allowed the board members to examine four main issues—governance and representation, committee structures, external accountability and internal

accountability and strategic planning.²⁹⁰ That the discussion took place almost entirely in the absence of any significant representation of the faculty and was only reported in summary form to senate is significant although senate had engaged in its own review of governance, “in the context of pressures for external accountability.”²⁹¹ There were so many sub committees of senate and review committees in place that one of the issues raised in senate, in the context of budget cutting, was the possibility of reducing the number and size of committees. Queen’s appeared to be drowning in its bureaucracy.

Despite the length of time it took for the administration and QUFA to consider the terms of reference for the dispute resolution task force, it seems that there remained some confusion as to the purpose of the task force. In the senate minutes of 27 January 1994, it was reported that the task force would include a consideration of dispute resolution for student problems. A long debate ensued in senate between the principal and Professor Manson, president of QUFA and a member of senate, who argued that the task force should be reserved for examining faculty issues and that the ad hoc committee of senate would be the appropriate body to address the student concerns.²⁹² The debate continued at the following meeting of senate where Professor

²⁹⁰ Queen's University Board of Trustees, Meeting Minutes 3/4 December, 1993.

²⁹¹ Queen's University Senate, Meeting Minutes 14 December, 1993.

²⁹² Queen's University Senate, Meeting Minutes 27 January, 1994.

Manson tried to point out that since a task force had been established to examine faculty matters as a precursor to special plan bargaining, it would be best if faculty matters were left to that body. He said:

[. . .] the Executive of the Faculty Association had engaged in negotiations with the Principal and Vice-Principal Fraser regarding the setting up of a Special Plan to deal with dispute resolution. Since that time, a 4-person Task Force had been established with the goal of developing a proposal for a suitable dispute resolution mechanism which would deal with compensation and non-compensation matters, to be submitted to the community for approval. One of the issues under discussion was a grievance model for faculty. In order not to undermine that process, he was asking that faculty matters not be discussed at the same time in another body.²⁹³

The opposition was adamant, with other faculty members disagreeing and accusing Professor Manson of suggesting that “faculty issues should be dealt with through collective bargaining rather than collegial means. This would have the effect of undermining student participation in the process.”²⁹⁴ Professor Manson replied that QUFA was

²⁹³ Queen's University Senate, Meeting Minutes 17 February, 1994.

²⁹⁴ Queen's University Senate, Meeting Minutes 17 February, 1994.

[. . .] committed to Queen's being a community of scholars and a place of energetic inquiry, and he supported the CAUT statements on having a strong senate; he added that the community had changed and was no longer a homogeneous community.²⁹⁵

Indeed the rift between those who wanted things to remain as they had always been and those who wanted change was widening and many of the members of senate were not ready to accept that faculty issues were discussed in any other forum. Dr. Manson's motion failed.²⁹⁶ Despite his participation in the senate discussion, the principal did not correct Dr. Manson's understanding that the faculty would have an opportunity to decide on a dispute resolution mechanism. This was a missed opportunity to set the record straight.

A second issue, close to the heart of the academy was procedures and criteria for faculty promotions. Eighteen months earlier, in December 1992, senate had initiated a process to review the procedures for promotions. There had been two independent reports prepared by external consultants on the current procedures. At that time senate had requested that Senate Committee on Appointments, Promotions, Tenure and Leave (SCAPTL) make recommendations for changes to the current

²⁹⁵ Queen's University Senate, Meeting Minutes 17 February, 1994.

²⁹⁶ Professor Marvin Baer, Manson's chief opposition, would later become one of QUFA's chief negotiators.

policy based on these external reports. A draft document had been prepared and circulated to various interested parties. It is interesting to note that while two students participated as full voting members on SCAPTL, and faculty members who were senators were represented, QUFA had only observer status on the SCAPTL committee and only on 1 October 1993 was QUFA formally invited to comment on the draft revisions. On 4 October QUFA responded that since QUFA was negotiating a special plan, “all issues relating to the terms and conditions of appointment ought to be frozen” and “that the timing and appropriateness of providing views to SCAPTL was contingent on other things.”²⁹⁷ Despite QUFA’s reservations, the SCAPTL committee continued its work and prepared a document for approval at senate. In February 1994 SCAPTL had prepared a revised draft which contained two major changes, changes in language to clarify procedures and a deletion of the section on “Review and Appeal Processes”. Despite the fact that it was the appeal process that was causing concern, SCAPTL deemed it best to delay discussion of the review and appeal process until the new principal had joined the university. In the spring of 1994, QUFA was asked for its comments on the draft and this time, QUFA replied. However, QUFA’s recommendations for revisions as outlined in a letter from QUFA to SCAPTL dated May 6, 1994 had not been included in the senate draft. Professor Manson requested that QUFA’s revisions now be considered as amendments to the draft before senate. At this point senate bureaucracy prevailed and the senate quite simple became bogged

²⁹⁷ Queen's University Senate, Meeting Minutes 23 June, 1994.

down in its own rules, unable to decide whether to consider QUFA's amendments and finally defeated Professor Manson's motion, but only after Principal Smith had already ruled them "out of order" as they would "change materially the substance of the main motion." Lost in the debate was any consideration of the validity or the appropriateness of QUFA's amendments to policies that would substantially affect their membership. The document as presented to senate was finally approved, disregarding QUFA's input. The winds of change were blowing at Queen's and while the faculty accepted that senate was the body that traditionally dealt with academic matters, they were becoming uneasy and frustrated with the process and with the lack of real, meaningful input that the faculty as a group appeared to have on important academic issues.

In May of 1994 the food services workers, employees of the Marriott Corporation who provided the food services on the Queen's campus went on strike. Senate became involved in the dispute because senate had been asked by the principal to review those areas of policy that involved, "values critical to the university." Again, Professor Manson, president of QUFA voiced his opinion at the board of trustees saying that "many persons disagreed with the judgements referred to by Dr. Williams [the vice-principal] and felt that the university over reacted in the situation." He said that 'although food services workers are officially employed by Marriott, board members might play a role in suggesting how a fairer working environment could be

achieved and in encouraging those involved to resolve the strike situation.”²⁹⁸ When he pushed the point further in saying that he “felt there were better ways of handling the situation,” the chairman ruled “that this was not a topic for discussion, in light of the legal advice received.”²⁹⁹ This incident, however minor, indicates that the sympathies of the board of trustees were not with any union or unionized group, and, moreover that the chair of the board of trustees had no compunctions about shutting down any discussion or debate that he did not want aired.

In the summer of 1994, David Smith left the office of principal at Queen’s University and was replaced by William Leggett, formerly of McGill University. Chosen by a search committee formed by the board of trustees, Leggett, Vice-Principal, Academic at McGill was an obvious choice and although those at Queen’s do not readily admit that there was a conscious effort to seek out a new principal from a non-union environment, both Donald Carter and Frank Burke hinted that this may have been a consideration.³⁰⁰ Shortly after his arrival, Leggett suspended the work of the task Force on Dispute Resolution and stepped directly into the discussion with QUFA on dispute resolution mechanisms. “Key board members had told Dr. Leggett that regardless of any task force finding, the board would not give up its power to set

²⁹⁸ Queen's University Board of Trustees, Meeting Minutes 13/14 May, 1994.

²⁹⁹ Queen's University Board of Trustees, Meeting Minutes 13/14 May, 1994.

³⁰⁰ Donald Carter, personal interview.

wages [. . .] so he apparently felt he needed to carry the persuasion of QUFA on his personal charisma.”³⁰¹ In a recent interview, Dr. Leggett recalled the urgency with which he had attempted to resolve the conflict over a dispute resolution mechanism. In concert with the board of trustees, he believed firmly that to allow a final offer dispute resolution mechanism that would be decided by an external arbitrator would have been tantamount to “handing over the reigns of power” to an outside party.³⁰² Those discussions did not go very well; in fact by October Principal Leggett was at loggerheads with QUFA and the task force was reinstated. By November, the task force had agreed upon two models. The first model, and the one ultimately favoured by the faculty was binding final offer selection arbitration, the model favoured by the administration was a non-binding internal mechanism that would be advisory to the board of trustees. The faculty association understood that the results of the task force would be put to a vote of the faculty and that their decision would carry the day. The administration had no such understanding and now denies that there ever was a vote on DRM.³⁰³ In fact, what subsequently transpired began the spiral toward certification.

In December 1994, Principal Leggett updated senate on the status of discussions concerning dispute resolution, in which he had personally intervened. He

³⁰¹ John Scott Cowan, letter to the author.

³⁰² William Leggett, personal interview, 4 December, 2002.

³⁰³ William Leggett, personal interview.

presented his proposals for handling individual grievances and salary disputes. He stressed that “since the board of trustees was responsible for the financial well-being of the university, it was not feasible for the decision of the appeal board concerning salary issues to be final and binding.” QUFA had disagreed with this position and wanted salary disputes to go to a three-person panel, one of whom would be external to the university. Since they had been unable to agree upon this point, the discussion went back to the task force. The next step would be a series of town-hall meetings with the community to allow “a broad discussion of the issues involved and the models being proposed.”³⁰⁴ Clearly Leggett’s first foray into negotiations with faculty had not gone very well.

In February 1995, the town hall meetings were held and shortly afterwards QUFA members voted on their choice of dispute resolution. Approximately 50% of the eligible faculty members voted, and an overwhelming 66% of them voted for binding final offer selection arbitration and only 34% voted for an internal appeal board. When Principal Leggett reported this news to the board of trustees on March 3-4, 1995, the chair of the board, announced that he had formed a board task force on dispute resolution, consisting of board members, to review the Principal’s report and make a policy recommendation. In May 1995, the board task force presented its report. The chair of the task force was adamant that the board had an obligation “to

³⁰⁴ Queen's University Senate, Meeting Minutes 15 December, 1994.

maintain the fiscal integrity of Queen's.”³⁰⁵ The task force had adopted the principles that the dispute resolution process should build agreement rather than confrontation and be fair and equitable. The board task force decided that both proposals that had been presented failed to meet these principles. In particular the board could not approve the faculty-favoured proposal for binding arbitration since the board “should not delegate financial responsibility [. . .] because delegating financial decision-making to a constituency of the university ran the risk that other constituencies might suffer because of those decisions [. . .] .”³⁰⁶ The board task force recommended mediation between the parties and that the mediator would prepare a report that would provide advice to the parties. The board felt that any outside arbitrator who would not be familiar with the university could be “the thin edge of the wedge which could ultimately lead to people outside the University appointing arbitrators... and that board authority was needed.”³⁰⁷ The report of the board task force was approved by the board. QUFA had been given no real opportunity to react to this new proposal. Despite the implied promises previously made to QUFA, the university now refused to bargain a special plan with binding arbitration on salaries.

³⁰⁵ Queen's University Board of Trustees, Meeting Minutes 12/13 May, 1995.

³⁰⁶ Queen's University Board of Trustees, Meeting Minutes 12/13 May, 1995.

³⁰⁷ Queen's University Board of Trustees, Meeting Minutes 12/13 May, 1995.

The events at Queen's University are yet another example of a university administration that missed an opportunity to work with the faculty, to find negotiated means by which their differences could be settled outside of the provincial labour board jurisdiction. It is also another case where the administration failed to appreciate the resolve of the faculty for change or to understand the depth of the faculty's dissatisfaction. Dr. Leggett maintains that although he had done "a lot of homework" prior to accepting the position of principal at Queen's, he had no idea of the tensions that existed on campus and the fact that the faculty were very close to certification when he arrived in August 1994.³⁰⁸ In this case, after agreeing to establish a task force to investigate possibilities of special plan negotiations, including some sort of dispute resolution mechanism, the administration dragged its' heels for several months before naming its representatives to the task force. This, in and of itself, is not unusual practice for universities where every side must be heard and consensus reached on parameters of responsibility before action can be taken. The mills of academia do grind slowly. However, it seems that there was a basic misunderstanding of what would be done with the task force's recommendations. According to Dr. Cowan, the previous principal, David Smith, had merely implied to QUFA that the results of the task force would be followed. QUFA, on its part, believed they had a promise. In addition, having agreed to establish a task force and then, in fact, establishing that task force in January 1994, the question must be raised why did the new principal,

³⁰⁸ William Leggett, personal interview.

having only just arrived on campus, with no previous negotiation experience, and no experience of a union, believe that he could step into the discussion and personally craft a solution. The answer lies in the board's insistence on maintaining control of the financial matters of the university and their demands that the new principal assure that outcome. Dr. Leggett claims to have had no knowledge of any promises made to QUFA with respect to either special plan bargaining or DRM. It is safe to speculate that there may have been a lack of communication among the senior administration and the board of trustees.

Despite, or perhaps because of Leggett's intervention, the task force was derailed. His view of the solution was clearly not shared by the QUFA members of the committee and that he reported to senate in November 1994. The task force then resumed its own deliberation, conceived two proposals, one for binding final offer selection arbitration on salaries and one for an internal appeal mechanism. As promised, the faculty had an opportunity to vote on the two proposals early in the winter of 1995. Not unexpectedly, QUFA members voted for binding, final offer selection arbitration. That might have been the end of the discussion. However, at the board of trustees meeting on March 3/4, 1995, Principal Leggett reported the results of the vote and was simultaneously informed by the chairman of the board that, "he had that day formed a board task force on dispute resolution."³⁰⁹ The responsibility of that task force was to review the work of the principal's task force and to report to the

³⁰⁹ Queen's University Board of Trustees, Meeting Minutes 3/4 March, 1995.

May meeting of the board. The task force included only external board members and no faculty representation or, in fact, any representation from the senior university administration. The recommendations of both the administration and QUFA were being called into question by the board, despite the faculty vote and the administration's involvement.

The board task force endorsed neither proposal because neither met the board's self-defined principles: that the dispute resolution process should build agreement and be fair and equitable—a tall measure. The task force praised the experiences of the consultative group, the group of faculty and administration representatives who, in reasonably good financial times had been able to reach solutions on monetary matter but who, in 1991 were incapable of reaching agreement and caused the principal to impose an unacceptable settlement, which had, at least in part, been one of the factors that caused the faculty association to seek special plan bargaining. The consultative group did not have a stellar track record and of course, had only the authority granted to it by the principal and the board.

The board of trustees was worried that any external arbitrator could impose a settlement that would plunge the university into debt, in violation of their recent agreements with the provincial government. According to Marvin Baer, the university was worried because final offer selection arbitration at the University of Toronto some years previous had caused that university financial difficulty. In any case, the board of trustees' task force proposed a system of internal mediation whereby the appointed mediator would meet with both sides and try to get an agreement, if no agreement was

possible, the mediator would issue a report to both sides. It would then fall to the board to settle the matter with the faculty association having no further recourse. This undoubtedly suited the board, but did not suit the faculty association and while Dr. Burfoot, the president of QUFA was polite at the board meeting, she made it clear that QUFA was not ready to accept the proposal.

The Queen's senior academic administrators as well as the board of trustees may have underestimated the intensity of concern felt by the faculty and the level of sophistication and preparedness of QUFA or, they may deliberately have weighed the options and truly believed that anything would be preferable to the DRM favoured by QUFA.³¹⁰ They may have believed that by adopting a paternalistic, authoritarian attitude, the faculty association would back down on their demands and agree. This was not so. QUFA was very well placed to act quickly. Many of its more senior members had served on CAUT academic freedom and tenure committees or had been advisors to other faculty associations engaged in collective bargaining. QUFA had good support among the professors in the Faculty of Law who were ready to help and advise on the certification process. They knew what they had to do. In refusing to bargain with the faculty association in a special plan arrangement, the administration drove QUFA to certification.

³¹⁰ William Leggett, personal interview.

On May 25, 1995, just days after the disastrous board of trustees meeting, the Kingston Whig-Standard reported, “Queen’s faculty begins drive for union membership.”³¹¹ The report stated that at a meeting held the previous day, all those present voted to begin the process of certification on the condition that they would form an independent union and not affiliate with any other labour organization. QUFA immediately passed motions to alter the QUFA constitution to exclude senior managers from the association. The principal commented that “the university would respect any decision the faculty association makes,” and added, “I expect business to continue as usual.”³¹²

However, business would become very different, very quickly. On May 24, 1995 the faculty association held a meeting of its membership and voted overwhelmingly in favour of asking members to sign union cards. At the same meeting amendments were voted to the constitution to restrict the membership to the teaching and research faculty and exclude those who held management positions. Although there had been a majority vote in favour of a sign-up campaign, the faculty was far from unanimous in their feelings. Frank Burke, a professor in the Faculty of Arts joined the QUFA executive to reorganize the union and to develop support as

³¹¹ Kingston Whig-Standard, 25 May 1995.

³¹² Kingston Whig-Standard, 25 May 1995.

they moved forward³¹³ QUFA needed to establish a council which would be representative of the different disciplines and faculties to which bargaining issues could be taken for discussion and approval. In order to establish such a council, QUFA would need wide support across the university. Professor Burke was aware that the certification process had not always gone smoothly at other universities and that the professional faculties and departments with ideological differences were likely to oppose the union. At Queen's he found the Economics Department divided along ideological lines and mostly opposed to unionization while the Law Faculty, an area of serious dissension at the University of Manitoba was not opposed. However, the engineers were mostly opposed to the union, as were the physicists who respectfully suggested that academics were not like other workers and that the academy operated differently from other work places. Faculty in the business school were sceptical of how the union would work for them, but not outrightly opposed to the idea of unionization. It was Professor Burke's task to talk to all of the groups and to convince them of the benefits that the union would bring to them. QUFA also established an advisory council of members from other faculty unions across the country from which the executive could draw experience and advice on bargaining matters.

By the third week of August 1995, just three months after they had begun the process, QUFA applied for certification from the Ontario Labour Relations Board. It appears that there was no major opposition mounted by the administration and little

³¹³ Frank Burke, personal interview, 22 March, 2002.

conflict over the membership of the new union although the administration later raised the question of inclusion of certain categories of adjuncts. This rather calm approach to certification of the faculty may have been, at least in part, due to the recent appointment of John Scott Cowan as Vice-Principal, Operations and Finance, at Queen's. Cowan came to Queen's from the University of Ottawa, where the faculty had been unionized for many years. In fact, Cowan had been active in the University of Ottawa Faculty Association prior to becoming a vice-rector at that institution. Unions were not new to him and he truly believed that management could and profitably function in a unionized situation. Perhaps it was serendipitous that Cowan had taken up residence in Kingston just days before QUFA applied to the Ontario Labour Relations Board for certification. He was called to a meeting with the principal, members of the senior administration and board of trustees before he had even officially taken up his position, and asked for his opinion and advice on the situation. Cowan advised them that it was possible to work in a unionized setting. Cowan's mandate was immediately expanded to include labour relations as there was no one else on the administration who was prepared to deal with the fledgling union. This decision ensured a relatively smooth transition to a new mode of management at Queen's.

The certification vote was held on September 27 and 28 and a month later the Ontario Labour Relations Board announced that 57% of the members at Queen's had voted in favour of certification, a sufficiently large majority to guarantee success. Always reticent and understated, the QUFA executive characterized the votes as one

“for more equitable relations between the academic staff and the university” because “fair representation and the power to negotiate has become increasingly important as pressures on the post-secondary sector increase.”³¹⁴ Although there were serious difficulties within the university, QUFA was more comfortable putting the blame for their actions on the provincial government.

Despite the fact that Principal Leggett had said that it would be “business as usual”, the Queen’s senate took the QUFA decision to certify seriously and began to consider what their role would be in a unionized environment. Although members of the union, many senators were concerned that senate would lose at least some of its power as the supreme academic decision making body of the university. Senators were aware that the collegial process and collective bargaining had created strained relationships at other institutions. It was proposed that senate undertake to discuss this issue and a task force was established to determine how best to facilitate such a debate at senate. In the winter of 1996, just as negotiations were beginning, senate devoted parts of the January and February meetings to a discussion of “The Role of Senate in a Unionized Environment.”³¹⁵ Members of the QUFA executive participated in the debate and Michael Manson, speaking on behalf of the QUFA

³¹⁴ "Queen's Votes to Certify" CAUT Bulletin 42.9 (1995): 3.

³¹⁵ Queen's University Senate, Meeting Minutes 25 January, 1996

---. Meeting Minutes .29 February, 1996.

executive outlined QUFA's motivating principles and noted that these principles indicated that QUFA and senate shared common values:

QUFA supported senate as the principal, academic decision-making body and wanted to see it strengthened;

QUFA felt that senate/board policies which were working well should be maintained and protected; however, those which were not working well should be changed [. . .];

QUFA supported the appropriate delegation of decision making;

QUFA believed in the importance of fair process and fair, effective and expeditious review mechanism.³¹⁶

Manson's intervention may be seen as an attempt on the part of QUFA to demystify the collective bargaining process and to reassure faculty colleagues that the bargaining process need not change the culture of the university. Whether he believed this is a moot point. For the most part, the debate at both meetings focused on how senate could maintain its role as the academic authority and how it could advise or influence the bargaining process. John Cowan carefully reminded senate that while in the past, some smaller universities had left some issues to the jurisdiction of senate despite the presence of a collective agreement; this was unlikely to happen at this

³¹⁶ Queen's University Senate, Meeting Minutes 25 January, 1996.

time. However he assured senate that in his experience “agreements developed in the last few years had sought to preserve a venue for qualitative decisions.”³¹⁷

Bargaining for the first collective agreement began in January 1996 under the shadow of more provincial budget cuts. In fact, negotiations were suspended during the winter while a package of voluntary options including early retirement, reduced appointments and combinations of the two were discussed by the administration with the union. The administration had recognized, for the first time, that these issues had to be negotiated and discussed with QUFA before being presented to the membership. In return, the administration gained QUFA’s support of the packages and tacit support of the programme. QUFA wrote to its members again blaming the “budget cuts which have been imposed on the university sector by the Ontario government [. . .]” and saying, “we have given our consent to the offering of this package because, in the current circumstances, we feel that this is an important initiative. We urge members who are eligible to give the voluntary options serious consideration.”³¹⁸

Negotiations began with discussions of “broad principles” that were intended to protect the “academic well-being” of the university.³¹⁹ However, even under the aegis of the agreed-upon “broad principles,” little of substance was settled during the

³¹⁷ Queen's University Senate, Meeting Minutes 25 January, 1996.

³¹⁸ QUFA Negotiation Update 12 January, 1996:2

³¹⁹ William Leggett, personal interview.

first months of negotiations. The parties engaged in long and convoluted arguments on language for dues check-off,³²⁰ non-discrimination, and intellectual property.

Intellectual property issues took on paramount importance in this negotiation because in 1992, a senate policy had basically given all of the rights to the individual creators.

Some members of the board of trustees took the position that all rights had to be recovered for the university or the board would not ratify the agreement. However, most of the board members felt that the university ought to regain only some of the rights that they had inadvertently given up prior to collective bargaining. John Cowan recalls that “the board members did not see IP (intellectual property) as a financial saviour, but rather saw that the University ought to have some rights, which they didn’t fully understand they had given up before collective bargaining began [. . .].”³²¹

On other matters, Marvin Baer, one of the QUFA negotiators, admitted that “we were new to this [...] and we wanted to re-invent the wheel.”³²² Instead of accepting the senate policies on various personnel matters and incorporating them into the text, the negotiators drafted and crafted new text for virtually all of the articles. By the end of

³²⁰ Under the “Rand” formula, all eligible members of a union must pay dues because they all benefit from the negotiated settlement. However, all those eligible do not have to be members of the union and, provision is made for those who object for religious or conscientious reasons to unionization may have their dues donated to an appropriate charity

³²¹ John Scott Cowan, letter to the author.

³²² Marvin Baer, personal interview, 19 May, 2002.

September, 1996 only a handful of articles had been signed off, and most of them were administrative matters rather than matters of substance such as rights or compensation. Negotiations centered on dispute resolutions and how various mechanisms would be implemented to resolve personal grievances as well as union grievances and compensation disputes.

In October the bargaining teams made a strategic decision that altered the course of negotiations and enshrined a method of dispute resolution into the collective agreement and the culture of Queen's. The parties decided that if negotiations had not been satisfactorily completed by December 5, QUFA would apply for conciliation to the Ontario Labour Relations Board (OLRB).³²³ For its part, QUFA formed a strategic action committee to prepare for work action and to support the bargaining

³²³ In November 1995 the Harris government revoked major amendments to Ontario labour law that had been introduced by the NDP. The Conservatives also enacted legislation to require mandatory votes for all certification and collective agreement ratifications as well as prior to all lawful strikes. In addition, the Harris government enacted legislation that made it easier to decertify a union when it declared that if a union fails to negotiate a collective agreement within one year after being certified, and if it appears that 40% of the employees wish to be decertified, a vote to decertify may be called by the employer. In addition, the employer has the right to insist that the bargaining unit vote on what it defines as its final offer. It may do this only once. A vote of all the employees in the bargaining unit would be conducted and if 50% +1 of those voting accept the employer's final offer, it becomes a binding contract whether or not the union executive agree with it.[Sheila McIntyre, Recent Changes to Ontario's Labour Relations Act (Kingston, ON: Queen's University, 2000).]

team, and the QUFA membership voted to join the CAUT Defence Fund, an emergency fund that provides financial assistance to member unions in case of a strike. Membership in the CAUT Defence Fund would make clear to any administration the seriousness which the faculty association was according to collective bargaining. Carefully and determinedly QUFA had taken all of the necessary steps to protect its members. The decisions taken in October would assure that both parties put forward their best effort in the remaining weeks in order to reach a settlement prior to the deadline because the consequences were serious. If conciliation was requested, the OLRB would appoint a conciliator who would first assess why an impasse had been reached and then attempt to resolve the problems. The conciliator would then recommend that a conciliation board be established or that “no board” is necessary. Should a “no board” recommendation be put forward, the union would be in a legal position to strike or take job action and the administration would be in a legal position to lock the employees out. This self-imposed deadline put considerable pressure on the parties to reach a solution. After three final weeks of intensive bargaining, QUFA and the administration reached an agreement on all issues, including compensation, at 3:15 a.m. on 6 December 1996.

That agreement was due in part to the expertise at the bargaining table. According to individuals from both sides of the table, much of the credit for the progress goes to John Cowan, who is variously referred to as “a masterful

bargainer”³²⁴ and “a dominating, megalomaniac.”³²⁵ A physiologist by education and training, Cowan had become an experienced labour negotiator who had not only practised the art of negotiating, on both sides of the table but had also taught the skills. By all accounts Cowan was always prepared and ready to bargain. He bargained not only with the union but also with his administrative colleagues, among whom he was the only one with any union and collective bargaining experience. He made certain that he had the support of the administration and the board before going to the bargaining table and saw it as his responsibility to brief the administration and to put forward reasonable positions. He used the months from August 1996 to January 1997 to educate his colleagues in the senior administration about collective bargaining, other collective agreements and how specific provisions really worked. His job was not an easy one as he had to convince colleagues who trusted in a collegial system to give collective bargaining a chance. The board was very concerned about the possibility of external arbitration partly because they were afraid that an arbitrator would award too generous a settlement but mostly because they saw both collective bargaining and arbitration as a derogation of their power. However, by the time he actually got to the bargaining table with QUFA, Cowan had gained their trust and had a good deal of latitude in what he could propose.³²⁶ Immediately that Cowan left

³²⁴ Donald Carter, personal interview.

³²⁵ Marvin Baer, personal interview.

³²⁶ John Scott Cowan, letter to the author.

Queen's, the relationship with QUFA deteriorated and the board had the opportunity to experience arbitration.

On its side, QUFA was well prepared and mature. It sought assistance from CAUT, hired legal counsel and mobilized its own members. The executive was well organized and prepared weekly updates for the membership to keep everyone informed of the progress at the table.

The results of the bargaining process gave Queen's a collective agreement that included as a dispute resolution mechanism—final offer selection, to be used if necessary in three years time when salaries would again be bargained. Also included were procedures for handling financial exigency, employment equity provisions and reasonable terms and conditions of employment of academic staff and a reasonable article on Intellectual Property which obligated the inventor to give the Queen's exploitation company, PARTEQ a fair hearing as the exploiter and the obligation to give Queen's a percentage of profits if PARTEQ wasn't used. However, on the compensation side, scales remained frozen and the only increase was a modest increase in the merit increment, from \$1442 to \$1900 in the first year and \$2000 in the second year. It would take another two rounds of compensation bargaining for Queen's to begin to achieve salary increments comparable to those in other Ontario universities.

Frank Burke, the President of QUFA, announced, "It's a good agreement. This is a new era of cooperation between the administration and the academic staff at Queen's University."³²⁷ At a Senate meeting some days later, Dr. Leggett announced the agreement and Dr. Cowan added that he would be recommending full support of the agreement to the board of trustees. It is assumed the board of trustees supported the agreement although the discussion was held entirely in a closed session meeting on 10 January 1997 at which the only agenda item was the collective agreement. There was no mention of the settlement recorded in the minutes of the open session at any future meeting of the board of trustees.

Since that first collective agreement in 1997 Queen's has bargained two collective agreements, the second in 1999, for the period 1999-2002, and the most recent, in 2002 for the period 2002-2005. The 1999-2002 Collective Agreement allowed for salary openers on adjustments to base salaries for the years 2000-01 and 2001-02. The parties reached an agreement at the table for a 2.15% scale increase in the 1999-2000 year. The implication was that this amount included an amount of rattrapage that would continue until the Queen's faculty had "caught-up" with other similar Ontario universities. In 1999, after bargaining the settlement with QUFA for the 1998-2001, John Cowan left Queen's to become the principal of Royal Military College, Kingston. The negotiations for the second year of the agreement, 2000-01, did not go well. The union argued for a continuation of the rattrapage, the

³²⁷ Frank Burke, personal interview.

administration did not see any need for further “catch up” especially in light of the consumer price index for 1999 at 0.9%. Cowan’s departure for Royal Military College made “a huge difference”³²⁸ in how QUFA was treated and the lines of communication between the administration and the faculty association broke down. Since there was no possible way to bridge the gap, the parties opted for final offer selection arbitration as mandated by their collective agreement. This was the first opportunity that they had to test the methodology.

QUFA presented a twenty-one-page brief in which they argued that as public service employees they had been subjected to government salary policies such as the social contract that had only been applied to the public sector and had only affected their salaries. QUFA argued that had they been certified earlier, they would have enjoyed more clout in bargaining through the difficult years from 1992-97. They also argued that their salaries lagged behind other Ontario universities and, perhaps their most specious argument, that they were paid less than similar workers in the private sector. In that argument they may have overreached themselves.

³²⁸ Donald Carter, personal interview.

While the arbitrator, Me. M. G. Mitchnick, found in favour of the administration's position he made the point that "neither of the parties' positions can be said to lie patently beyond the realm of justification."³²⁹ He also noted that:

[. . .] for a gap of so relatively small a magnitude, the number of fundamental issues raised by the parties' submissions is quite extraordinary. Clearly, neither proposal can be said to be wildly unreasonable, and with the prospect of another salary arbitration built into the present collective agreement for next year, I am loathe [. . .] to say more than I have to.³³⁰

Dr. Leggett was naturally pleased with the results but maintains that the differences that led the parties to arbitration were differences of principle and that there was no gloating in the administration over the outcome.³³¹

In 2001-02, the parties bargained from December 2000 to March 29, 2001 before reaching a salary settlement for the year of 3.7% and again in 2002 they were able to bargain a new collective agreement without reverting to arbitration. Perhaps the possibility of final offer selection arbitration is the impetus that both of these well

³²⁹ M. G. Mitchnick, In the Matter of Final Offer Selection Between: Queen's University Faculty Association and Queen's University [Toronto] 11 May, 2002.

³³⁰ M. G. Mitchnick, In the Matter of Final Offer Selection 2.

³³¹ William Leggett, personal interview.

disciplined parties need to push their positions closer and closer until there is convergence and agreement.

QUFA made its decision to certify after all internal routes to change had been explored and the doors virtually slammed in their faces. In 1992 the university mistakenly believed that if it showed restraint with faculty salaries, it would get more money from the government. In retrospect, Donald Carter, former Dean of the Faculty of Law, believes this was a "big mistake" because those low salaries were then solidified by the social contract and became a festering sore within the faculty. The belief that additional money would be forthcoming from the government was unfounded.³³² The second mistake was the refusal to accept special plan bargaining with a dispute resolution mechanism. That was the final, identifiable act that pushed the faculty association to certify. However, there was a myriad of other, little irritants that added to QUFA's discontent, mostly relating to the over abundance of committees and the early attempts to satisfy the faculty demands for more autonomy with senate reform and change.

At Queen's, as at the University of Manitoba and Dalhousie University, the discussion of important academic issues that regulate the lives of faculty members has shifted from the senate to the bargaining table. Issues of concern to faculty are now discussed and resolved at the bargaining table despite the fact that even after the

³³² Donald Carter, personal interview.

first collective agreement was settled, faculty members of senate still wanted to have the debates at senate and had to be reminded that this was no longer appropriate. According to Dr. Leggett, the Queen's senate has evolved since that first collective agreement. Since then senate has stopped spending its time on issues related to terms of employment and returned to the academic business of the university. As principal, Dr. Leggett had made a conscious decision to keep senate strong as an academic voice and had determined to send all academic issues to senate for debate and recommendation. He now sees senate as more focused, with much more of the work being done in senate committees. According to Dr. Leggett there has been little, if any change, in the board of trustees since certification. He believes that the Queen's board of trustees is very cognizant of the difference between governance and management, and that they do not meddle in the management of the university except to expect that the senior officers of the university will act in the best interests of the university.³³³ They do strike a small committee to follow negotiations and to whom the administration must justify any salary increases or other monetary issues. Since Queen's has a royal charter the provincial government is precluded from an intervention in the management of the university or the control of the board. The board of trustees is drawn from across North America and provides an international rather than a local focus for the university. Any issue that is not specifically related to working conditions or compensation, such as deregulation of tuition fees, is decided at

³³³ William Leggett, personal interview.

the board of trustees with little or no consultation with QUFA. The administration has accepted that issues of working conditions and compensation must be discussed at the bargaining table but, at least according to some faculty members, there is little or no voluntary consultation with QUFA on university matters. However there is a monthly luncheon meeting between Principal Leggett and the president of QUFA at which general university matters can be discussed.

There is a sense that the union offers the faculty some protection from lack of consultation but there is no sense, at least on the part of those with whom I spoke, that the union is a political force on campus or has any real clout beyond the negotiating table. Despite their collective agreement which assures academic freedom, faculty members were reluctant to talk with me during the 2002-05 negotiations. There remains a group within QUFA who feels that they have been tainted by their association with a trade union and who have no “sense of the pervasive undercurrent of unfairness which many felt when subjected to the traditional Queen’s way.”³³⁴

Dr. Leggett wonders if there was anything that could have been done to achieve a different outcome in 1995. Although he believes that there are many positive aspects to the collective bargaining process, he regrets that they could not have been achieved without the formality and legality of collective bargaining. However, when comparing the situation at Queen’s to that at McGill, where he was

³³⁴ John Scott Cowan, letter to the author.

the Vice-Principal, Academic, he sees efficiency at Queen's that comes from the collective bargaining process that forces an end point to discussions. An optimist, Leggett, sees the collective agreement as a way of doing things well in the first instance, rather than making arbitrary decisions which may create time consuming and conflicting results.

The question remains, where will Queen's be in twenty years and will they still need the formality of a collective agreement to achieve their goals. It is almost impossible to look into the future of post-secondary education in Canada, but if provincial government interventions and funding problems persist, it is highly likely that the union is there to stay since, at least at present, there is no other mechanism that allows parties to come together on an equal footing to decide issues of importance such as working conditions and salaries.

CHAPTER 6 ANALYSIS OF COLLECTIVE AGREEMENTS: IS THE PEN MIGHTIER THAN THE SWORD?

To understand what has occurred on the campuses of English Canadian universities over the past three decades, it is essential not only to listen to what the academics and the administrators have to say, but also to study what arrangements have been enshrined in collective agreements and the words that they have used to craft those binding agreements. It is also important to note, despite the processes mandated by any collective agreement, where the decision-making power lies.

Early collective agreements were frequently brief. For example, the first collective agreement between the University of Manitoba and the University of Manitoba Faculty Association in 1975-76 had thirty-three articles plus a preface and objectives, and was contained in about fifty type-written pages. Articles were short, often a page or less, and stated the responsibilities of the administration and the member. In contrast, the 1998-2000 agreement was composed of thirty-seven articles plus a preface, objectives, four letters of understanding, a description of the bargaining unit and an approved grievance form. It occupied one hundred and thirty-two typewritten pages. The differences are summarized below:

UNIVERSITY OF MANITOBA COLLECTIVE AGREEMENTS, 1975-2001

1975-76		1998-2001	
Number of Articles	Page Length	Number of Articles	Page Length
17	<1	7	<1
11	1	13	1
2	2	7	2
3	3	1	3
1	5	2	4
1	14 ³³⁵	2	5
		1	6
TOTAL: 35		1	7
		1	9 ³³⁶
		1	12 ³³⁷
		1	16 ³³⁸
		1	18 ³³⁹
		TOTAL: 39	

While the length of any particular article is not necessarily indicative of its importance to the collective agreement as a whole or, in fact, to the parties concerned, it is an indicator of the description of criteria, regulations, and procedural steps

³³⁵ Academic Freedom, Responsibility and Tenure.

³³⁶ Leaves other than research/study leaves

³³⁷ Promotions

³³⁸ Discontinuance of Members' Appointments

³³⁹ Academic Freedom, Faculty Rights, Duties and Responsibilities, Discipline, Appointments and Tenure

deemed necessary to ensure the intended implementation. In 1975-76, 25.8% of the collective agreement was devoted to one article, “Academic freedom, Responsibilities and Tenure.” This implies that these were important and significant issues for both parties. In 1998-2001, four articles, Academic Freedom, Duties and Responsibilities, Promotions, Leaves and Discontinuance of Members, constituted 40% of the collective agreement.

In the first round of bargaining of any newly certified union, the lion’s share of the power and rights rests with the administration and it is up to the union to wrest what powers it can from the administration by the persuasive influence of its negotiators as to what is a fair and equitable division of that power, or by trading more or different labour services for some power or rights. In ways, the first collective agreement between any faculty association and university administration establishes the paradigm for what will follow as the tone and language of subsequent collective agreements usually follow the model set down in the first collective agreement. On this issue, Arnold Naimark, the former President of the University of Manitoba, commented, “You establish a response pattern and a behaviour pattern that gets transmitted from generation to generation.”³⁴⁰ Thus if the union’s goal is to rein in the administration, not by taking decision-making power away but rather by constraining that power such that the process involved becomes transparent and open to criticism, appeal, grievance and arbitration should the result not be satisfactory, then that pattern

³⁴⁰ Arnold Naimark, personal interview, 6 November 2000.

of bargaining seems to continue and each subsequent collective agreement will enshrine similar and increasing constraints for each issue discussed. However, should the union decide at the outset to claim for itself some of the decision-making power such that the peer review process is very strong and carries a good deal of weight in the decision-making process with little or minimal input from the administration, then it seems that there are fewer specific constraints constructed to limit the specific process but rather general appeal, grievance and arbitration articles which are intended to handle all disputes.

SHALL OR WILL, MUST OR MAY: IMPERATIVES IN COLLECTIVE AGREEMENTS

One of the most striking elements of any collective agreement is the use of the terms “shall” and “will”, “must” and “may”. At first glance, it may seem that unions believe that by imposing the imperative form as frequently as possible they will somehow bludgeon the administration into doing the activity correctly; be it establishing a committee, preparing a reasoned report, or simply behaving fairly and equitably. In the first collective agreement between Dalhousie University and the DFA the article on appointment and re-appointment of faculty was written in twenty-four clauses. The imperative “shall” was employed forty times in instructing peer review committees as well as administrators on their responsibilities and roles. Twenty years later the same article was written in fifty clauses in which the imperative “shall” was employed seventy-seven times. A doubling of the instructions on procedure and policy for this issue resulted in almost a doubling of the use of the imperative. There is perhaps a sense that the more profoundly the participants are

constrained to act according to the rules that have been agreed upon, the easier it will be for the faculty association to find fault and grieve an unfavourable result or an incomplete or inappropriate procedure. Legally, however, the excessive use of “shall” and “must” makes very little differences to the responsibilities of either party.

COLLECTIVE AGREEMENTS

A sequential examination of a selection of the collective agreements negotiated at the University of Manitoba, Dalhousie University and Queens University provides an important perspective on how the power has shifted and how the management and governance of those universities have changed as a result of the collective bargaining process.

UNIVERSITY OF MANITOBA

The University of Manitoba Faculty Association became the certified bargaining agent for the faculty and librarians at the University of Manitoba in 1974 and has been bargaining collective agreements, every two or three years, since that time. The association’s strategy in that first round of bargaining was to write a collective agreement that would include everything: “we wanted to have everything in [...].”³⁴¹ By this, the union executive meant that their goal was to have an article to represent each important issue with discrete text.³⁴² This was an astute move on the

³⁴¹ Nora Losey, personal interview, November 2000.

³⁴² Nora Losey, personal interview.

part of UMFA because it asserted the parties' ownership of those issues negotiated and put text in the collective agreement that could be bargained at each subsequent round of bargaining. The other strategy, which may have been implemented upon the advice of the CAUT advisors, was to negotiate rights issues first on the understanding that salary issues could be left for a second or third round of bargaining.³⁴³ The first collective agreement, which governed the period 1975-1976, was short and rather succinct. It had thirty-three articles and was contained in fifty-two pages of typewritten text. The heart of that collective agreement was in three central articles, Article 18: "Hiring of Members"; Article 19: "Academic Freedom, Responsibility and Tenure;" and Article 20: "Promotions". These three articles detailed the manner by which faculty members³⁴⁴ were hired, reappointed, granted tenure, promoted and disciplined. They described the responsibilities of faculty members and the procedures for the assignment of those responsibilities. Together they comprise fifteen of the fifty-two pages, or 28.8% of the collective agreement. By 1987, these core articles constituted 30% of the collective agreement and have remained in this proportion ever since.

³⁴³ David Cameron, *More Than an Academic Question: University Government and Public Policy in Canada* (Halifax: Institute for Research on Public Policy, 1991) 345.

³⁴⁴ The University of Manitoba Faculty Association includes professional librarians. Clauses and sections of clauses specifically related to professional librarians have not been considered in either the count or the discussion.

EVOLUTION OF ISSUES

Hiring of Members

Central to the academic's sense of autonomy is the decision of who should be invited to become a member of the academic unit or department. Traditionally academics guarded the right to decide who would join their ranks. The first modern day educators, the monks and the clergy, picked their own students and decided when those students were ready to become masters themselves and begin teaching others. However, in Canadian universities, the decision on hiring was often left to the academic administration or, even more distantly, to the board of governors. In the pre-union days of both the University of Manitoba and Dalhousie University, the decision of where to allow a position to be filled and whom to hire was held firmly in the hands of the president or principal. In the first collective agreement at the University of Manitoba the question of hiring was handled in one short article composed of four clauses. It stated that a "reasonable number" of faculty members from the designated department ought to be consulted with the resulting recommendation going from the chair of the department to the dean. In this case, the dean became the decision maker. Because the collective agreement remained silent on when a position would be filled, it is assumed that remained a management right. Using the impact value described in Appendix IV the article was assigned an impact value of 2. That is to say, the issue was mentioned in the collective agreement, there was some possibility for faculty input into the decision but that input did not result from an elected peer committee nor was it binding on either the chair of the department or ultimately the decision-maker,

the dean. There was no possible formal recourse should the faculty not agree with the dean's decision.

Ten years later, in the 1987-90 collective agreement, Article 18 had expanded from four to thirty-one clauses and included provisions to favour Canadian citizens and stipulated that hiring must conform to a male female balance that had been approved by the Board of Governors in 1980. The advisory search committee still had to be composed of a "reasonable number of faculty members" but now those faculty members were to be selected by the dean from a list of five individuals chosen by the department. The dean or his/her delegate would be the non-voting chair of such search committees. All positions had to be advertised in appropriate publications such as the CAUT Bulletin, but this stipulation could be waived by the vice-president. Hiring decisions were still approved by the dean and negotiations with the candidate took place at the departmental level. The article in 1987 was given an impact factor of 3 because there was now clearly mandated responsibility to seek advice from the department concerned and procedures that provided for an open and fair search. However, the peer committee remained only advisory to the dean.

In the next collective agreement, Article 18 was increased by nine clauses and the text was augmented to include provisions for the Federal Contractors

Programme³⁴⁵ as well as tougher measures to ensure gender equity. Now, in evaluating candidates for a position, search committees were mandated to take into account career interruptions caused by family responsibilities. The committee structure and mandate remained the same as before with the dean making the decision. The impact factor remains at 3.

In the 1993-95 collective agreement there were only two significant changes to the text, the first strengthened the equity clauses as it pertained to gender and visible minorities, and the second mandated that the Association would be informed of the search process and its procedures after the process had been completed. In addition, the vice-president academic had to be informed of the recommendation before any appointment was made. The appointment was made by the dean. An impact factor of 3.5 was now assigned to the article because the association, while not controlling the hiring decision, had reasonable representation on the hiring committee, the rules for hiring were well defined and the Association received information, albeit after the fact, about all hirings. This enabled it to take action, if required, upon receipt of the information. The dean was now directly on record as responsible for his or her decision to the vice-president, academic. It would appear that the union, or perhaps the management, wanted some additional control on the dean's decision.

³⁴⁵ Federal Contractors Programme is an initiative of the Canadian government by which contracts for research and development work may be awarded to Canadian institutions who comply with the federal guidelines relating to designated minority hiring.

In 1998-2001 several new clauses were added to the article to provide directions for spousal hiring in recognition of the university's need to attract faculty members who would not consider the position if an academic spouse were not also offered a suitable position. While this need was recognized by both parties, the text wording prescribes procedures that would prevent a new hire from being foisted upon an unreceptive department and hence limiting the power of the administration to make convenient appointments.

Thus after over twenty years of bargaining the faculty at the University of Manitoba still has only recommendatory power in the making of academic appointments. However, the rules and procedures are clear and the requirement to report the process to the Association allows for any inconsistencies to be identified and dealt with. Gone are the days when Ernest Sirluck, the president in the early 1970s, could decide which departments would be given permission to fill a vacant position and who would be hired and under what circumstances to fill that position.³⁴⁶

Academic Freedom, Responsibilities and Tenure

This long, complex article was the heart of the collective agreement in 1975. It defined the parties' understanding of academic freedom, detailed the responsibilities

³⁴⁶ Ernest Sirluck believed that it was the President's prerogative to decide on all of the conditions of appointment of a new hire, including that individual's tenure status. (Ernest Sirluck, personal interview, January 2002).

of faculty members, both in the classroom and in the university context, and set down the procedures for tenure consideration and the appeal and grievance process as they specifically related to tenure. Of the one hundred and twenty clauses in the article, thirty-seven clauses, or a third, were directly related to the tenure process and twenty-one of those dealt with appeal and grievance processes specific to the tenure decision. There are few direct references to criteria for tenure and virtually no language to standardize the procedures across the university. Indeed each Dean, might, upon advice from his/her faculty establish the tenure committee of choice and “any additional criteria and procedures that he or she feels should be established at the faculty level...”(Art. XIX.9.a.3.a).³⁴⁷ The President retained his right to grant tenure on appointment (XIX.5.a.1) and his right to decide on all tenure cases (XIX.9.d.2) and the administration maintained its insistence that tenure is not granted by virtue of the legality of the collective agreement:

[. . .] all faculty members who have tenure prior to the commencement of this Agreement or receive tenure during the life of this collective agreement shall have and hold tenure independently of the existence of this Agreement (XIX.5.e).

Ernest Sirluck had been adamant that the granting of tenure would not become a union driven award but rather would remain in the purview of the academic

³⁴⁷ "Collective Agreement Between the University of Manitoba and the University of Manitoba Faculty Association," April 1, 1975 to March 31, 1976.

administration. Dr. Sirluck drew a fine distinction between academics acting in their capacity as university senators and academics acting in their capacity as union members. This clause has remained in the collective agreement to date.

However, indicative of the relations between the union and the administration at the time, the article included a long, involved section on the procedure for appeals and grievances pursuant to a negative tenure recommendation. The faculty had been accustomed to tenure refusals and were attempting to ensure that should tenure be refused in the future, the member would have adequate recourse.

By any account this was a landmark article because it was the first comprehensive tenure article to be negotiated in an English Canadian university. It has an impact factor of 3.5 because there is provision for faculty input, albeit organized and decided upon by the Dean. There are significant safeguards in the form of formal appeals on substantive grounds and grievance on procedural grounds for faculty members whose tenure application might be rejected on capricious or unfounded grounds. However, it is the administration in the persons of the dean, the vice-president academic and ultimately the president who hold fast to the right to render the final decision.

1976-77

In 1976-77 there were very few significant changes to Article 19. The only one of real substance was a provision to allow members to apply for early tenure consideration if they so wished. The stakes however were high as the consequence of

not being granted early tenure was termination of appointment. There were no new rights issues involved and the impact factor remained at 3.5.

1987-90

In the ten years between 1977 and 1987 there were a few significant changes to Article 19. Of the 41 clauses dealing directly with tenure, 19 of those clauses are concerned with appeal and grievance procedures. The dean retained the right to establish “any procedures” he or she felt necessary at the faculty level and must advise the faculty of those decisions. The dean selects the type of tenure committee, establishes the committee and now sits on that committee as the non-voting chair. The dean now submits the committee recommendation, his own recommendation and that of the department head to the vice-president, academic who adds his recommendation and sends it to the president for his decision. The ultimate decision maker has not changed although several steps have been added to the process. The appeal and grievance processes for tenure remain unaltered and the impact factor remains at 3.5, the edge being given to the union, not because they have any more control over the process but because they have maintained the high degree of scrutiny on the process by means of appeals and grievances.

1990-1993

There were no significant changes to Article 19 in this round of bargaining. The impact factor remains at 3.5.

1993-95

Despite the evidence that this was a difficult round of bargaining³⁴⁸ there were at least two significant changes made to the tenure article that strengthened the faculty position. The first was to mandate "at least one (1) person of each gender on each tenure committee" (Art. 19.D.1.3) and, more importantly, the commitment that an individual would receive, upon the granting of a probationary appointment, the criteria and weightings that would be used in his/her tenure hearing, six years later (Art. 19.D.1.6). This change certainly levelled the playing field for the faculty members and gave them assurance that the tenure rules would not change under their feet. It was a step in the direction of fairness and equity. The impact factor remains at 3.5 since the union did not make any gains in the composition of the tenure committees or in the decision-making process.

1995-98

At the outset of this round of bargaining the parties were seriously conflicted. The last negotiations had been difficult; UMFA had lost a strike vote and believed that the administration took advantage of their relatively weak position to force an unfavourable contract. The main issues in 1995 were redundancy and the right of the administration to lay off tenured members. Ultimately there were no significant

³⁴⁸ During this round of bargaining, UMFA held a strike vote on the issues but was unsuccessful in winning a majority of the members. See chapter 3.

changes to Article 19 but a completely new Article 28, Discontinuance of Members Appointments, was written which defined academic programmes and units in detail and governed the layoff of tenured faculty members.

1998-2001

In 1998 the union again addressed the tenure procedures and managed to make some significant changes to the procedures requiring the department chair, the dean and the vice-president, academic to write his/her decision and give specific reasons for the decision related to the criteria and weightings established. This was a significant change since it now demanded that the faculty member concerned also receive the recommendations from each level in writing at the time that such recommendations were sent to the next evaluative level. Again, not so much a real gain in the power struggle between the union and the administration but another very real and transparent constraint upon the administration's decision-making process. The impact factor remains at 3.5.

2001-2004

There were no changes to this article in the most recent round of bargaining.

Promotion

When bargaining the first collective agreement, UMFA made some strategic decisions. One such decision was to have a very short article that mentioned promotions but merely stated that the department head must seek the advice of the departmental members prior to making a recommendation to the dean and ultimately

to the president. This decision allowed negotiations to move forward while reserving the union's option to concentrate on this article in the next round of bargaining in 1976-77. In 1975, the impact factor of the Promotions article was 1. It was mentioned but there were no stated procedures or criteria.

In 1976-77 the Promotions article was given very high priority in the bargaining agenda and expanded to 27 clauses with 14 of those clauses devoted to appeal and grievance procedures for use in cases of promotion denial. As is the case of tenure, UMFA had decided to constrain the administrative decision makers rather than seek peer authority in the decision process. Although the article made clear criteria for each of the required elements in performance--teaching, research and service, the management retained control of specific criteria for each faculty or school; "the dean/director [. . .] shall be responsible for establishing the criteria, if any, to be used in the making of a promotion recommendation [. . .]. These criteria and their weightings shall be made known to all faculty members by the dean/director" (Art. XX.2.b.). There were no precise departmental or faculty procedures except to say that the department head "shall seek advice of the department in accordance with procedures developed by the academic staff members [. . .]"(XX.3). The recommendation went from the department head to the dean, who, one supposes, made the decision. The safeguard for the faculty against a capricious or unfounded decision was the elaborate appeal procedures which included a Promotion Appeal Panel consisting of members elected by the faculty or school. The Promotions Appeal Panel had the final decision after one loop back to both the dean, to allow for a change

of opinion, and the individual, to allow for comments in the case of a decision different from that of the original decanal decision. The member had the right to grieve the procedure. The impact factor is assigned at 3 because of the power of the appeal panel. However, there is no mandatory peer review or recommendation. There are no university-wide procedures and the association receives no information about the process.

By 1987, Article XX had expanded to 35 clauses dealing specifically with faculty promotions, with 14 of those clauses pertaining to the appeal and grievance procedure specific to promotions. The changes over the ten-year period included a faculty promotions committee which was to be composed in each case to reflect the candidate's department. Both the department head and the dean sit on the committee in a non-voting capacity with the dean as chair. Recommendations are made to the dean, who makes the decision. The impact factor by 1987 was 3 to reflect the existence of representative committees and imposition of deadlines. The process remained largely in the hands of management despite the representational nature of the Promotion Appeal Selection Committee and the existence of a Standing Promotion Appeal Selection Committee. The article was unchanged in 1990.

1993-95

In the 1993-95 negotiations, tenure and promotions were both important articles for discussion and the changes that were made to the tenure article to guarantee stability of the process and to provide some gender representation on each committee were also reflected in the promotions article. In addition, all

recommendations were now mandated to be reasoned and in writing and the candidate was to receive a copy of the recommendation at each step in the process. The dean and the vice-president academic are made accountable to the association as both must give specific written reasons that relate directly to the criteria and weightings that have been established for their decisions. Similar to the changes in the tenure procedures that occurred at this time, the faculty member now could decide to be considered for promotion under either existing rules or rules in place at the time of hire. Time delays were tightened. In addition the parties agreed to establish a joint committee to "consider the advisability of, and the potential role for a University-wide promotion committee for promotions to the rank of professor." These changes gave the faculty members considerably more control of the process and change the impact factor from 3 to 3.5 due to the improvements in representation on the evaluation committee and the requirement that the management provide written specific reasons in the recommendations. There were no further changes to this article in the 1995-98 round of bargaining except to drop the provision to provide a joint committee to consider the advisability and potential role for a university-wide committee to consider promotions to the rank of professor.

1998-2001

The 1998 negotiations did not produce any changes to Article 20, except to re-introduce the provision of the possibility of a university-wide committee to recommend on promotions to professor. The impact rating remained at 3.5.

Two additional articles in the University of Manitoba collective agreements warrant some analysis. They are Management Rights (Article III) and Past Practices (Article IV). The Management Rights article is a standard statement in which the association recognizes the right of the University to operate and manage the business of the University in accordance with the University of Manitoba Act. This article has not changed, except to reflect updates of the University of Manitoba Act.

Under the law, employers are obliged to maintain those practices which affect the membership of the bargaining unit which have not been negotiated under the terms of a collective agreement. Such practices have to be commonly known to the management and the membership and there must be some tangible evidence that such practices exist. In including such an article in the first, and each subsequent collective agreement, the union was evidently trying to secure for its members those practices which were advantageous to the membership prior to certification. The administration, on the other hand used this article to secure for itself two very clear benefits: that working conditions do not include certain services such as telephone, telecommunications means or support staff; and that the Board is not obligated to replace any member who leaves the university. These two statements give the university a clear hand to alter the type and number of support staff and to decide when and if any faculty position shall be filled. Over the years Article IV has changed very little, except to require, since 1990, that should the university contemplate implementing any policy that would affect the membership, the association must be consulted.

This article gives a good deal of flexibility and power to the administration as they maintain the absolute right to hire or replace faculty and to change faculty support services at will.

Discipline and Dismissal

In the first collective agreement between UMFA and the University of Manitoba the issue of discipline and dismissal or suspension of members was relegated to five simple clauses tucked into a long article titled, “Academic Freedom, Responsibility and Tenure.” The decision to suspend or dismiss was made by the board of governors on the recommendation of the president who was not compelled to notify either the member concerned or the association. The impact factor for these clauses was 2. Ten years later, there had been significant modifications to these clauses, although the issue of discipline still remained incorporated in the large, all-encompassing article. The decision to suspend or discipline remained in the hands of the board of governors on the recommendation of the president but now the president had to give written notification of such action, with reasons, to the member and was compelled to notify the association that such action had taken place. The collective agreement has remained static on this issue since then with no changes being made to procedures, policies or possible sanctions that may be imposed upon a faculty member. Management has retained substantial control of disciplining and reprimanding its employees.

Summary

Overall, the negotiations at the University of Manitoba have produced a model of shared governance that reflects the tensions between the faculty association and the administration. Much of the decision making is left to the administration, however that decision-making power is under such scrutiny that the administration dare not make a capricious or unfounded decision unless it is prepared to deal with the consequences. The bargaining at Manitoba has resulted in a collective agreement that shares the responsibility between the administration and the union for those issues that are clearly governed by the collective agreement. There is no indication that there is a sense of collegiality or shared governance on things that are not governed by the collective agreement and no sense on the part of the union that it has achieved any political power on campus outside its mandated agenda.

DALHOUSIE UNIVERSITY

Similar to the experience at the University of Manitoba, the first collective agreement negotiated between the Dalhousie Faculty Association and the Dalhousie Board of Governors was short, forty-eight typewritten pages, and succinct. It included thirty-three articles of which nineteen were less than one page and only three articles required three or more pages. However, unlike the strategy employed at the University of Manitoba to bargain rights issues first, Dalhousie's faculty association went directly after increased salaries and a methodology to achieve an improved salary structure in the future. Hence, the article on the salary model and salaries required eight pages of the text as well as three pages of salary tables and a four-page career placement form included as an appendix. Rights issues appeared to get short shrift in this early

collective agreement with Promotion and Tenure each occupying less than a page of text. Appointment and reappointment were both covered in an article that was three pages long. The heart of this collective agreement was grievance and arbitration procedures, disciplinary measures and financial constraint, all of which set the stage for the confrontational relationship that would prevail between the DFA and the administration of Dalhousie University for the next two decades.

Article 12: Appointments and Reappointments

Dalhousie's first article on appointment and reappointment includes no procedures or criteria for either making faculty appointments or for renewing them save to say that an "appropriate committee of the relevant department, School, College, Library or Faculty" must be involved and the recommendation is sent by the chairperson to the dean/director, who makes the appointment. The majority of the clauses in this article are concerned with the type of appointments possible and with the mechanism by which part-time faculty might become full-time faculty. In ranking this article based upon the scheme presented in Appendix IV, an impact factor of 2 is assigned to this article.³⁴⁹ The issue is addressed in that faculty must have some representation in the recommendation that goes forward. There is no provision for appeal of non-renewed contracts, although the normal channel of grievance is available. However there is one crucial clause in this article that became central to the

³⁴⁹ Dalhousie Faculty Association includes professional librarians. Clauses dealing with this group are not analyzed or discussed here.

collective agreement, was the topic of much of the negotiations in 1987, caused a strike in 2002 and was believed by the bargaining unit to be central to its mission: it is the definition of the complement³⁵⁰ and the formula by which part-time faculty may be hired but may not be used to replace work done by full-time faculty.

Ten years later, 1988-90, the article had expanded from 24 clauses to 54 clauses and sub-clauses and included provisions for initiatives to favour female applicants. The emphasis in the article continued to be placed on the types of appointments possible and the allowable proportion of part-time faculty to full-time faculty. There are no procedures or criteria for selecting new hires and no explicit or implicit provisions for peer involvement in the decision save to require an “appropriate committee” as in the earliest contract. The impact factor remains at 2 with the management retaining almost full control of the hiring process.

The next contract, 1990-93, saw two significant changes to this article that were an attempt on the part of the union to control the actions of the dean and the president in the hiring process. The first change required the dean, should he disagree with the departmental recommendation, to consult with the departmental committee prior to making an appointment in an “endeavour to reach agreement on the matter” (Art. 14.11.(a)). The second change required the dean to prepare a written report of all candidates to whom offers were made and to submit that report to the Employment

³⁵⁰ Complement refers to the number of full-time faculty positions that must be filled at any particular time in a bargaining unit in order to protect the size of that bargaining unit.

Equity Officer. Since no time requirement was placed on this provision and since the report does not go to the faculty association, it has little impact. The impact factor remains at 2.

In the agreement of 1997-2001, the DFA took a step towards regulating the hiring committee by mandating that its members must respect the quorum with no deliberations transacted in the absence of such a quorum and further, that any vacancy on the hiring committee occurring after interviews had begun, would be left unfilled. However these changes do not really alter the division of power between the management and the academic peers but rather are an attempt to ensure fairness in the process. The impact factor is 2.5.

Promotion

The decision to promote faculty members to a higher academic rank is traditionally a decision that has rested with the academy. However in Canadian universities this decision was seen as a manifestation of the power of the administration and the board of governors in many universities. At Dalhousie, prior to certification, promotion had been the subject of senate discussion but the board had prevailed as the deciding voice in who would be granted promotion, especially promotion to the rank of Professor.

In the first collective agreement the procedure and criteria for promotions to the ranks of associate professor and professor were laid out. There was provision for a “representative” departmental committee and a “representative” faculty committee, which, in fact might be the tenure committee as mandated in the senate tenure

document. The committees had only the power to recommend. The department chair was required to make his or her own recommendation for submission to the dean along with the committee's recommendation. All of the recommendations including that of the dean were sent to the president for decision. The president informed the member and made his recommendation to the board. There was no special appeal or grievance process for promotion denials but the members had access to the general provisions in the collective agreement. The impact factor is 2.

A decade later substantial changes were made to this article and the committees, both at the departmental and the faculty levels, were no longer merely "representative" but "elected" by the members of that department or faculty. To ensure fairness, a committee member might not participate at both the departmental and faculty levels on the same case. In the case of promotion to the rank of Professor, the collective agreement now made clear how external evaluative letters for the candidates were to be solicited. The President was required to inform the member, in writing if the promotion was to be denied and reasons had to be given which pertained specifically to the promotion criteria. A Promotion Appeal Committee was established to provide for cases where promotion had been denied. The impact factor for the year 1988-90 is 3.5 to reflect the DFA's gain of control over the promotion process with elected committees at both levels, the requirement for the president's decision to be reasoned and in writing, and a specialized, representative appeal process.

The next collective agreement saw the faculty association demand even more control of the promotion process. It is now mandated that neither the departmental or faculty level committee should transact deliberations in the absence of a 2/3 quorum and that should a position on either committee become vacant after the process had begun, the position would remain vacant for the duration of proceedings on that particular case. Should a promotion be denied, the member must receive the reasons, in writing, “with sufficient particularity to assist the Member to understand the decision” (Art. 16.04). The impact factor for 1997-2001 is 4. The faculty association had gained significant control over faculty promotions by means of elected committees at both the departmental and faculty levels and the requirement for detailed, explicit reasons for promotion denial.

Tenure

The debate over which office or body ought to determine the outcome of the tenure proceedings reflects the very difficult discussions that occurred in the Dalhousie University senate prior to the decision of the faculty association to certify. As discussed in Chapter 4 above, there were two groups at Dalhousie and both groups wanted change. One group wanted the change to occur by means of senate reform which would have given the senate a more democratic appearance and would have removed the president of the university from the dual role of president of the university and chair of senate. The other group wanted change to come through collective bargaining. There was, and remains a contingent at Dalhousie University that believe academic decisions are the purview of senate, and those decisions include the decision to grant tenure. Just prior to certification, senate had consulted widely

and had prepared a senate document on tenure procedures. Those procedures were accepted by the majority of the faculty members and in the first round of bargaining, the decision was taken to refer to that document as the tenure procedures that would govern the process under the new collective agreement. Hence in the collective agreements from 1979 to 1996, the senate document was a reference tool.³⁵¹ While the tenure procedures were contained in a document outside the collective agreement they could not be negotiated at the bargaining table or be the subject of discussion between the administration and the union, thus senate held complete control of the tenure process for eighteen years after certification. In 1997, the decision was taken to move the text of the tenure document into the collective agreement. The DFA and the Dalhousie administration took ownership of the text and could now negotiate changes as desired and required. The tenure process now required an “appropriate tenure committee of the Faculty”. That committee would receive information and recommendations from the departmental level, either from a committee if one existed, or from the department chair. The dean recommends to the president who has the decision-making power. The 1997-2001 tenure article rates an impact value of 3 since there is no requirement for an elected committee at either the departmental or faculty level, there is no standardization of the process or criteria across the university, the dean has considerable power in the process and the president makes the decision

³⁵¹ The various clauses in the Tenure article refer to procedures for librarians and instructors, categories not governed by the Senate document.

based upon the information brought forward to him. There is a University Tenure Committee which is, in fact, a tenure appeals committee, to which a member denied tenure has access. The member may also avail himself of the grievance process in cases of procedural irregularities.

The negotiations of the tenure article for the 2001- 4 Collective Agreement may have taken a very different path had the faculty association and the university administration not been embroiled in a very messy and protracted case of tenure denial. As discussed in Chapter 4 above, the case of Professor Mathieson progressed from arbitration to the Supreme Court of Nova Scotia when the university appealed the decision of arbitrator Daniel Soberman to grant him tenure. As it occurred, the tenure article not only underwent some major changes to guarantee fairness to the member but also required that the president respect the time delays in notifying a member of the tenure decision. Most striking however, was the addition, at the beginning of the article of the provision for arbitration to a single arbitrator with a 90 day limit on the arbitrator's decision. Since the usual style of collective agreement articles places the criteria and procedures at the beginning of an article, followed by any appeal or grievance procedures, by placing this provision at the beginning of the article a confrontational tone was set that tends to presume denial. The impact value of the article is now rated at 4.

Disciplinary Actions, Suspension and Dismissal

Unlike their colleagues at the University of Manitoba, the members of the DFA placed significant importance on the issue of how its members could be

disciplined, suspended or dismissed and from the first collective agreement negotiated an article that constrained the administration by proscribing the circumstances, procedures and policies that could lead to any disciplinary action against a member. While relatively short, only twenty clauses, the article clearly constrains the management's possibilities for action by implementing a hearing committee, composed of two members named by the president, two members named by the association and two members elected by senate. From that group of six, one member from each designation would be chosen to sit on a three-person hearing panel for any case. The panel would recommend to the president not only whether or not discipline should be imposed, but also what sanctions, if any, could be imposed. The president was bound by the recommendation of the hearing committee. The high proportion of academics on the hearing committee, four academic members and two administrators, is highly significant. The association is involved at each step of the procedure and attends any meetings held with the member. The impact value of this article is 5 since the association has real input into the decision and power to hold the management accountable in the disciplining of members. There has been no change to this article since 1979.

The conflict between the parties is very evident in the Dalhousie collective agreements. There is a great effort in all of the "rights" articles to stipulate eligibility and requirements for processes and advancements. However, it is also clear to see that one of the overriding issues at Dalhousie has been compensation. The salary clause was the longest and the most detailed in the first collective agreement and it

continues to occupy twenty-four pages of text plus an additional twenty-four pages of schedules and six pages of appendices concerned with salary formula calculations.

The tension between the senate and the union has continued for many years and in all likelihood kept appropriate clarity and change from taking place in many of the rights articles, most specifically the articles on tenure and promotions. The faculty have not strengthened the peer decision mechanism to any great extent over the twenty-five year period of certification but rather have opted to contain the decision-making actions of the President, anticipate negative decisions and to institute appeal, grievance and arbitration measures to react to those negative decisions.

QUEENS' UNIVERSITY

Because Queen's University came to the collective bargaining forum very recently, its collective agreement is a sophisticated document in which the negotiating parties have relied on work done in the past at other universities and upon the experience and expertise of those who bargained the first collective agreement. There is good deal of economy in this collective agreement with one set of procedures for personnel decisions which are used for re-appointment, promotion and tenure decisions. There is even the provision that the all-purpose personnel committee may also handle new appointments.

Since there is one set of procedures that mandates the election of a personnel committee in each department which deals with re-appointments, promotions and tenure, there is, in all reality, just one article that mandates how the decision-making power is divided between the faculty and the administration.²¹ The articles specific to

re-appointment, promotion and tenure are elaborations of those academic rites of passage and specify the eligibility and criteria required for each of them. The impact factor of these procedures is 3, reflecting the elected committee structure and the requirement that reasons be given for decisions.

Article 13: Procedures for Personnel Decisions

Each department is mandated to elect a personnel committee which will in turn elect its own chair. The department head and the dean are excluded from this committee so that it is truly a peer committee that is recommendatory to the head, the dean and ultimately the president. The head of the department and the dean each make their own recommendation based on the file that has been presented by the candidate. Should the dean decide to recommend a decision other than that recommended by the committee, reasons must be given. The impact factor for this article is 3 for although the committee is elected, it is recommendatory.

In the 1999-2002 collective agreement, there were few changes to this article except to provide for both gender equity on the departmental committee and to provide for faculty at each rank to be represented. It is interesting to note that there is provision for student participation at the committee level. During the pre-certification discussions at Queens' the issue of student participation was debated with the majority of the faculty believing that students have a legitimate place in the academic decision-making process. The impact factor remains at 3.

In the most recently bargained contract, 2002-2005, the provision is added that the departmental committee must be elected “by a form of secret ballot.” This does not change the impact factor.

Article 12: Appointment of Members

Although this article has its own procedures, separate from those described in Article 13, it does allow for departments to utilize the personnel committee created by virtue of “Procedures for Personnel Decisions” or to elect a different committee. However, in the case of appointments, the department head chairs this committee which is recommendatory to the dean and the principal.

In 1999, the provision was added that the short list of candidates for any position must contain more than one candidate unless the committee can demonstrate that only one applicant has met the requirements of the position. However, this requirement does not in any effective way alter the impact factor of this article.

Article 35: Promotion

Of the articles governed by the common procedures, only the promotions article carries procedures specific to it. It requires a University Promotion Advisory Committee to provide advice to the principal on “whether an applicant has met the criteria for promotion to professor” (Art. 14.4.1). This committee is chaired by the vice-principal, academic and is comprised of 2 professors provided by the deans, 2 professors elected by the senate and two members selected by the association. The composition is significant since it includes four faculty members who have achieved

the rank of “Professor” and two, appointed by the association, who may, one presumes, come from any rank. The committee is recommendatory to the principal.

Article 39: Tenure/Continuing Appointment

The Tenure article relies on the standard procedures and only specifies the criteria and requirements for tenure.

Discipline

The Queen’s University collective agreement has included an article on discipline since its inception; however the article leaves much discretion to either the dean or the principal to decide upon disciplinary measures. The administrator must inform the member of the possible disciplinary action but is not under any particular time constraints to do so and may withhold information if he deems it useful. The impact factor for this article is assessed at 3. There were changes made to this article in 1999-2002 that required the dean or principal to give the member two days notice of any meeting and to advise the member in writing of any probable outcome, however these small changes do not significantly alter the impact factor of this article. It remains at 3 and the management retains the power to discipline and dismiss under very few constraints.

When the faculty association of Queens’ University decided to certify they did so reluctantly and almost solely to improve salaries. Had the university administration not been financially squeezed by the Ontario provincial government and, in trying to satisfy the government, offered the faculty no salary increase for the 1993-94 year, it is very likely that the Queen’s University Faculty Association would not have certified.

The Queens' collective agreement enshrines the peer review process and the notion that it is the principal, a "first among equals" who is charged with making the final academic personnel decisions. Of the three universities examined in this study, Queen's has been the most successful in achieving a shared governance with both parties, the union and the administration, each having important input into the final decision with respect to appointments, promotions and tenure. The confrontational issues at Queen's appear to focus on compensation rather than rights issues.

The collective agreements at these three universities reflect, in ways, the dynamic of the collective bargaining process at each particular institution. For example, at the University of Manitoba the "rights" issues were very important from earliest days of bargaining. The faculty association wanted not only to include everything in the collective agreement, but to ensure that management would be constrained in how they made decisions and would be held accountable for those decisions. Compensation issues were left for a second and third round of bargaining. While the labour relations atmosphere between UMFA and the administration was not ideal it did not degenerate into open confrontation until the faculty perceived that they were being threatened by an administration who, when faced with budget cutbacks from the provincial government, indicated that there may be closures of small units and lay off of tenured faculty members.

The strategy at Dalhousie University was different. From the first round of negotiations, the Dalhousie Faculty Association sought salary increments, a new salary structure based on qualifications and experience, and peer review processes for

re-appointment and promotion. The union was determined to gain control over the size of the bargaining unit and the general working conditions for faculty. However, they were content to rely upon the senate-mandated procedures governing tenure consideration for twenty years until it was perceived that change was needed.

CHAPTER 7
SUMMARY AND CONCLUSIONS: FROM SENATORS TO NEGOTIATORS: THE
CHANGED ROLE OF ACADEMICS IN UNIVERSITY GOVERNANCE.

On the eve of collective bargaining in Canadian Anglophone universities there were different predictions as to what would happen to the academy if faculty members were to join the ranks of organized labour and certify as legally constituted bargaining units with the rights, privileges and responsibilities that accompany such action. There were those who believed that the fabric of the university would be changed for the worse, with adversarial collective bargaining taking the place of collegial discussion and “far-reaching changes in the atmosphere of the university, which would no longer be that of a community of scholars but that of a factory;”³⁵² those who believed that the standards of excellence in education and research would be lowered; and those who believed that it was “unseemly” for faculty to take their place with other workers by transforming their faculty associations into unions which would negotiate on an equal footing with their employers. Certainly, Sir James Duff and Robert Berdahl, the authors of University Governance in Canada³⁵³ did not anticipate a major role for faculty associations in the governance of Canadian universities. In

³⁵² A. J. Robinson, "Would Collective Bargaining Increase Academic Salaries." CAUT Bulletin 16.4: 74.

³⁵³ James Duff and Robert Berdahl, University Government in Canada: Report of a Commission Sponsored by the Canadian Association of University Teachers and the Association of Universities and Colleges of Canada (Toronto: University of Toronto Press, 1966) 62.

fact, the Duff-Berdahl report suggested that faculty associations “would prosper more without this compromising connection with university government.”³⁵⁴ While they did acknowledge that the main activity of most Canadian university faculty associations “was to press for faculty to be given a more powerful place in the university government,”³⁵⁵ they believed that the faculty association remained, in 1965, “essentially a body of protest rather than of achievement.”³⁵⁶ The Duff-Berdahl vision suggested that the creation of strong university senates with members elected by and from the faculty would be the answer to most university governance issues and would give the faculty an appropriate share in the governance of the university. They were, perhaps, slightly behind their times although their prediction that faculty associations would be bodies of protest, rather than of achievement or pro-action, may not have been far off the mark. In 2001, Andrew Wainwright, President of the DFA, still held the conviction that “the faculty association is reactive, it defends the collective agreement [. . .] we react to show that we are defending the territory, but management takes the offensive [. . .].”³⁵⁷

³⁵⁴ James Duff and Robert Berdahl, University Government in Canada 62.

³⁵⁵ James Duff and Robert Berdahl, University Government in Canada 61.

³⁵⁶ James Duff and Robert Berdahl, University Government in Canada 61.

³⁵⁷ Andrew Wainwright, personal interview, 25 Oct. 2001.

Just five years after the publication of the Duff-Berdahl Report, faculty associations at some branches of the University of Quebec were certified and other Francophone universities in Quebec soon followed suit. The early negotiation experiences at the Francophone universities were not without conflict and both Laval University and the University of Quebec at Montreal had long and bitter strikes in the mid-1970s. In 1974 the University of Manitoba Faculty Association began its steps to certification and so the certification floodgates were opened in English Canada. The proponents of collective bargaining believed that the time had come for faculty to be recognized as a group of professionals who deserved to have their voices count in the governance and management of the universities and their compensation package reflect their contributions.

In most cases the faculty association, sensitive to the uneasiness of segments of their membership at the prospect of certification, attempted to find other means such as informal discussion or formal special plan bargaining by which to achieve their goals. In fact, faculty members usually turned to collective bargaining only when all other possibilities, including senate reforms, had failed to provide them with a mechanism by which they could achieve some measure of autonomy over their own affairs. During the 1970s this change occurred at many Canadian universities.

In 1990, the CAUT commissioned an Independent Study Group on University Governance (*ISGUG*) in Canada. The members of the group were Professors Ernest Benjamin, general secretary of the American Association of University Professors; Guy Bourgeault, Professor of Education Sciences at the University of Montreal and

Ken McGovern, Professor of Philosophy at Campion College, University of Regina. In the ISGUG report³⁵⁸ they note that “many have come to believe that the laudable model of university governance espoused by Messrs. Duff and Berdahl is simply unequal to the task” and “that a system of shared governance can evolve that is capable of addressing realistically the needs of the day and responding meaningfully to the genuine concerns of all those within and without the university who seek to influence its future course.”³⁵⁹ The ISGUG report accepts and validates the role of the faculty association as “an important voice within the academic constituency”³⁶⁰ and states that “the advent of collective bargaining and unionization has served to define and strengthen the legal status of the association” and negotiated personnel procedures for hiring, promotion and tenure are “much more fair and equitable and, as such, they have contributed effectively to the maintenance of stability within the universities [. . .].”³⁶¹ At the time of publication of the ISGUG report, forty-seven Canadian universities were unionized, bargaining under a special plan, or under terms of statutory or voluntary recognition.

³⁵⁸ E. Benjamin, G. Bourgault and Ken McGovern, Governance and Responsibility: The Report of the Independent Study Group on University Governance (Ottawa: CAUT, 1993).

³⁵⁹ E. Benjamin, G. Bourgault and Ken McGovern, Governance and Responsibility 11.

³⁶⁰ E. Benjamin, G. Bourgault and Ken McGovern, Governance and Responsibility 7.

³⁶¹ E. Benjamin, G. Bourgault and Ken McGovern, Governance and Responsibility 7.

By 2003, virtually all Canadian Anglophone university faculty associations are either formally and legally unionized under the labour code of their particular province or, are bargaining under a special plan arrangement with their governing board. The exceptions are McGill University, St. Francis Xavier University and King's College. There is a possibility for the faculty associations at these three universities to discuss salaries and benefits with the governing body, but no formal bargaining arrangements or legal requirements are in place. In the province of Alberta unionization is not possible for faculty members under the provincial labour laws but faculty associations may bargain with the employer under statutory recognition³⁶² and are governed by the University of Alberta Act. All Canadian Francophone university faculty associations are formally unionized.

Over the past thirty years faculty associations have become increasingly sophisticated and competent in bargaining collective agreements that mandate a sharing of the responsibility for academic governance in some proportion between the parties. The CAUT has continued to provide assistance to its member associations in the forms of committees on academic freedom, collective bargaining and other rights issues. It has prepared and disseminated model clauses on all aspects of collective agreements. In addition, CAUT provides training workshops and, although the CAUT “flying circus” has long since been disbanded, the CAUT continues to provide on-site assistance as necessary to its member associations. The CAUT defence fund has been

³⁶² For the bargaining status of all Canadian universities, please refer to Appendix V.

instrumental in providing funding to those member associations that have anticipated strike action and actually been on strike.³⁶³ CAUT also provides a semi-annual forum for member associations to meet and discuss issues of common concern. Faculty association executive members and appointees have honed their governance skills by participating in collective agreement-mandated university-wide committees that prepare recommendations concerning appointments, promotions, tenure, discipline and redundancy. However, while academic administrators such as deans, vice-presidents and presidents tend to have three to five-year terms of office, many faculty association presidents and executive members serve only one or two years.

An analysis of attendance at twenty-four consecutive CAUT September Council meetings, 1975-1999, showed that 65.3 per cent of the association representatives attended for only one year, 21.7 per cent attended for two years and less than 1 per cent of the association representatives attended for six or more years.³⁶⁴ However it is interesting to note that a few individuals have represented their faculty associations for eight or even more consecutive years, providing continuity and stability for those associations and expertise for the CAUT. In addition, many individuals have had second and third terms, separated by five or more years, as representatives of their faculty associations. This repeat representation at CAUT indicates that faculty associations across the country are either electing members with

³⁶³ Membership in the CAUT Defence Fund is independent from membership in CAUT.

³⁶⁴ See Appendix F for analysis of CAUT Council attendance.

prior experience or that the union interest is vested in the more senior faculty members. It has also been suggested that the increased research demands that are placed on new faculty members leaves them little time or energy for union involvement. There continues to be a preponderance of union support among faculty members in the humanities and social sciences which may influence the issues that are brought to the bargaining table and the solutions sought. In some ways, objections made at the outset of certification at both Manitoba and Dalhousie that the union did not represent all of the faculty may be just as valid today. There are also those who believe that, as a result of collective bargaining, faculty associations have nurtured a core of interested and competent faculty members who take on the work of the union as an avocation and act almost like a shadow cabinet in anticipating the administration's policies and bargaining positions. The evidence of officers of various faculty unions who attended CAUT council meetings from 1975 to 1999 may support this notion. Certainly some of the universities with the most stable faculty association leadership such as the University of New Brunswick, where one individual has been in an executive position in the union and has represented the union for over ten years, have had relatively stable labour-management relations over the years. On the other hand, the lack of renewal and change in union leadership may perpetuate long-standing conflicts between unions and management as has been the situation, to some extent, at both the University of Manitoba and Dalhousie University. The lack of change in union leadership may have also led to situations where the union is not as aware of the changed needs of the university as a whole and the particular constraints on professional faculties and specialized disciplines as it might be.

SOME REMAINING QUESTIONS

However, the question remains, in the governance of Canadian Anglophone universities, has “the system by which decisions of general import are considered, approved, amended, and put into operation or abandoned”³⁶⁵ changed significantly in the past thirty years? Have faculty members collectively gained control over those academic decisions concerning hiring, renewal, promotion and tenure or have administrations retained the decision- making power over these decisions as enshrined “management rights”? Have Canadian academics achieved the level of autonomy in the major academic decisions of a university, including the hiring, promoting and granting of tenure of their peers that their British counterparts already enjoyed in the earlier part of the 20th century or, despite their collective agreements, do many of those academic decisions ultimately remain in the purview of the senior academic executive officer or externally controlled bodies such as boards of governors or trustees. In 1966, The Duff-Berdahl report suggested that the ideal governance situation would have a senate that was composed of elected faculty members and academic administrators that would deal with the academic issues, including faculty personnel matters; and a board of governors, composed principally of external members, which would have the fiscal responsibility for the university.³⁶⁶ In 1993,

³⁶⁵ Charles H. Stewart, "The Government of Canadian Universities," CAUT Bulletin 5.2 (1957) 8.

³⁶⁶ James Duff and Robert Berdahl, University Government in Canada.

the ISGUG Report recommended that if senates were to have any real power over their academic decisions, especially those relating to curriculum and programme offerings, then the senate ought to have some say in how the university budget was to be allocated. Its authors believed that only when senates have the authority to allocate budgets can they determine what programmes and initiatives will be implemented. Since senates are academic bodies, such changes would give faculty much more control over their own destiny.³⁶⁷ To what extent, if any, have the responsibilities of senates changed in the last thirty years? Has the collective bargaining process superseded senate authority while strengthening the power of the board of governors as employer?

Writing in 1957 while on a visit to Canada from Scotland, Charles H. Stewart, Secretary to the University of Edinburgh, noted that although there was much to admire in Canadian universities,

[. . .] the elements of academic participation in the supreme government of universities was practically non-existent [. . .] and the fact that [the principal] is as a rule the sole academic with voting power on the board seems to me [. . .] to put him in too powerful a position vis-à-vis his

³⁶⁷ E. Benjamin, G. Bourgault and Ken McGovern, Governance and Responsibility.

academic colleagues, while at the same time leaving him in a position of inferiority [. . .] in relation to the members of the board.³⁶⁸

Over the years the composition of boards at many Canadian universities has been expanded to include members elected to the board by senates, thus ensuring that there will be at least a few academics on the board, although never a majority. Senates, on the other hand have been more reluctant to accept board members or board appointees into the senate and in many universities the communication between the two bodies is left to the senior academic administrators who sit on both bodies, or to annual, or semi-annual joint meetings of the two bodies at which there is an agreed-upon agenda.

The Duff-Berdahl report also discussed the role of boards of governors or trustees in the management of the university. Traditionally boards had assumed the role of managing body and were, at least in part, charged with acting as liaison between the university's academic function and the community or society which was financially supporting that function. Boards were composed of representatives of corporate donors, provincial governments, influential community members, and successful alumni. They were often business men, and later women, who believed that they knew how to run a university efficiently and often believed that faculty ought to be relegated to the classroom and the laboratory but not to be consulted in the

³⁶⁸ Charles H. Stewart, "The Government of Canadian Universities," 9.

financial and business decisions that were central to the operation of the university. Sir Robert Duff and James Berdahl accepted this idea in large measure and pronounced that it would be unwise for faculty members to sit on governing boards as this would doubtless create conflicts of interest with an individual being both employer and employee at any one instant. In 1993, the authors of the ISGUG report disagreed with this notion and recommended that there be significant representation of faculty on boards of governors.³⁶⁹ The problem however was one of fiscal responsibility. Academic programmes and initiatives can only be successful if they are adequately funded and if they meet the needs of the community. It would seem that in a shared governance situation, both the board and senate should be concerned with these aspects of the university and both must be informed by a body of academics.

SENATE REFORM

In the three universities examined in this study, some form of senate reform was attempted as a means to satisfy the faculty's desire for more autonomy and to provide an alternative to certification. In each of the universities studied senate reform was unsuccessful and, at least in the case of Dalhousie, the dissatisfaction with the senate process and its lack of impetus, may have hastened the vote for certification. Neither the efforts of Ernest Sirluck, at Manitoba, to strengthen senate as a forum for academic debate, nor the concerted attempts by a group of senate

³⁶⁹ E. Benjamin, G. Bourgault and Ken McGovern, Governance and Responsibility 35.

members at Dalhousie to reduce the size of the senate and remove the president of the university from the positions of both chair of senate and senate council, were sufficiently significant to convince the majority of academics that a changed senate would translate into increased faculty autonomy, changed working conditions and improved salaries. At Queen's, senate debates on procedures for promotions and tenure dragged on for months with no consensus. This may have contributed to the factors that led the Queen's Faculty Association to certify.

As early as 1966, the Duff-Berdahl report recognized that the main activity of faculty associations was to "press for the faculty to be given a more powerful place in university government, at both academic and fiscal levels."³⁷⁰ However, the same authors also recognized that the faculty association remained, "essentially a body of protest rather than of achievement—for the obvious reason that it has no constitutional standing within the university."³⁷¹ The movement to faculty certification changed all that. Faculty associations began not only to achieve constitutional standing within the university as the sole bargaining agent for faculty members, but also to flex their legal muscles and demand rights and respect before the law for their members. It is important to understand that it was frequently the same faculty members, who, as university senators were unable to affect change, were able to affect that change when they had the power and legal authority of unionization supporting them. Individuals

³⁷⁰ James Duff and Robert Berdahl, University Government in Canada 61.

³⁷¹ James Duff and Robert Berdahl, University Government in Canada 61.

who were proficient in the art of senate debating frequently became just as proficient, but substantially more effective, when they began to practice the art and science of negotiating. Although it was the board of governors, as employers, with which faculty associations began to bargain, it was the rights that had previously been the purview of senate, that were put on the bargaining table for negotiations. It may have been this awful realization that moved the senate at Dalhousie to demand, and be granted, a seat as observer at the bargaining table. Although negotiations were held in camera, senate was to be regularly updated on the progress of the negotiations by both union and management representatives. At Queen's there was considerable senate debate on the potential relationship between senate and a certified bargaining unit and senate had to be reminded by John Cowan, vice-principal of Queen's, that it did not have such a role. However, Dr. Cowan assured the senate that collegial governance was still possible within the parameters of collective bargaining.

When he arrived at the University of Manitoba in 1970, one of Ernest Sirluck's goals was to improve the functioning of senate and to strengthen it as a forum for debate among the academic community. He took all substantive academic issues to senate and encouraged thorough debates. He also took the initiative to allow student representation on senate, believing that they were part of the academic community. The student senators would have the status of "assessor". They would have speaking privileges but would not be able to present motions or to vote. The students were suspicious of an offer for which they did not have to fight, but they accepted the arrangement. At the University of Manitoba the senate, as mandated by

the University Act of 1968 had considerable recommendatory powers with respect to academic issues and was composed of ninety-five members, of which fifty-five were faculty members and the remainder were either academic administrators or external appointees.³⁷² Despite the recommendatory powers, senate had no legal authority in matters of hiring, firing, promotions, salaries, and tenure. These powers all belonged to the board of governors and at no time during the bargaining of the first collective agreement was it suggested that these powers should shift.³⁷³ While senate did prepare policy statements and procedures to govern these academic issues, it was, in effect, the president through the board of governors that granted all academic appointments, promotions, and tenure. Hence Sirluck's insistence that tenure be granted by senate was simply his way of ensuring that the final decision would be the president's. In fact, according to the University of Manitoba Act of 1968, all matters relating to academic personnel issues such as appointments, promotions and tenure are responsibilities of the board of governors, which may cede those responsibilities to the senate if it so wishes. Presumably, since the board has responsibilities for those issues, it may bargain procedures and policies with the faculty association, in effect bargaining with the faculty association the responsibilities that had previously been delegated by the board to the senate.

³⁷² University of Manitoba. General Calendar, 1970-71 (Winnipeg: Manitoba, 1970) 6.

³⁷³ Roland Penner, "Senate," E-mail to author, 27 November 2000.

The tension between senate reform and collective bargaining was openly debated at Dalhousie where two factions developed within the faculty—those who believed that change would come through senate reform, and those who believed that change could only come through unionization and collective bargaining. According to David Cameron, Dalhousie had

[. . .] the world's funniest senate, in which every Professor was a member, as well as seventy to eighty elected representatives of the Associate and Assistant Professors and various academic administrators such as Deans, Directors and other administrators.³⁷⁴

The unwieldy nature of the senate made it possible for two things to take place. The members of senate became divided into those who were interested in the running of the university and those who were not. Those who were interested became the core of senate, enshrined as the senate council in 1968, and began to set the agenda and make the decisions for senate and, in some respects, for the university. The university began to be governed by a rather small group of interested, senior faculty members. As president of the university, Hicks chaired both senate and senate council and thus had overall control. The senate council included all of the deans, who would likely support any recommendation coming from the president. Prior to unionization, the president and senate were very powerful and could create positions, fill those

³⁷⁴ David Cameron, personal interview, 23 October 2001

positions, appoint the faculty, re-appoint the faculty, decide upon promotions and tenure. The faculty as a group felt marginalised and ineffective. Those on the senate, and especially those on the senate council, had a good deal of power and were loath to give it up. This desire by a relatively small group of faculty members to hold onto power contributed to the split between the senate reformers and the unionists.

When the efforts to reduce the size of the senate and remove the president as chair of both senate and senate council were initially unsuccessful, senate began to look at the collective bargaining process and became aware that while it was the board of governors that was, at least technically, bargaining with the Dalhousie Faculty Association, it was the responsibilities and rights of senate that were being bargained. Senate passed a resolution instructing the parties not to agree to matters concerning appointments and tenure as these were senate responsibilities and demanded, and was granted, a seat as observer at the negotiating table. Ultimately these forbidden issues have all been bargained with the DFA and senate no longer has control of any faculty personnel matters. After the initial round of collective bargaining, senate also relinquished its demand for observer status at the bargaining table.

At Queen's, the Royal Charter of 1841 granted to the board of trustees the authority to constitute "the college senate" which was to be composed of "the principal and professor, together with three members of the board of trustees."³⁷⁵

³⁷⁵ Margaret Hooey, The Queen's University Senate: Evolution of Composition and Function, 1842-1995, Web Page. URL: <http://www.queensu.ca/secretariat/senate/evolutio.html>, p.1.

However, as soon as three additional professors were employed, “no trustee shall be a member of the said college senate, but that such principal and all the professors of the said college shall for ever constitute the college senate³⁷⁶ with responsibility “for the exercise of academical superintendence and discipline over the students, and all other persons resident within the same, and with such powers for maintaining order and enforcing obedience to the Statues, Rules and Ordinances of the said College [. . .].”³⁷⁷ In 1912 an Act of Parliament separated Queen’s University from the Church and gave the board of trustees the power to revise the senate constitution after consultation with the senate. Immediately there was a new composition of senate approved and new functions mandated, however the responsibility for faculty personnel issues such as appointments, promotions and tenure remained with the board of trustees. Senate became a policy-making body and continued its work until the 1960s when changes were made to the composition of senate and student representatives were added. In 1968 the functions of senate were amended to include the responsibility to establish

[. . .] policies and procedures to be followed in the appointment of the members of the academic staff, vice-principals, deans and heads of departments, and policies concerning the promotion, tenure, termination

³⁷⁶ Queen's University, Historical Development, Web Page. URL: <http://www.queensu.ca/secretariat/senate/history.html>, p.1.

³⁷⁷ Queen's University, Historical Development 1.

of appointment, sabbatical leave and other leave of members of the academic staff.³⁷⁸

In addition, senate was also empowered to review the university budget, previously the sole responsibility of the board of trustees. In the 1970s senate developed policies to ensure fairness in all of the conditions of employment relating to full-time faculty. Over the years Margaret Hooley, a Queen's University historian, reports that there were frequent references to the diminution of the effectiveness of the senate and its lack of involvement in the leadership of the university.³⁷⁹

In the period just prior to certification at Queen's, there was considerable debate at senate on a revision of the policies and procedures that governed faculty promotions. Two things about this debate irritated the Queen's University Faculty Association: the first was the ineffectiveness of senate in reaching any conclusions and the second was that QUFA was virtually ignored as a participant in the debate. These irritants helped to push QUFA to certify. On the eve of QUFA certification, concerned that their authority was being diminished, senate and the board of trustees held two joint meetings devoted to the question of university governance and the role of senate in a unionized environment.

³⁷⁸ Margaret Hooley, The Queen's University Senate 5.

³⁷⁹ Margaret Hooley, The Queen's University Senate 5.

Unionization of full-time faculty has reduced the powers that senates held in all matters of faculty personnel decisions such as appointments, promotions and tenure. Even if these powers are still attributed to senates in university constitutions they have effectively been removed from that body by the board of governors or trustees and bargained with the faculty association. While it may be true that the ultimate decision maker in matters of appointment, promotion and tenure remains the president or the board of governors, the *de facto* decision makers have become the faculty peers who recommend either departmentally or by faculty to the president and board. Even if the president and board should disagree with the peer recommendation, or a stage of the peer recommendation, by virtue of the collective agreement, they have become answerable for the procedures and for the validity of their reasoning and their decision to the members and the faculty association itself. Gone are the days when Ernest Sirluck or Henry Hicks could, by fiat, promote or grant tenure to a faculty member without consultation and without agreement of the peer group. Conversely, it is now difficult for administrators to deny promotion or tenure to individuals who are supported by faculty colleagues and peer review processes. Not only are the administrators now answerable to the peer group or the faculty association as a whole but they may also be responsible for their actions in arbitral hearings and courts of law. While these provisions may not completely alter the decision making process they act to deter administrators from making unfounded decisions because the consequences have become immediate and serious.

The fact of collective bargaining has added responsibility to the board of governors in that it is the board, as employer, that bargains with the faculty association. Normally, the board delegates its authority to the principal and members of the administrative bargaining committee but must retain ultimate responsibility for the contract that is negotiated. Most boards have established collective bargaining committees on which membership is reserved for external board members and senior administrators. It is the entire board that ratifies, on behalf of the university administration, the completed collective agreement. Boards are now routinely required to provide budget statements, planning documents and other operating information to the faculty association. However, should the board include elected faculty members, then those members may also vote as “employer” on the collective agreement which has been negotiated on their behalf, by the faculty association. Duff-Berdahl recognized the potential for such conflict of interest in their report and recommended that for this very reason, faculty members ought not to sit on board of governors or regents. Collective bargaining has increased the potential for conflict of interest situations as faculty members, who accept term appointments as deans, vice-presidents, and even presidents, will likely return to the bargaining unit at the end of their sojourn in the administration. However, while they are in office, they may be mandated by the board of governors or trustees to bargain on behalf of the board, with the faculty association. In a very real sense they are sent to argue against settlements that may be in their own ultimate best interest. Dr. Sirluck recognized this problem when UMFA requested certification and it was one of the reasons that he so vehemently opposed the union. He believed that one could not be both employer and

employee at the same time nor could one behave objectively as a representative of the employer in the knowledge that one would return to, or join, the bargaining unit at some future date.

In recent years some university boards have attempted to resolve the problem of conflict of interest at the bargaining table by sending senior professional officers, such as university lawyers or directors of human resources, to the negotiating table. Dalhousie University tried this approach beginning in 1985 when it sent Brian Crocker, the university's legal counsel to bargain the collective agreement. That year, Dalhousie had a one-day strike. In subsequent rounds of bargaining, Dalhousie has continued to send professional officers to the bargaining table. The record of success has not been good—three strikes in as many rounds of bargaining. It seems that academics need to have the intellectual and academic dialogue with their administrative counterpart in order for negotiations to move forward on any issue of academic rights, such as tenure or promotion. When that dialogue is not seen to be possible, perhaps partly because of preconceived notions that only academics can understand other academics, the exchange breaks down. In the latest round of bargaining at Dalhousie in 2001, it was acknowledged by both parties that the discussions on tenure, although difficult, progressed more effectively when Dr. Scully, the vice-president, academic, was at the bargaining table. Dr. Scully understands the problem and is hopeful that a dean can be mandated as one of the administration's negotiators in the next round of bargaining. This however, does not resolve the dilemma and universities will likely continue to send academic administrators to the

negotiations table in the hope that, while in that position, they will do what is in the best interests of the institution as a whole. It is also part of the maturing process for Canadian universities.

Other changes in governance are perhaps more subtle but as important to the university as the changes in senate and board responsibilities. University presidents appear to recognize that the association can be an ally as well as an adversary. When asked to comment on the political influence of the union on campus, especially in matters other than those governed by the collective agreement, Dr. Leggett³⁸⁰ responded that although he is not obliged to discuss matters with the union, he would, because he wants to be seen as open and approachable, and that by consulting the union on university issues he can demonstrate that openness. He sees the collective agreement as a way to do things, rather than as an obstruction to doing things, and more importantly, he sees the restrictions in the collective agreement as a way of doing things right the first time and thus saving time and money later. He also admits to a discipline that comes from having a collective agreement that forces an end point to discussions which may not happen in an uncertified situation. Dr. Naimark had similar comments.³⁸¹ He said that prior to certification there had been a tendency to “be paternalistic, perhaps not to be as even handed as one might” and that favouritism and a lack of due process had caused some unpleasant consequences. The collective

³⁸⁰ William Leggett, personal interview, 4 December, 2002.

³⁸¹ Arnold Naimark, personal interview, November 6, 2000.

agreement provides a pattern that can be followed to ensure that fairness is in place, and failing that, a recourse that is accepted by both parties. Dr. Naimark also made the observation that collective agreements can be useful as a management tool to monitor the success of deans and directors – too many grievances on a particular issue in a particular area can indicate problems that need attention. Dr. Scully, Vice-Principal, Academic at Dalhousie, realizes that, after three strikes, in three rounds of collective bargaining, the faculty association is a force with which to be reckoned. He also realises that mistakes have been made at Dalhousie with respect to both bargaining style and implementation of agreements and is making serious efforts to have positive experiences with the union and intends to bargain differently in the next round of bargaining.³⁸² Time will tell.

On the contrary, the faculty association executive members with whom I spoke were less optimistic about the impact that unionization has had on management of the universities. Frank Burke, from QUFA claims to be “frustrated with the way the collective agreement works and dissatisfied with the implementation of policies and procedures “even in areas that we struggled to get.”³⁸³ Andrew Wainwright does not believe that the union has really made a difference in areas not explicitly governed by the collective agreement. The paradigm of conflict and mistrust appears to continue.

³⁸² Sam Scully, personal interview, 24 October, 2001.

³⁸³ Frank Burke, personal interview, 22 March, 2002.

Although spread over a time span of twenty years, the experiences at these three research universities have been similar and all three have fulfilled the conditions for unionization that were proposed by Carr and Van Eyke in 1974 as well as the fourth condition that I see as essential:

1. The law must establish the right of the group to require their employer to bargain with them
2. There must be a substantial measure of dissatisfaction with existing conditions of employment
3. Someone must make the positive efforts to organize
4. There must be considerable concern for future academic and economic stability

All three universities were in provinces of Canada where unionization of employees was possible; the faculty at each university were sufficiently dissatisfied with their conditions of employment and compensation; a strong faculty association, assisted by CAUT, was in place that was prepared to take the initiative; and there was concern for the future academic and economic stability of the university brought on by the external pressure of provincial government funding policy. Unionization has forced the university administrations to share the governing power with the faculty associations as the legal representatives of the faculty members (See Summary Chart, Appendix D). This shared governance includes all aspects of faculty personnel issues as well as decisions that may be made with respect to the continuance of programmes

and the academic staffing levels of the universities. Senates no longer have the recommendatory power to decide on faculty personnel issues. That power is now shared between faculty members who are responsible to their peers and representative administrators. There is no longer the possibility for ad hoc or impulsive decisions as each decision must be reasoned and accounted for to the community. However, senates continue to have a significant role in the governance of universities as forums for debate of academic issues such as curriculum, academic programmes and academic criteria and will continue to do so. Dr. Leggett pointed out that he is careful to continue to send all academic issues to senate for debate in order that senate will continue to have an important and influential role in the governance of Queen's University.³⁸⁴ It is the academic way.

Certainly collective bargaining has imposed a more legalistic framework on the management of our universities but it has not turned them into factories, nor has it destroyed the collegial atmosphere that is so much a part of the academy. It was perhaps inevitable, that in order to be accepted as partners in the academic process faculty members have had to take the step to certification. In the three cases studied, alternatives to unionization were proposed but were rejected by administrations that feared sharing the decision-making power with those who do the teaching and the research would prove disastrous. In rejecting all other options, these administrations gave few other alternatives to the faculty who had to either retreat or take the giant

³⁸⁴ William Leggett. personal interview.

step forward. In the three cases studied, the faculty had gone too far down the path to shared governance to retreat and so chose the only option they saw open to them.

Dr. Leggett posed an important question, “Where will we be in twenty years?” In answering his own question he perhaps voiced the hope of many other administrators, and perhaps even faculty associations when he said, “I would like to think that we won’t need it [the discipline of collective agreements].”³⁸⁵

In a perfect world Dr. Leggett might be right. However the Canadian academic community is far from perfect. Canadian universities continue to struggle with issues of under-funding, corporate influence, accountability to provincial governments and changing enrolments. The size of the faculty, complement, which also implicates class size and numbers, has been an issue across the country as faculty associations attempt to protect their membership and while administrations endeavour to control costs. Ultimately both parties are committed to providing high-quality education to Canadian students.

Although unionization has reduced the number of grievances considered by the CAUT Academic Freedom and Tenure Committee because such matters are now handled locally in unionized situations, the committee is still called upon to deal with important cases where the local situation cannot come to a solution. Recently there

³⁸⁵ William Leggett, personal interview.

were two nationally reported instances of violations of academic freedom.³⁸⁶ In both cases the individuals were faculty members in a non-unionized university and were defended by their faculty association with assistance of the CAUT and the Academic Freedom and Tenure Committee. These cases were reminiscent of the Harry Crowe case of almost fifty years ago. Both faculty members were subsequently vindicated but the notion of academic freedom in Canada had been seriously challenged. Although progress has been made in the past thirty years towards creating a system of shared governance in Canadian universities and Canadian faculty members now have a strong voice in the governance of their universities, that arrangement remains tenuous and will continue to require the vigilance of faculty associations and enlightened administrators.

³⁸⁶ Dr. David Healy was offered and accepted the position of Clinical Director, Mood and Anxiety Program with CAMH and Professor of Psychiatry with the University of Toronto in 2000. His contract was revoked suddenly following a lecture he gave which was critical of the role of pharmaceutical companies in medical research. Apotex Incorporated was a corporate sponsor for research conducted by Dr. Nancy Olivieri a clinician at the Hospital for Sick Children in Toronto (an affiliated teaching hospital of the University of Toronto). When the clinical trials identified a risk to the patients, Dr. Olivieri believed that those patients ought to be informed. Apotex refused to allow her to inform them of the risks involved in continuing the drug. Dr. Olivieri wished to publish her findings and Apotex objected. At issue was Dr. Olivieri's academic freedom as a researcher and the public interest.

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APPENDICES

APPENDIX A

PUBLIC SECTOR LABOUR LEGISLATION BY JURISDICTION

Jurisdiction	General Private Sector	General Municipal	Police	Teachers	Civil Service	Government Enterprise
Federal	Canada Labour Code	Canada Labour Code	Canada Labour Code	Public Service Staff Relations Act (PSSRA)	PSSRA	Canada Labour Code
British Columbia	Labour Relations Code	Labour Relations Code	Labour Relations Code	Labour Relations Code	Public Service Labour Relations Act	Labour Relations Code
Alberta	Labour Relations Code	Labour Relations Code	Police Officers Collective Bargaining Act/Police Act	Labour Relations Code	Public Service Employee Relations Act	Labour Relations Code
Saskatchewan	Trade Union Act	Trade Union Act	Police Act	Education Act	Trade Union Act	Trade Union Act
Manitoba	Labour Relations Act	Labour Relations Act	Labour Relations Act/Police Act; City of Winnipeg Act	Public Schools Act	Civil Service Act	Labour Relations Act
Ontario	Labour Relations Act	Labour Relations Act	Police Services Act/Public Service Act (Ontario Provincial Police)	School Boards and Teachers Collective bargaining Act/ Colleges Collective Bargaining Act	Crown Employees Collective Bargaining Act	Crown Employees Collective Bargaining Act
Quebec	Labour Code	Labour Code	Labour Code/Police Act	Labour Code	Labour Code/Public Service Act	Labour Code/Public Service Act
New Brunswick	Industrial Relations Act	Industrial Relations Act	Industrial Relations Act/Police Act	Public Service Labour Relations Act	Public Service labour Relations Act/Civil Service Act	Public Service Labour Relations Act

Jurisdiction	General Private Sector	General Municipal	Police	Teachers	Civil Service	Government Enterprise
Nova Scotia	Trade Union Act	Trade Union Act	Trade Union Act	Teacher's Collective Bargaining Act	Civil Service Collective Bargaining Act	Trade Union Act
P.E.I.	Labour Act	Labour Act	Labour Act/Police Act	School Act	Civil Service Act	Civil Service Act
Newfoundland	Labour Relations Act	Labour Relations Act	Labour Relations Act/Royal Newfoundland Constabulary Act	Teacher's Collective Bargaining Act	Public Service Collective Bargaining Act	Public Service Collective Bargaining Act
Yukon	Canada Labour Code	Canada Labour Code		Education Act	PSSRA	
Northwest Territories	Canada Labour Code	Canada Labour Code			Public Service Act	

Source: Allen Ponak and Mark Thompson. "Public Sector Collective Bargaining," in Gunderson, Morley and Allen Ponak. Union-Management Relations in Canada. Don Mills: Addison-Wesley

APPENDIX B
INTERVIEW QUESTIONS

Questions Posed To the Union Representatives

1. What were the issues that prompted the union to seek certification?

6. What did you believe could be gained for the membership by bargaining in a certified situation?

7. How did the administration react to your announcement to seek certification?

8. What steps did the union take to ensure a positive vote? What were some of the obstacles to certification that the union leadership faced?

9. In your opinion, what administrative body was making most of the decisions concerning certification? The president? The administrative team? The board of governors?

10. Did you have any sense that any external body such as AUCC was driving the local agenda?

11. Was there any degree of dissonance between the board, the president and the administrative team? If so, to what extent did that dissonance affect the discussions?

12. Once you had legally certified, what were the most important issues for the members in the first round of collective bargaining? In what ways did you achieve your goals in those areas?

13. When you went to the bargaining table, did you feel well prepared? How did the administration behave at the bargaining table? Was the administration prepared?
14. What guided or informed the union at the bargaining table? What kinds of help did you have?
15. Looking back, how has certification changed the roles and influence of faculty members on the board and on senate?
16. Since the union certified, have the qualifications for senior administrators changed? If so, how have they changed?
17. If you could do it all over again, what, if anything, would you do differently and why?
18. In your experience, how would you characterize the relationship between the union and the administration?

Questions Posed To the Administration Representatives

1. Was the university administration prepared for the faculty association's decision to certify? What steps did the administration take when the union made its announcement? Were you opposed to faculty certification? Why or why not?

19. In the event of certification, what structures or positions were you intent on maintaining?

20. At the time of certification, were you concerned that certification would lower academic standards? Did it?

21. Another charge against certification is that it undermines collegial governance because it bypasses faculties and senates. Did you believe this at the time and do you now? How did this affect the university?

22. What were the most important issues for the administration during the first round of collective bargaining? What management rights were you committed to maintain?

23. What administrative body or individual was making most of the decisions concerning negotiations? How much autonomy did the administration's negotiators have? Was there any dissonance between the president and the board or the administrative team? How was that dissonance manifested?

8. How did the administration's team prepare for negotiations? In your opinion, were they well prepared? Did you ever feel that the university was being asked to follow an agenda prepared by an external body such as AUCC?
9. How much assistance did you believe the union was receiving from CAUT or other unions?
10. What role, if any, did the provincial government play in the certification and subsequent collective bargaining?
11. How has certification changed the roles or influence of the faculty members on the board or senate? In what way has the power of the board been altered by the collective bargaining process?
12. If you could do it all over again, what if anything, would you do differently?
13. During your term of office, how would you characterize the relationship between the administration and the union?

Additional Questions for Universities That Have Experienced A Strike

Questions Posed To the Union Representatives

1. What were the issues that caused the faculty to vote to strike?

24. Was the administration prepared for the strike? Did they believe that the union would strike or were they taken by surprise?

25. In your opinion, was there any chance that you might have settled without a strike? Why or why not?

26. What percentage of the membership fully supported the union leadership? If there were segments of the faculty that did not support the strike, what faculties were they in and what were their reasons?

27. Why do you think that the administration was so intransigent on the strike issues? Were there external forces or other factors driving the administration?

28. In your opinion, what administrative body or individual was making most of the decisions concerning negotiation positions? Was there any degree of dissonance that you could detect, between the president, the board and the administrative team? What do you think was the cause of this dissonance?

29. Did the local press or media cover the strike? What effect, if any, did that press/media coverage have on the ultimate settlement? In what ways did the

press coverage affect the faculty? Were the faculty embarrassed to have what was essentially the university's business discussed in a public forum?

30. What were the gains that the union made in the strike? Were they worth it?
31. In retrospect, was there anything that you might have done differently? How?
32. How did the strike alter the relationship between the union and the administration? How would you characterize that relationship before and after the strike? Has anything changed over time?

Questions Posed To the Administration Representatives

1. What do you believe were the factors that caused the union to take strike action? Was the administration prepared for the strike or was it a surprise? When the faculty association struck, did you, in turn, lock them out?
33. In your opinion, could the strike have been avoided? Why or why not?
34. Why was the administration unwilling to compromise in order to avoid a strike?
35. What administrative body or individual was making most of the decisions concerning negotiations? Were the president, the administrative team and the board of governors in accord on the position to present to the union? Why or why not?
36. What external factors influenced the university's position? What role did the provincial government play?

37. Did the local press or media cover the strike? What effect, if any, did that press/media coverage have on the ultimate settlement? In what ways did the press coverage affect the administration? Were you embarrassed to have what was essentially the university's business discussed in a public forum? How much of an influence did public opinion have on the university's positions?
38. How did the strike alter the relationship between the union and the administration? How would you characterize that relationship before and after the strike? Has anything changed over time?
39. In your opinion, is there anything that the administration might have done differently? What?

APPENDIX C
LIST OF INDIVIDUALS INTERVIEWED

University Of Manitoba

University of Manitoba Faculty Association	University of Manitoba Administration
Trevor Dandy	Arnold Naimark
Ian Kerr	Ernest Sirluck
Nora Losey	Donald Wells
Roland Penner	
Grant Woods	

Dalhousie University

Dalhousie University Faculty Association	Dalhousie University Administration
Alan Andrews	David Cameron
Michael Cross	Brian Crocker
Thomas Faulkner	Andrew Mackay
Robert Roger	Sam Scully
Susan Sherwin	
Andrew Wainwright	

Queen's University

Queen's University Faculty Association	Queen's University Administration
Marvin Baer	Donald Carter
Frank Burke	John Cowan
	William Leggett
	Daniel Soberman

APPENDIX D
RANKINGS

Appointment Procedures

- Rank 1: No mention of clause found in contract.
- Rank 2: Brief discussion of the topic but no mention of faculty rights or responsibilities in the determination or control of appointments.
Administration decides if, when and how to fill vacancies.
- Rank 3: Faculty consultation with administration on procedures and policies.
Search committees of either appointed or elected faculty member who make recommendations.
- Rank 4: Greater faculty decision making authority through elected committees, checks and controls on management decisions.
- Rank 5: Faculty control over the procedures and processes through elected committees. Faculty make the decisions which are implemented by management. If management refuses to implement a decision, reasons must be provided to faculty.

Reappointment and Renewal

- Rank 1: No mention of clause found in contract.
- Rank 2: Brief discussion of the topic but no mention of faculty rights or responsibilities in the determination and control of reappointments.

Administration controls if and when to reappoint. Negative decisions may be grieved on procedural grounds but may not be appealed..

- Rank 3: Faculty consultation with administration on procedures and policies. Evaluation committees composed of elected or appointed faculty members who make recommendations to management. Negative decisions may be grieved on procedural grounds. may not be appealed
- Rank 4: Greater faculty decision -making authority through elected, autonomous committees of faculty with check and controls on management decisions. Negative decisions may be appealed on substantive grounds and grieved on procedural grounds.
- Rank 5: Faculty control over procedures and processes. Faculty make the decisions which are implemented by management. Negative decisions may be appealed and grieved.

Promotion

- Rank 1: No mention of clause found in contract.
- Rank 2: Brief discussion of the topic but no mention of faculty rights or responsibilities in the determination and control of promotions. Administration controls if and when promotions are to be granted.
- Rank 3: Faculty consultation with administration on procedures and policies. An evaluation committee, composed of either elected or appointed faculty at

both the departmental and faculty levels who make recommendations to management is established. Management may be involved in the decision making process in addition to being the ultimate decision makers.

Negative decisions may be grieved on procedural grounds but may not be appealed.

Rank 4: Greater faculty decision-making authority through elected, an autonomous committee of faculty at both the departmental and faculty levels with check and controls on management decisions. Management may only be involved in the decision-making process as non-voting members. Negative decisions may be appealed on substantive grounds and grieved on procedural grounds.

Rank 5: Faculty control over procedures and processes through elected committees at both the departmental and faculty levels. Management is not directly involved in the decision-making process. Faculty make the decisions which are implemented by management. Negative decisions may be appealed and grieved.

Tenure

Rank 1: No mention of clause found in contract.

Rank 2: Brief discussion of the topic but no mention of faculty rights or responsibilities in the determination and control of tenure. Administration controls if and when tenure is to be granted.

- Rank 3: Faculty consultation with administration on procedures and policies. An evaluation committee composed of either elected or appointed faculty at both the departmental and faculty levels who make recommendations to management on tenure is established. . Collective agreement states criteria and service requirements for tenure consideration. Management may be involved in the decision making process in addition to being the ultimate decision makers. Negative decisions may be grieved on procedural grounds but may not be appealed.
- Rank 4: Greater faculty decision-making authority through elected, an autonomous committee of faculty at both the departmental and faculty levels with check and controls on management decisions. Collective agreement states criteria and service requirements for tenure consideration. Management may only be involved in the decision-making process as non-voting members. Negative decisions may be appealed on substantive grounds and grieved on procedural grounds.
- Rank 5: Faculty control over procedures and processes through elected committees at both the departmental and faculty levels. Collective agreement states criteria and service requirements for tenure consideration. Management are not directly involved in the decision-making process. Faculty make the decisions which are implemented by management. Negative decisions may be appealed and grieved.

Discipline and Dismissal

- Rank 1: No mention of clause found in contract.
- Rank 2: Brief discussion of the topic but no mention of faculty rights or responsibilities in the determination and control of discipline or dismissal. Administration controls all disciplinary procedures and sanctions.
- Rank 3: Procedures and policies mentioned but much discretion is in the control of the administration. Administration controls sanctions. Grievance and arbitration are possible.
- Rank 4: Procedures and policies specified in collective agreement. Some constraints are placed on management discretion. Sanctions are specified. Grievance and arbitration are possible.
- Rank 5: Reasons for disciplinary action, procedures and policies specified in collective agreement. Controls placed on management decisions. Sanctions are specified. Grievance and arbitration are possible.

Summary Chart – Average Impact Factors

University	Appointment	Promotion	Tenure	Discipline
University of Manitoba 1974-2004	2-3.5	2-3	2-3.5	2-3

University	Appointment	Promotion	Tenure	Discipline
Dalhousie University 1979-2004	2-2.5	2-4	2-3	5
Queen's University 1997-2005	3	3	3	3-3.5

University of Manitoba							
Article	Year Of Contract	Number Of Clauses	Impact Factor	Committee Structure	Decision Maker	Appeal Yes/No	Grievance/Arbitration Yes/No
Hiring	1976-77	4 clauses	2	"a reasonable number" of department members—not elected	Dean	N/A	N/A
	1987-90	31 clauses ³⁸⁷	3	at least 3 members of search committee must be selected from a list of 5 recommended by the department	Dean	N/A	N/A
	1990-93	40 clauses	3	selection committee is advisory to dean	Dean	N/A	N/A
	1993-95	47 clauses (Equity issues addressed)	3.5	No change from 1990-93	Dean Association to be informed of search process and candidates after completion	N/A	N/A
	1995-98	47 clauses	3.5	No change	No change	N/A	N/A
	1998-01	60 clauses (Spousal hiring addressed)	3.5	No change	No change	N/A	N/A
	2001-04	60 clauses	3.5	No change	No change	N/A	N/A
Promotion	1976-77	26 clauses	2	No committee, some departmental procedures required	Dean	Yes	Yes(Procedural)

³⁸⁷ Only clauses pertaining to full-time faculty are included in this study.

	1987-90	23 clauses	3	Appointed committee;, deadlines established. Dean and department head on committee as non-voting members. Dean chairs.	Dean	Yes	Yes(Procedural)
	1990-93	37 clauses	3	Same as 1987-90 but deadlines added to procedures	Dean	Yes (Special Appeals Committee established to hear appeals on promotions)	Yes
	1993-95	43 clauses	3	Same as 1990-93 but criteria added for promotions	Vice-president, academic	Yes	Yes
	1995-98	51 clauses	3	Same as 1993-5	Vice-president, academic	Yes	Yes
	1998-2001	43 clauses	3	Same as 1993-95	Vice-president, academic	Yes	Yes
	2001-04	43 clauses	3	Same as 1993-95	Vice-president, academic	Yes	Yes
Academic Freedom, Responsibilities, Discipline and Tenure	1976-77	37 clauses	3	Committee appointed by Dean	President recommends to board of governors	Yes	Yes
	1987-90	41 clauses	3	Committee appointed by dean and dean chairs the Faculty Tenure Committee	President recommends to board of governors	Yes	Yes
	1990-93	41 clauses	3	Same as 1987-90	President recommends to board of governors	Yes	Yes
	1993-95	64 clauses (Additional clauses deal with gender equity issues and provide for an automatic tenure deferral if a parental leave has been taken)	3.5	Same as 1987-90	President recommends to board of governors	Yes	Yes
	1995-98	64 clauses	3.5	Same as 1987-90	President recommends to board of governors	Yes	Yes
	1998-2001	46 clauses	3.5	Same as 1987-90	President recommends to board of governors	Yes	Yes

	2001-04	64 clauses	3.5	Same as 1987-90	President recommends to board of governors	Yes	Yes
Academic Freedom, Responsibilities, Discipline, Tenure	1976-77	5 clauses	2		President to board of governors. No notification to member and no association involvement.	No	Yes
	1987-90	11 clauses	3		President recommends to board of governors. Written notification with reasons given to member. Association notified.	No	Yes
	1990-93	11 clauses	3	Same as above		No	Yes
	1993-95	11 clauses	3	Same as above		No	Yes
	1995-98	7 clauses (Definitions moved to Article 1)	3	Change: If remedial or other action has been demanded, the faculty member may not be further disciplined for non-compliance with that action if a grievance has been filed.)	No change	No	Yes
	1998-2001	7 clauses	3	No change		Np	Yes
	2001-04	7 clauses	3	No change		No	Yes
Dalhousie University							
Appointment	1978-80	24 clauses	2	"Appropriate committee" to be struck. No election.	Dean to president to the board of governors. The CACA, composed of two appointees of the union and two appointees of the administration oversees the salaries of new hires.	No	No
	1988-90	26 clauses	2	Same as 1978-80	Same as 1978-80	No	No
	1990-93	26 clauses	2.5	"Appropriate committee" retained but a loop back to the committee if the dean and or president disagrees with selection in order to reach agreement.	After the attempt to reach consensus, the dean or vice-principal, academic, as appropriate makes decision.	No	No

	1997-2001	50 clauses (Additional clauses deal with equity issues)	2.5	"Appropriate committee" retained but quorum required for each deliberation.	Dean or vice-principal, academic as appropriate.	No	No
	2001-2005						
Promotion	1978-80	14 clauses	2	Requires a "representative committee" but no election.	Chair recommends to dean and then to president for decision.	Yes	Yes
	1988-90	24 clauses	4	Requires elected committee at both the departmental and faculty levels and stipulates that participation at one level excludes it at the other.	President receives recommendations and makes the decision but reasons must be given.	Yes	Yes
	1990-93	24 clauses	4	No change from 1988-90	No change	Yes	Yes
	1997-2001	24 clauses	4	Quorum required for committees at both levels.	At each level "explicit" reasons must be given for denial. President decides and must give reasons.	Yes	Yes
	2001-04	25 clauses	4	Dept., faculty committees and dean and president must decide with consistency across faculty		Yes	Yes
Tenure	1978-80	3 clauses	2	Committees and procedures mandated by senate	President	Yes	Yes
	1988-90	4 clauses	2	No change.	President	Yes	Yes
	1997-2001	44 clauses	2	Senate policy document patriated into collective agreement.	President	Yes	Yes
	2001-2004	26 clauses	3	Procedures remain status quo. Member must be told of tenure regulations when hired, and regulations for that member cannot change unless member opts for new procedures.	President	Yes	Yes Negative decision goes to a single arbitrator who has a fixed time to deliver a decision.

Disciplinary Actions, Suspension and Dismissal	1978-80	20 clauses	5 (Starting with the first collective agreement, the association had to be informed and present at any disciplinary meeting.	Hearing Committee established to deal with discipline. Committee consists of two persons named by the association, two named by the president and two elected by senate. A sub-committee of three—one from each mandate—hears the case and recommends to the president.	Dean or Vice-president, as appropriate forwards matter to president. president must rule within the constraints of the Hearing Committee's recommendation.	No	Yes
	1988-90	20 clauses	5 No change from 1978-80	No change	No change	No	Yes
	1990-93	20 clauses	5 No change from 1978-80	No change	No change	No	Yes
	1997-2001	20 clauses	5 (No substantive change from 1990-93 but incorporates possibility of charging stemming from sexual harassment or prohibited discrimination	No change	No change	No	Yes
	2001-2004	20 clauses	5	No change	No change		Yes
Queen's University							
Appointment	1997-99	48 clauses	3	Queen's elects one departmental personnel committee to handle all matters of appointment, promotion, re-appointment and tenure decisions. There is no faculty level committee.	Department committee to department head to dean to principal. Reasons must be given.	No	No
	1999-2001		3	No change from 1997-99.	No change.	No	No
	2002-05	41	3	No change.	No change.	No	No

Promotion	1997-99	22	3	Uses elected departmental personnel committee except in case of promotion to Professor where a faculty level committee is in place.	Department head to dean to principal. Reasons must be given to explain a negative decision.	No	Yes
	1999-2001	22	3	No change.	No change.	No	Yes
	2002-2005	25	3	No change.	No change.	No	Yes
Tenure	1997-99	14	3	Same procedures and committee as promotion	Principal	No	Yes
	1999-2001	14	3	No change.	Principal	No	Yes
	2002-2005	21 (Specifies number of referees)	3	No change	Principal	No	Yes
Discipline	1997-99	20 clauses	3	Dean or principal must inform member but may withhold information	Dean or principal. Only the principal may dismiss or suspend.	No	Yes
	1999-2001	20 clauses	3.5	Member must be advised in writing and receive two days notice for any meeting. Member must be advised of probably decision.	Same as 1997-99	No	Yes
	2002-2005	20 clauses	3.5	No change	No change	No	Yes

APPENDIX E
UNIONIZATION STATUS OF CANADIAN UNIVERSITIES BY PROVINCE

Faculty Association By Province	Certified	Statutory Recognition	Voluntary Recognition	Special Plan	Non-Certified
Alberta					
Alberta ³⁸⁸		1982			
Athabasca		1982			
Augustana		X			
Calgary		1982			
Lethbridge		1982			
British Columbia					
British Columbia			2000		
Northern British Columbia				X	
Simon Fraser				X	
Victoria				X	
Manitoba					
Brandon	1978				
Manitoba	1974				
Saint-Boniface	1983				
Winnipeg	1981				
New Brunswick					
Moncton	1976				
Mount Allison	1982				
Saint-Louis-Maillet			1972		
St. Thomas	1976/1985 ³⁸⁹				
Shippigan			1978		
Newfoundland					
Memorial	1988				
Nova Scotia					
Acadia	1976/2001 ³⁹⁰				

³⁸⁸ Separate bargaining units for faculty, contract academic staff, administrative professional officers, librarians, faculty service officers.

³⁸⁹ Separate unit for contract academic staff

³⁹⁰ Separate unit for contract academic staff

Faculty Association By Province	Certified	Statutory Recognition	Voluntary Recognition	Special Plan	Non-Certified
Cape Breton			1975		
Dalhousie	1978				
Mount Saint Vincent	1988				
Nova Scotia College of Art and Design	1985				
Saint-Anne			1982		
St. Francis Xavier					X
Saint Mary's	1974				
Ontario					
Algoma	1976				
Brock	1996				
Carleton	1975				
Guelph				X	
Hearst	1982				
King's College					X
Lakehead	1979				
Laurentian	1979/1995 ³⁹¹				
McMaster				X	
Nipissing	1994/2001 ³⁹²				
Ottawa	1975				
Queen's	1995				
Ryerson			1964		
Toronto				X	
Trent	1980				
Waterloo				X	
Western Ontario	1998				
Wilfred Laurier	1988/2001 ³⁹³				
Windsor	1977				
York	1977				
Québec					
Armand Frappier	1979				

³⁹¹ Separate unit of contract academic staff certified in 1994; units merged in 1995

³⁹² Separate unit of contract academic staff (incl. Lab instructors)

³⁹³ Separate unit of contract academic staff (Instructors and librarians)

Faculty Association By Province	Certified	Statutory Recognition	Voluntary Recognition	Special Plan	Non-Certified
Bishop's	1976/2000 ³⁹⁴				
Concordia	1981				
Institut National de la Recherche Scientifique	1973				
Laval	1975				
Montréal	1975				
McGill					X
Ecole Polytechnique	1979				
Université de Québec à Chicoutimi	1979				
Université de Québec à Hull	1980				
Université de Québec à Montréal	1971				
Université de Québec dans l'Ouest	1982				
Université de Québec à Rimouski	1973				
Université de Québec à Trois-Rivières	1971				
Université de Sherbrooke	1974				
Saskatchewan					
St. Thomas More	1977				
Regina	1977				
Saskatchewan	1977				
Prince Edward Island					
Prince Edward Island	2001				
Federal					
Canadian Military Colleges	1990				

Source: Canadian Association of University Teachers, January 2003

³⁹⁴ Separate unit of contract academic staff

APPENDIX F
 FACULTY ATTENDANCE AT SEPTEMBER CAUT COUNCIL MEETINGS, 1975-1999

Number Of Attendances	Number Of Individual Faculty Members	Percentage Of Total Attendance
1	421	65.3
2	140	21.7
3	45	7.0
4	12	1.8
5	12	1.8
6	4	0.6
7	5	0.7
8	6	0.9
Totals:	645	99.8

Data compiled from attendance at CAUT September Council Meeting as recorded in the Minutes of the September Council Meetings, 1975-1999