

Submissions of the Canadian Association of University Teachers on **Bill 100**, as introduced on April 22, 2015

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Background

The Canadian Association of University Teachers is the national voice of 68,000 academic staff members at 124 post-secondary institutions across Canada. CAUT's member associations include academic staff associations representing several thousand academic staff working at all of Nova Scotia's universities.

Nova Scotia universities are justifiably proud of their long tradition of academic excellence. Students from across the country and all over the world are drawn to Nova Scotia's campuses by the diverse range of academic options available to them and by the distinct character of each institution. While many factors have contributed to the development of Nova Scotia's ten universities, the role of academic staff in the governance of those institutions (protected by academic freedom) and the autonomy of the institutions themselves have ensured the success of Nova Scotian universities.

While the exercise of academic freedom and the autonomy of the institutions have enabled Nova Scotia's universities to preserve and maintain their unique characteristics, the same universities have demonstrated that they can and will respond as necessary to changing economic and other circumstances. However, even in times of challenge and change, academic staff at Nova Scotia's universities have always determined the content of teaching and research, and have decided how teaching and research will be done. Bill 100 seeks to change these long held rights and traditions.

Bill 100

CAUT is disappointed that Bill 100 was introduced without any consultation with academic staff associations in Nova Scotia. The quick introduction and rapid passage of this bill, including the limited and last-minute opportunities to appear at committee and make representations, are undemocratic.

The bill links the Minister's authority to provide operating or capital grants to universities to the submission of a revitalization plan prepared by the university with the assistance of a government-appointed revitalization committee and a revitalization facilitator. The university is required to "consult" with affected trade unions, but during the consultation process, the unions are subject to a broad and sweeping prohibition against striking or enforcing much of their collective agreement.

The revitalization plan is required to include a number of terms set by the government which could affect collective agreement rights of employees, including job security related rights.

From start to finish, the duration of the revitalization plan process (and the period during which important union and worker rights are suspended) could last well over a year.

Bill 100 Violates the Charter Rights of University Staff and Creates Labour Relations Problems

CAUT adopts and reiterates the submissions of the academic staff associations and unions who assert that Bill 100 violates important and recently-confirmed rights of workers to collectively bargain and to strike. The Supreme Court of Canada has held that these rights are necessary to equalize the power between unions and employers when conditions of employment are negotiated. In the face of this recent and important statement of principle, Bill 100 deliberately creates an uneven playing field, overturning years of labour board and court jurisprudence, by reducing employees' rights and power precisely at a time when plans which could affect their terms and conditions of employment, and collective agreement rights are being developed.

By weakening unions during the revitalization process, CAUT also believes that this bill will at best postpone labour relations problems, rather than avoid them. We assume this is not the intention of government. Presumably, the legislative objective behind Bill 100 is to enforce financial restructuring by over-turning hard-won collective agreement rights by taking away the strike threat

or the right to arbitrate disputes about the collective agreement. This strategy is short-sighted, because it does not account for the fact that the rights taken away by the bill will eventually be restored. Even under Bill 100 in its current form, the right to grieve and the right to strike are not removed forever. The current collective agreements will expire and the parties will return to the bargaining table and the unions will undoubtedly seek changes to their collective agreements to address the effects of the revitalization plans. Since the legislature does not have the power to end collective bargaining rights in perpetuity, at the end of the revitalization period unions will rely on these rights, including the constitutional right to strike, to address the changes brought about by the revitalization plans. Bill 100 does not and cannot eliminate opposition to unfair revitalization plans; instead, it postpones the possibility of strike actions to enforce demands until the next round of bargaining.

Bill 100 Violates Principles of Academic Freedom, Collegial Governance and Institutional Autonomy

The CAUT *Policy Statement on Academic Freedom*, adopted with the support and agreement of academic staff associations including those in Nova Scotia, provides that the common good of society is served by the advancement of knowledge through teaching and research, and that academic freedom protects the right to teach and research without interference. Academic freedom also requires that academic staff participate meaningfully in the governance of universities through collegial governing bodies of the institutions.

Academic freedom predates the existence of collective agreements, although it is often acknowledged in collective agreements which cover academic staff. Collective agreements covering Nova Scotia universities include provisions which require that academic freedom in teaching and research be protected from threats from both within and outside the university.

Governing statutes provide that university senates have authority to determine the academic direction of the institution, including determinations about discontinuance of faculties or programs. As reflected in the CAUT *Policy Statement on Academic Freedom*, institutional autonomy requires that senates should operate independent of outside interference.

Furthermore, the collective agreements currently in place between Nova Scotia universities and academic staff associations already contain provisions which address many of the issues that are required to be covered by a revitalization plan. A cursory review of current agreements would have demonstrated to this government that the collective agreements already in place and negotiated by universities and academic staff associations contain provisions which require the disclosure of financial information and the consideration of measures to address and relieve financial exigency or financial constraint. Some agreements expressly provide for procedures and rights in the event that programmes are reduced or eliminated, or the university is amalgamated or merged with another. The fact that these provisions already exist causes CAUT to question the government's motives behind Bill 100.

Bill 100 mandates the contents of revitalization plans and ties those revitalization plans to decisions about operating and capital grants. In this way, the bill effectively coerces universities to effect changes to research and teaching. The bill itself presumes that the revitalization plans will have an effect on the collective agreement rights and/or conditions of employment of university employees, including academic staff.

Importantly, the revitalization plans are not content-neutral. The bill requires that a university's revitalization plan must include the following elements:

"(a) a strategic assessment of the university's strengths and weaknesses and the opportunities and risks that may affect the university's future, taking into account where the university fits within the national and international university environment and expected future changes in post-secondary education;

- (b) a description of the university's long-term strategy for financial sustainability, including present and projected student enrolment and plans for student retention;
- (c) a plan to achieve a focus on high-quality, efficient and effective learning through appropriate delivery channels for students;
- (d) a plan to achieve access and inclusiveness for students and faculty from a wide range of backgrounds, communities and groups;
- (e) an assessment of the potential impact of the proposed revitalization plan on students;
- (f) an assessment of the potential impact of the proposed revitalization plan on employees;
- (g) goals and objectives for contributing to social and economic development and growth in the Province, including through world-class research and development that is internationally competitive, turning research into business opportunities, fostering a skilled, entrepreneurial and innovative workforce needed for economic growth in the Province and improving the quality and inclusiveness of courses and program offerings and their relevance to students and the wider society and economy;
- (h) a plan for the effective exchange of knowledge and innovation with the private sector, including excellent collaboration between the university and industry;
- (i) analysis of potential opportunities and cost savings that could be achieved through collaboration with other universities, including by the elimination, consolidation and specialization of faculties, departments and programs;
- (j) human resources, financial, capital and operating-expenditure plans designed to achieve long-term competitiveness and sustainability, including outlines of the relevant assumptions and risks;
- (k) proposals for partnerships, mergers, affiliations, federations or other arrangements;
- (l) anything that the Minister requires to be included; and
- (m) a description of any contingent factors that may be necessary to achieve the plan." (s. 12(1))

CAUT wishes to comment on two aspects of s. 12(1) as contrary and offensive to the principles of academic freedom.

Bill 100's Concept of Research Is Limited to Economic Development Instead Of the Expansion of Human Understanding and Knowledge

A university's revitalization plan is required to include:

"[g]oals and objectives for contributing to social and economic development and growth in the Province, including through world-class research and development that is internationally competitive, turning research into business opportunities, fostering a skilled, entrepreneurial and innovative workforce needed for economic growth in the Province and improving the quality and inclusiveness of courses and program offerings and their relevance to students and the wider society and economy" (s. 12(1)(g)) and "a plan for the effective exchange of knowledge and innovation with the private sector, including excellent collaboration between university and industry" (s. 12(1)(h)) (emphasis added)

The language of sections 12(1)(g) and (h) is troubling for a number of reasons.

Section 12 expressly connects research to social and economic development. Academic staff understand and agree that university research advances the common good of society by expanding human understanding, as reflected in the CAUT *Policy Statement on Academic Freedom*. However, this bill connects only what is commonly known as applied research to social and economic growth. By implication, this suggests that basic research is not as important. This assumption is false, and for that reason, the legislative emphasis on applied research and industry collaboration is at least short-sighted and at worst harmful. CAUT has examined and considered this issue carefully, and has concluded that basic investigator-driven, peer-reviewed research is essential to social and economic development ([Open for Business](#), CAUT, November 2013; [CAUT Response to Industry Canada's 2014 S&T Strategy](#), February 2015). Basic research should not be relegated to second class status as it is by this bill.

By prioritizing applied research the bill is infringing the academic freedom of academic staff to conduct research free from external influence. Decisions about what kind of research will be pursued, and how the research will be done, is within the authority of academic staff and they are entitled to make those decisions free from coercion or limitation by outside forces.

The clear preference for certain kinds of research seeks to change the focus of universities. An emphasis on the importance of applied research and industry collaboration will relegate universities, faculties and academics whose research interests do not align with corporate interests to a second-class status, at least when funding decisions are made.

The emphasis on applied research to the exclusion of basic research is misguided and it undermines the academic freedom of researchers and the autonomy of universities.

Revitalization Plan Directs Discontinuance of Programs Displacing University Senates

The revitalization plan must also include:

"[a]nalysis of potential opportunities and cost savings that could be achieved through collaboration with other universities, including by the elimination, consolidation and specialization of faculties, departments and programs" (s. 12(1)(i)) and "proposals for partnerships, mergers, affiliations, federations or other arrangements" (s. 12(1)(k)) (emphasis added)

Section 12(2) makes it clear that partnerships, mergers, affiliations, federations of universities or other similar arrangements are a priority for this government: the law requires a written explanation from the university if these options are not included in a proposed revitalization plan. By singling out these reorganization provisions for special treatment, the government makes it clear that proposals for mergers or merger-type arrangements should be part of the revitalization terms that will determine grant decisions.

Very few issues are more central to the authority of a university senate than decisions about continuation of faculties, departments and programs. The right to make these types of decisions is typically expressly listed among a senate's statutory or constitutional authority.

From time to time, university governing bodies deal with the difficult and often contentious issues of mergers and discontinuance of programs, in accordance with traditions and practices of collegial governance. But that tradition and practice is wiped out by Bill 100. By forcing these issues onto the agenda of the revitalization plan while simultaneously depriving academic staff of their rights, and connecting a grant decision to its outcome, the bill ignores these traditions of collegial decision making and institutional autonomy.

Conclusion

CAUT respectfully submits that Bill 100 cannot continue in its present form and we ask that it be withdrawn. CAUT shares the view expressed by many others before you that the bill violates the freedom of association of academic staff and unions, and would not survive a Charter challenge. We believe that if this bill becomes law it will increase labour relations problems, rather than reducing them. Finally, CAUT believes that the academic traditions and rights which have supported the growth and development of Nova Scotia's universities are threatened by this bill. Academic freedom and collegial governance are core principles of Nova Scotia's universities, weakening them weakens the province's universities.

All of which is respectfully submitted.



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