

Equity in the Appointment and Career Progress of Academic Staff

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Introduction

The Canadian Association of University Teachers (CAUT) is committed to securing equity for members of marginalized groups disproportionately excluded from full participation in the academy. Excellence in post-secondary institutions can be sustained only when we actively promote social and intellectual inclusivity. Discrimination necessarily compromises the pursuit of excellence by ignoring the talents of individuals able and willing to contribute to the academic enterprise.¹

Academic staff associations have an ethical and legal obligation to ensure that the agreements they negotiate do not discriminate against members.² The removal of discriminatory provisions is insufficient, however, to overcome systemic discrimination that persists in the academy. Realizing equity requires associations to play a leadership role and negotiate proactive measures to improve the recruitment, retention, and working conditions of Indigenous and equity-seeking members.

Academic staff associations have negotiated collective agreement language to eliminate discriminatory practices and promote the recruitment, retention, and advancement of members of underrepresented groups. This bargaining advisory looks specifically at examples of collective agreement language pertaining to equity in the appointment and career progress of academic staff. It updates and complements the 2008 advisory “Realizing Equity.”³

Assessing the workplace

Equity data

A key barrier to the creation and monitoring of equitable appointment and advancement processes is a lack of information and analysis about the composition of the workforce. While many institutions make some efforts to collect information on representation of the four federally-designated employment groups⁴ (women, visible minorities, Aboriginal peoples, and people with disabilities), and some go beyond these categories, to include LGBTTTQ+ or disaggregated racialized groups, for example, not all institutions make this information available to academic staff associations.

Associations facing resistance to sharing data can take advice and examples from other institutions in the CAUT Bargaining Advisory, *The Provision of Information to the Association*.⁵ Associations can also point to a general trend toward increasing transparency on equity, diversity and inclusion (EDI). Universities Canada has called on member institutions to collect and make public data relating to EDI.⁶ Institutions that participate in the Federal Contractors’ Program (FCP) are required to collect data on the four designated groups. At least 50 institutions have participated in the FCP in the last decade.⁷ Similarly, the Canada Research Chairs (CRC) program requires institutions to have an EDI Action Plan and collect data on the four designated groups and LGBTTTQ+. ⁸ As well, the Federal Dimensions Program, launched in May 2019, will support data collection. Many institutions have endorsed the Dimensions Charter, which states:

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1. CAUT Policy Statement on Equity (2011, revised 2016).
 2. Central Okanagan School District No. 23 v. Renaud, [1992] 2 S.C.R. 970; Starzynski v. Canada Safeway Ltd., [2003] ABCA 246.
 3. [citation for BA].
 4. Canada Research Chairs Institutional Public Accountability Web Pages. <http://www.chairs-chaires.gc.ca/program-programme/equity-equite/Institutional-etablisements-eng.aspx>.
 5. CAUT Bargaining Advisory on The Provision of Information to the Association, April 2016. <https://www.caut.ca/sites/default/files/caut-bargaining-advisory-provision-of-information-to-the-association-2016-03.pdf>.
 6. Universities Canada. (2017). Inclusive Excellence Action Plan. <https://www.univcan.ca/priorities/action-plan-equity-diversity-inclusion/>.
 7. See Appendix 1 for list of FCP institutions 2010-2018.
 8. Participating institutions in the CRC Program. <http://www.chairs-chaires.gc.ca/program-programme/equity-equite/Institutional-etablisements-eng.aspx>.

Institutions require qualitative and quantitative data to measure, monitor, understand and publicly report on challenges and progress made. The analysis of the data should inform a comprehensive, in-depth, intersectional understanding of the contexts, manifestations and experiences that result from inequities, underrepresentation and exclusion among all post-secondary community members.⁹

Associations should negotiate access to disaggregated and intersectional equity data on the four federally designated groups, LGBTTTQ+ and provincially designated groups, if any. This information should be provided by rank, subject taught, and year of appointment, as this will allow analysis of representation, compensation, working conditions, and promotions.

At York University, the York University Faculty Association (YUFA) and CUPE 3903 each negotiated provisions to include LGBTQ2 as an equity-seeking group and collaborated to develop related questions for the university's self-identification survey. YUFA and the employer also agreed¹⁰ to revise the self-identification survey to allow members to self-identify with the visible minority sub-categories defined in the Canadian census¹¹ in order to obtain more complete information on the representation of members of racialized groups.

Data collected by the institution and shared with the association should address not only representation, but also other aspects of career progress. The Association of University of New Brunswick Teachers (AUNBT) receives such information through its Employment Equity Committee:

51A.04 The Employment Equity Committee shall carry out an analysis, and report annually by December 1, on the status of all designated groups. Such a report shall include but is not limited to the number of persons in each of the designated groups who:

- (a) were appointed to positions within the bargaining unit, and where the candidate has indicated a designated group:*
 - (i) those who applied for positions in the bargaining unit;*
 - (ii) those included on short lists of suitable candidates;*
- (b) were considered for probationary reappointment;*
- (c) were considered for promotion;*
- (d) were considered for tenure;*
- (e) were considered for sabbatical leave;*
- (f) were successful in considerations (b) – (e).¹²*

The disclosure of personal information about individual members and job applicants, including demographic information, may be subject to privacy legislation. Individual privacy can be protected by suppression of counts less than five, as is done in the CRC program. However, disclosure of this information to the association may be permitted where a collective agreement requires it, where the information is necessary for the association to ensure that the employer is complying with the collective agreement, or where the information is necessary for collective bargaining.¹³ Associations should seek legal advice if the employer asserts that privacy legislation prohibits the disclosure of demographic information or if they have questions about privacy legislation in their jurisdiction.

9. National Science and Engineering Research Council. Dimensions: Equity, Diversity and Inclusion Canada. http://www.nserc-crsng.gc.ca/NSERC-CRSNG/EDI-FDI/Dimensions_Dimensions_eng.asp.

10. Memorandum of Settlement for a Renewal Collective Agreement between York University and the York University Faculty Association, February 9, 2016. <https://www.yufa.ca/wp-content/uploads/2015/05/Tentative-Agreement-Feb-9-2016.pdf>. Retrieved on January 16, 2018.

11. The visible minority variable in the 2016 census includes "persons, other than Aboriginal peoples, who are non-Caucasian in race or non-white in colour." The categories for the visible minority variable in 2016 were South Asian, Chinese, Black, Filipino, Latin American, Arab, Southeast Asian, West Asian, Korean, Japanese, Visible minority, n.i.e. ('n.i.e.' means 'not included elsewhere'), Multiple visible minorities and Not a visible minority. Statistics Canada. *Visible Minority and Population Group Reference Guide, Census of Population, 2016*. October 25, 2017. <http://www12.statcan.gc.ca/census-recensement/2016/ref/guides/006/98-500-x2016006-eng.cfm>. Retrieved on January 16, 2018.

12. Collective Agreement between the University of New Brunswick and the University of New Brunswick Teachers – RAS (July 1, 2016 – June 30, 2020).

13. In *Royal Roads University v Royal Roads University Faculty Association*, 2018 CanLII 88451 (BC LRB), <<http://canlii.ca/t/hv7b1>>, the British Columbia Labour Relations Board rejected the union's argument that it required appointment letters and demographic information including

Because self-identification surveys are voluntary and the quality of data may be compromised by low participation rates, associations should also educate their members on the purpose of the surveys and encourage participation.

Joint Committees

The creation of joint EDI or employment equity committees may assist in the sharing and analysis of equity data and in the taking of action on the data.

The Acadia University Faculty Association (AUFA), for example, has negotiated a joint Employment Equity Committee (EEC) charged with identifying discriminatory barriers to employment equity. The collective agreement sets out the tasks of the committee and provides a detailed timeline for implementing its mandate:

3.61 The EEC shall

- a. *by 15 September 2017, receive training from a consultant, agreed to by the parties, on employment equity;*
- b. *15 October 2017, develop curriculum for Employment Equity Workshops based on a curriculum agreed to by the Parties, and*
 - i. *by 30 November 2017, review and if necessary revise the confidential Employment Equity Self-Identification Form which encourages potential candidates for positions at Acadia University to indicate whether they belong to one of the designated groups identified in Article 3.20. Applicants for positions at Acadia University shall be encouraged to complete and submit this form as part of the hiring process.*
 - ii. *by 30 November 2017, develop template(s) for job advertisements to encourage applications from members of designated groups. If changes are required to the statement in Article 10.52(b) such changes shall be implemented by the Joint Committee forthwith.*
 - iii. *by 30 November 2017, develop template(s) for Workforce Survey reports described in Article 3.56(c) and (d), and establish the benchmark data using the diversity of the populations of Canada. For African Nova Scotians, the EEC shall use publicly available provincial data for the benchmark.*
- c. *by 1 January 2018, review the Workforce Survey to be used in the employment systems review and hiring processes.*
- d. *by 30 June 2019, undertake an employment system review of current policies and practices to determine whether they pose barriers to employment equity. The EEC shall determine its own employment systems review methods.*
- e. *by 1 January 2020, monitor and revise as appropriate the Employment Equity Plan that aims to reduce the barriers that restrict the hiring and promotion of designated groups, taking into account the results of the workforce survey and the employment systems review;*
- f. *undertake other activities and make recommendations to alleviate barriers to employment equity in the University as appropriate; and*

age and gender of its members in order to fulfill its statutory obligation to fairly and effectively represent its members in collective bargaining. However, the Board also held that the union could obtain rights to this information in bargaining. The British Columbia Court of Appeal in *Canadian Office and Professional Employees' Union, Local 378 v. Coast Mountain Bus Company Ltd.*, 2005 BCCA 604 (CanLII), <http://canlii.ca/t/1m56b> and the Court of Appeal of Saskatchewan in *Saskatchewan Institute of Applied Science and Technology v Saskatchewan Government*, 2013 SKCA 8 (CanLII), <http://canlii.ca/t/fw037> each found that collective agreement articles requiring disclosure of information about job applicants to the union did not violate privacy legislation because of statutory exceptions permitting information to be disclosed for uses consistent with the purpose for which the information was collected. In Quebec, personal information may be disclosed "if the information is necessary for the carrying out of a collective agreement, order, directive or regulation establishing conditions of employment." Other jurisdictions have similar provisions.

- g. *deliver the Employment Equity Workshop and provide Human Resources with the names of all Employees who have completed the Employment Equity Workshop and the date of said workshop.*¹⁴

The Association of Professors of the University of Ottawa (APUO) negotiated a joint committee in its 2018-2021 agreement that:

*Within four (4) months following ratification of the collective agreement, the Employer shall provide the Equity, Diversity and Inclusion Committee with up-to-date information on the designated group distribution of academic staff with regular appointments, by academic unit. This information must be updated whenever appropriate and not less frequently than every twelve (12) months.*¹⁵

Defining underrepresentation

The identification of representation gaps involves comparing the existing workforce with an external availability estimate. In estimating external availability, it is important to decide whether to use representation by general population as a benchmark, or if using the labour market, to determine the geographic scope (i.e. local, regional or national).

The default geographic level of comparison for professional occupations is national labour market availability. Because the PhD or other terminal degree is the entry level requirement for most academic positions, there may be a temptation to consider the population that holds that qualification as the appropriate comparator. This could be counterproductive to equity goals by institutionalizing systemic barriers that can exist at the undergraduate and graduate level for Indigenous or equity-seeking group members for example, Black Canadians or Indigenous peoples are under-represented in PhD attainment in Canada, and setting a target by PhD representation in the labour market will not assist in diversification. Requirements instead of a PhD may be normal terminal degree for a discipline, years of experience within a discipline or traditional knowledge. For these reasons, representation for population may be the best target.

Representation by national population has been accepted as the target for the CRC program. However, associations may wish to negotiate additional criteria for employment equity programs. For example, where the student body or the regional population includes a higher percentage of Indigenous or racialized people than the national average, it may be appropriate to analyse the internal workforce in relation to the local external availability figure. The York University Faculty Association (YUFA) overcame significant employer resistance to using any figure other than national availability and negotiated an academic unit threshold of 25% for members of racialized groups. This represents a midway point between the national labour market and the labour market availability for the Greater Toronto Area.¹⁶

As the YUFA agreement disaggregates the “visible minority” category, it has also been able to negotiate for a review of the impact of existing employment practices on specific groups. In the Memorandum of Settlement for the 2018-2021 Collective Agreement, York University and YUFA agreed to strike a joint sub-committee to look at how best to increase the representation of Black faculty.¹⁷ Similarly, other academic staff associations have negotiated language to address members of groups historically disadvantaged in their province or region. The Employment Equity Program negotiated by the Dalhousie Faculty Association (DFA) specifies that, “Mi'kmaq people will be given preference among Aboriginal Peoples and African Nova Scotians will be given preference among visible minorities.”¹⁸

14. Collective Agreement between the Board of Governors of Acadia University and the Acadia University Faculty Association (July 1 2017 – June 30, 2021).

15. Collective Agreement between the University of Ottawa and the Association of Professors of the University of Ottawa (May 1, 2018- April 30, 2021, Article 17.1.6.4).

16. Collective Agreement between York University and the York University Faculty Association (May 1, 2018 – April 30, 2021).

17. Memorandum of Settlement in the Matter of Negotiations for a Renewal Collective Agreement between York University and the York University Faculty Association. <https://www.yufa.ca/wp-content/uploads/2018/10/MOS-2018-21-Renewal-CA.pdf>

18. Collective Agreement between the Board of Governors of Dalhousie University and the Dalhousie Faculty Association (July 1, 2017– June 30, 2020) Article 1.09.

Defining underrepresentation and setting targets for people with disabilities poses a particular challenge, as people are often reluctant to disclose disability and there is limited national data. The CRC program uses 7.5% as a target for persons with disabilities. This is higher than estimated labour market availability of persons with disabilities, but lower than the estimated population in the 2017 Canadian Survey on Disability.

While institutional employment equity programs aim to remedy underrepresentation within occupational categories, negotiated provisions generally consider representation at the level of the hiring unit or department. This addresses both underrepresentation in the bargaining unit as a whole, and patterns of underrepresentation within academic fields. For example, an institution where gender balance is achieved only because women make up a disproportionately high percentage of academic staff in education and a low percentage in engineering, could not be deemed to have met its employment equity obligations.

Brock University Faculty Association's (BUFA) language provides an example:

ARTICLE 20 – EMPLOYMENT EQUITY

20.01 General

- a. *The Parties agree that the University is better able to advance its essential functions, namely the pursuit, creation and dissemination of knowledge through teaching and research, if members of designated groups (Article 20.01 (a)(ii)) are well represented in the Bargaining Unit. To that end, the Parties agree to the principle of employment equity and agree to work toward increasing the proportions of women, Aboriginal peoples, persons with disabilities, members of visible minorities, and lesbian, gay, bisexual, transgender, and queer (LGBTQ) persons in the Bargaining Unit through the appointment of members of designated groups to probationary and tenured/permanent and limited term positions while sustaining the University's commitment to excellence. Consistent with that principle:*
 - i. *Where two or more applicants are equally qualified as the best candidate (see Article 19.02) or not substantially apart in their qualifications as the best candidate, and one of these applicants is a self-identified member of a designated group, then the applicant who is a self-identified member of a designated group shall be recommended for appointment.*
 - ii. *For the purposes of this Article, the Parties recognize women, Aboriginal peoples, persons with disabilities and members of visible minorities, and lesbian, gay, bisexual, transgender, and queer (LGBTQ) persons as designated groups. Any Department/Library/Centre with more than 40% representation of women (i.e. women hold more than 40% of the probationary and tenured/permanent positions in the Department/Library/Centre) will be deemed to have achieved a gender balance and, in this instance, the employment equity procedures in this Article will apply to candidates from the other designated groups (i.e. Aboriginal peoples, persons with disabilities, members of visible minorities, and LGBTQ persons).¹⁹*

Equitable appointment and promotion processes

Collective agreement language aimed at increasing equity in the appointment and promotion of academic staff falls into two broad categories. Anti-discrimination measures ensure that processes, criteria, and practices do not discriminate against applicants from Indigenous and equity-seeking groups, while proactive measures actively promote the recruitment and retention of members of groups that are underrepresented within the institution or the hiring unit. Associations should negotiate both types of language.

Anti-discrimination measures

While human rights and employment standards legislation apply to post-secondary institutions, collective agreements should also contain language to ensure that appointment, tenure and promotion procedures and criteria do not discriminate against applicants. Non-discrimination articles in the post-secondary sector generally prohibit discrimination and harassment on the basis of characteristics enumerated in human rights statutes, but may include

19. Collective Agreement between Brock University and the Brock University Faculty Association (BUFA) (July 1, 2017 – June 30, 2020).

additional grounds such as political affiliation, place of residence, and association membership and activity. Language that requires the parties to promote equity and work to eliminate systemic discrimination serves as an important indication of a commitment to equity and provides a means for the association to hold the employer accountable when it fails to live up to this obligation.

Anti-discrimination language should commit the parties to review existing practices in order to identify, eliminate, and remedy systemic barriers and implicit bias. Many of the appointment, tenure and promotion practices that have a discriminatory effect may appear neutral but can deter qualified applicants from Indigenous or equity-seeking groups or fail to assess their qualifications fairly. Associations should therefore ensure that their collective agreements require regular review of all practices relating to recruitment, advancement, and retention with a view to identifying and remedying discrimination.

The Acadia University Faculty Association agreement specifically requires the parties to eliminate or modify practices that contribute to systemic discrimination, to refrain from adopting discriminatory assessment criteria, and to review such criteria periodically:

3.30 Consistent with the principle of employment equity, the Parties:

- c. shall act to eliminate or modify those policies, practices, and systems, whether formal or informal, shown to have an unfavourable effect on the hiring, retention, and promotion of members of designated groups; and*
- d. agree that in the assessment and evaluation of candidates for appointment, renewal, tenure and promotion, and appointment to Head and Director positions, the criteria adopted shall not systemically discriminate against members of designated groups and shall be reviewed periodically.²⁰*

While the policies, practices, and systems that may have a discriminatory effect are often found outside collective agreements, associations can still ensure that equitable practices are adopted and followed. The Wilfrid Laurier University Faculty Association (WLUFA) has negotiated guidelines for fair and equitable procedures in appointments in a Letter of Understanding appended to the agreement. The guidelines outline best practices for advertising, recruiting at conferences, reviewing applications, developing a short list, interviews, and post-interview evaluation:

The Parties agree that the guidelines for fair and equitable procedures in appointments, as specified below, shall be made available to Deans, Associate Deans, Department Chairs, Temporary Chairs, Program Coordinators, chairs of Department (or equivalent) Appointment and Promotion Committees, under 13.12, and other Members involved in the evaluation and recommendation of appointments under Articles 13 and 14;

The Parties further agree that the chairs and members of Appointment and Promotion Committees shall follow the guidelines below in their respective committee's procedures for the assessment of applications and interview of short-listed candidates for appointment.²¹

Proactive recruitment measures

Collective agreements should include proactive measures to achieve recruitment and retention of members of Indigenous or equity-seeking groups that are underrepresented in the hiring unit or in the institution as a whole. Where a workforce analysis determines that members of one or more Indigenous or equity-seeking groups are underrepresented in a hiring unit, proactive recruitment measures may include affirmative action requirements, targeted hiring programs, and active search procedures.

20. Collective Agreement between Acadia University and the Acadia University Faculty Association (July 1 2017 – June 30, 2021).

21. Letter of Understanding #1. Collective Agreement between Wilfrid Laurier University and the Wilfrid Laurier University Faculty Association (July 1, 2017 – June 30, 2020).

Proactive measures intended to advance equality are permitted under provincial and federal human rights legislation. For information about the requirements in your jurisdiction, please see the CAUT advisory on The Legal Basis for Special Equity Programs.²² Some collective agreements also specify that proactive measures intended to benefit members of specific groups do not violate articles prohibiting discrimination. For example, the Laurentian University Faculty Association (LUFA/APPUL) agreement stipulates that:

*3.15.6 This Article shall not preclude any action that has as its object the equitable representation of designated employment equity target groups throughout the academic community. Any action taken in accordance with a specific equity plan or specific equity initiative that has been negotiated pursuant to this Collective Agreement will not constitute discrimination or harassment contrary to this Article.*²³

Affirmative action requirements

Because assessment of qualifications often involves an element of subjective judgement shaped by bias, agreements should stipulate that candidates who fulfil the position requirements are presumed to be equally qualified rather than require that candidates be “demonstrably equal” for affirmative action to apply. For example, YUFA’s agreement stipulates that, “[c]andidates are substantially equal unless one candidate can be demonstrated to be superior.”²⁴

Targeted hiring programs

In response to persistent underrepresentation, some institutions have designated postings as open only to applicants from one or more designated groups. Sometimes, this is done on an ad-hoc basis in response to needs within a department or faculty. In other cases, positions are created as part of a program to make a number of appointments within a set period of time. Such cluster-hiring programs may be designed not only to increase representation, but also to better ensure retention by building networks and improving the institutional climate for underrepresented scholars who often experience isolation, excessive workload, and a general lack of professional support.

Cluster hiring programs are relatively uncommon in Canada and have been more prevalent in the United States. While simply hiring a critical mass of scholars may be a worthy goal in itself, research assessing these programs demonstrates that they are more likely to lead to a positive experience for participating academic staff if they are supported by infrastructure aimed at identifying and eliminating systemic barriers.²⁵

Simon Fraser University’s Aboriginal Faculty Recruitment Plan funds the creation of up to two new faculty positions each year reserved for Aboriginal scholars. The first three years of salary and benefits for each position are funded by the office of the VP Academic. While institutions have often initiated such programs, associations have played a role as well. YUFA has negotiated the creation of an Aboriginal hiring initiative that stipulates that at least six Aboriginal scholars will be hired to tenure-stream positions during the life of the agreement, with no more of three of these appointments made to the teaching-intensive stream.²⁶

The settlement of a policy grievance filed by the Windsor University Faculty Association (WUFA) over the employer’s failure to follow the employment equity policies and procedures, included the establishment of the President’s Indigenous Peoples Scholars Program:

In keeping with the findings of the Truth and Reconciliation Commission and the Universities Canada Principles of Indigenous Education, the University of Windsor has established the President’s Indigenous Peoples Scholars Program. Through this program, the University will appoint five Indigenous scholars to tenure-track faculty positions at the assistant professor level across a range of

22. CAUT advisory on The Legal Basis for Special Equity Programs. caut.ca/content/the-legal-basis-special-equity-programs

23. Collective Agreement between Laurentian University and the Laurentian University Faculty Association (July 1, 2017 – June 30, 2020).

24. Collective Agreement between York University and the York University Faculty Association (May 1, 2015 – April 30, 2018), Article 12.21.

25. Urban Universities for HEALTH. Faculty Cluster Hiring for Diversity and Institutional Climate.

http://urbanuniversitiesforhealth.org/media/documents/Faculty_Cluster_Hiring_Report.pdf. Retrieved February 26, 2018.

26. <https://www.yufa.ca/wp-content/uploads/2018/10/MOS-2018-21-Renewal-CA.pdf>.

disciplines. The term “Indigenous Peoples Scholars” refers to scholars who self-identify as Indigenous (i.e., First Nations, Métis, or Inuit).²⁷

Many associations have begun to negotiate measures aimed at establishing equitable policies and practices that involve Indigenous Peoples and Indigenous Knowledge in all aspects of campus life. These are examined in detail in the CAUT advisory on Bargaining for the Indigenization of the Academy.²⁸

Job postings and active search procedures

The language used in job postings should be designed to welcome all qualified applicants and encourage members of Indigenous and equity-seeking groups to apply. The means chosen to advertise positions should be designed to better reach Indigenous people and members of equity-seeking groups who may have less access to informal professional networks, and may be less likely to employ typically used channels. Many academic staff associations have negotiated advertising requirements intended to ensure that postings attract a diverse applicant pool. Such articles typically address the content of advertisements and the places where they must be published. For example, BUFA’s agreement notes:

19.10 Faculty: Appointment Procedures

- e. All vacant positions shall be advertised (except as specified in Articles 19.11 (b)) indicating the nature of the positions and terminal dates for applications. The advertisement must be approved by the appropriate Dean in consultation with the Chair/Director before the position can be posted. Each advertisement shall:
 - i. include the following statement: “Brock University is actively committed to diversity and the principles of employment equity and invites applications from all qualified candidates. Women, Aboriginal peoples, members of visible minorities, people with disabilities, and lesbian, gay, bisexual, transgender, and queer (LGBTQ) persons are encouraged to apply and to voluntarily self-identify as a member of a designated group as part of their application. Candidates who wish to be considered as a member of one or more designated groups should fill out the Self-Identification Form and include the completed form with their application;”
 - ii. inform candidates where to find the Self-Identification Form referred to above; and
 - iii. be posted at an early stage in appropriate publications, relevant professional journals, or other appropriate avenues, including any that may be especially directed to designated group members of the relevant discipline.²⁹

The Queen’s University Faculty Association (QUFA) agreement requires specific measures in cases where proactive recruitment is required:

24.3.1 For the term of this Agreement the University agrees to utilize search procedures in Units that require an active search for qualified members of equity-seeking groups, including the following:

- a. Advertisements and postings shall include the following statement: “The University invites applications from all qualified individuals. Queen’s is committed to employment equity and diversity in the workplace and welcomes applications from women, visible minorities, Aboriginal peoples, persons with disabilities, and LGBTQ persons;
- b. Advertisements shall be placed on the University and Unit websites, and in appropriate professional journals, and other venues intended to reach prospective candidates from equity-seeking groups;

27. Windsor University Faculty Association. GR# 0870 - Employment Equity Obligations Under Article 30. <http://www.wufa.ca/article-296/gr-0870-employment-equity-obligations-under-article-30>. Retrieved February 26, 2018.

28. CAUT Bargaining Advisory on Bargaining for Indigenization of the Academy, January 2020. https://www.caut.ca/sites/default/files/caut-bargaining-advisory-bargaining-for-indigenization-of-the-academy_2020-01.pdf.

29. Collective Agreement between Brock University and the Brock University Faculty Association (July 1, 2016 – June 30, 2020).

- c. Copies of all such advertisements shall be transmitted to the Equity Office and to QUFA;
- d. The appropriate Dean and/or Unit Head or Director, University Librarian or University Archivist, as applicable, shall communicate to his/her counterparts in other Canadian universities inviting all qualified individuals, including women, visible minorities, Aboriginal peoples, persons with disabilities, and persons of any sexual orientation or gender identity to apply for advertised positions;
- e. Other measures as authorized by the Dean, University Librarian or University Archivist, in consultation with the Unit Head or Director or equivalent representative of Members of the Department or Unit, and/or the Equity Office; and
- f. Other measures as recommended by either Party or by the Equity Office, and agreed to by the Parties.

The Parties further agree that with regard to any grievance arising from an alleged failure to meet Article 24.3.1(c), the overturning of an appointment process cannot be a remedy to the grievance.³⁰

The Faculty Association of the University of St. Thomas (FAUST) has negotiated that the joint committee can recommend specific publications for job advertisements, and that an employment equity representative is involved in drafting and placing advertisements:

6.05.2 Advertisements shall be made in appropriate Canadian academic and professional journals and websites. Such advertisements shall be prepared by the appropriate Dean, in consultation with the Chair of the hiring committee and the employment equity representative on the hiring committee, and placed by the Office of Human Resources. Copies of advertisements shall be sent by the appropriate Dean to the Union as soon as the advertisements have been approved. Where appropriate, additional advertisements shall be placed in specialized publications identified by the representative of the Employment Equity Committee. Every advertisement shall state "St. Thomas University is committed to employment equity for women, aboriginal persons, members of visible minority groups and persons with disabilities."³¹

Appointment, tenure and promotion committees

Peer evaluation should be the primary factor determining decisions affecting academic careers. The CAUT publication *What is Fair?* outlines recommended peer review policies and procedures that ensure that judgements are made by qualified persons, according to fair procedures, and for sound academic reasons. Equity considerations are central:

Peer evaluation must be free of bias, and not discriminate against marginalized groups who have historically been excluded from full participation in the academy. This requires that the composition of peer committees are inclusive of diversity and equity, and that members receive appropriate information and training to assist in understanding and achieving equity.³²

Committee procedures must include mechanisms for ensuring that those responsible for evaluating candidates do so fairly. Bias can be present in the review of resumes, in reference letters, assessment of publications, teaching and service.³³ Associations should ensure that individuals charged with evaluating candidates receive proper training in order to ensure that their judgements are not compromised by discriminatory assumptions, stereotypes, and beliefs. While several agreements include an equity representative on committees, QUFA's agreement also requires all non-student members of appointments and tenure and promotion committees to receive training:

24.2 Appointments and Personnel Committees

30. Collective Agreement between the Queen's University Faculty Association (QUFA) and Queen's University at Kingston (May 1, 2019 – April 30, 2022).

31. Collective Agreement between St. Thomas University and the Faculty Association of the University of St. Thomas Full-Time Bargaining Unit (July 1, 2016 – June 30, 2019).

32. *What is Fair: Q&A on Procedures and Standards in Peer Review*. CAUT, 2017. https://www.caut.ca/sites/default/files/what_is_fair.pdf

33. <https://www.insidehighered.com/news/2018/06/19/study-finds-recommendation-letters-inadvertently-signal-doubt-about-female>; <https://hbr.org/2016/03/the-unintended-consequences-of-diversity-statements>.

24.2.1 Persons (excluding students) chosen to serve on Appointments Committees for Faculty, Librarian or Archivist positions, or on Personnel (Renewal/Reappointment, Tenure/Continuing Appointment and Promotion) Committees and administrators with a recommendatory or decision-making role in an appointments or personnel process may only carry out such functions after successfully completing within the previous ten (10) years, a familiarization and training workshop which shall cover the principles, objectives, recent history, best practices, and rules and institutional expectations with respect to employment equity. The program of such workshops shall be agreed between the Parties, with advice from the Equity Office.

24.2.2 While all Appointments Committee and Personnel Committee members shall adhere to the principles of employment equity, one (1) Member (normally with tenure) of each such Committee shall be designated as the Equity Representative and shall have explicit responsibility for the Committee adhering to the rules and expected practices that assure equity, and for data collection and reporting per Article 24.4. The Committee member charged with this responsibility shall be selected by the Committee, and shall be a person who understands and is sympathetic to the objectives of this Article. Persons with this responsibility will require training in excess of that foreseen in Article 24.2.1 unless waived by the Parties.³⁴

Some associations have negotiated language to provide candidates from Indigenous and equity-seeking groups the opportunity to ensure that committees include individuals able to assess their work appropriately. For example, at Dalhousie University, Aboriginal or African Nova Scotian applicants for reappointment, tenure, continuing appointment, and promotion can elect to have an Aboriginal or African Nova Scotian non-voting representative on their Department-level Committee.

The representative will be chosen by the Member, in consultation with the Committee, and must be arm's length and have an academic appointment at Dalhousie University. The role of the representative is to provide advice to the Committee on any aspect of the Member's application that may be a reflection of the Member's heritage and/or identity. The representative may prepare an independent report to add to the Member's file.³⁵

Committees assessing the work of candidates engaged in traditional Indigenous scholarship must be qualified to recognize Indigenous knowledge production, dissemination, learning and languages. The CAUT advisory on *Bargaining for Indigenization of the Academy* advises that:

Language should be negotiated to ensure Aboriginal community involvement, as identified by the candidate, in the assessment of Aboriginal academic staff traditional or dual scholarly activity for the purposes of recruitment, regularization, tenure and appointment committees. The persons chosen need not be academics, and should be seen as peers. In the case of some Elders and traditional people, it may not be possible to obtain written assessments, in which case a personal visit and interpreters may be required.³⁶

Assessing qualifications

Criteria for the appointment, renewal, and advancement of academic staff must not undervalue the contributions and potential of Indigenous and equity-seeking academic staff, and should not disadvantage applicants with non-traditional career paths or community-based scholarship and pedagogy.

QUFA has negotiated language that addresses the undervaluing of work and the impact of family responsibilities:

24.1.5 Consistent with principles of employment equity, the Parties agree that in the evaluation of applicants for renewal, tenure and promotion,

34. Collective Agreement between the Queen's University Faculty Association (QUFA) and Queen's University at Kingston (May 1, 2019 – April 30, 2022).

35. Collective Agreement between the Board of Governors of Dalhousie University and the Dalhousie Faculty Association (July 1, 2017– June 30, 2020) Articles 11.7(b), 12.12(a)(i), 13.03(a)(i), 14.15(c), 15.20(i), and 37.03(c).

36. CAUT Bargaining Advisory on Bargaining for Indigenization of the Academy (January 2020) https://www.caut.ca/sites/default/files/caut-bargaining-advisory-bargaining-for-indigenization-of-the-academy_2020-01.pdf.

- a) the criteria adopted must not systematically discriminate against members of equity-seeking groups and shall be reviewed periodically to ensure that they do not undervalue work which is done predominantly by members of the equity-seeking groups; and
- b) applicants shall not be disadvantaged by reason of minor career interruptions caused by family responsibilities.³⁷

Some agreements explicitly enumerate qualifications other than academic credentials. For example, Nipissing University Faculty Association's (NUFA) agreement outlines several factors to be considered for appointments:

19.3 Academic Qualifications and Appointment Procedure

- a. *In assessing the academic qualifications of candidates for any position, the following will be considered as appropriate: academic credentials, including scholarships and awards; program fit within the relevant academic unit; teaching experience and teaching performance; scholarly research and publication record; professional and community service record; and Indigenous knowledge.*³⁸

The Simon Fraser University Faculty Association (SFUFA) has negotiated language to ensure that the contributions of candidates engaged in non-traditional scholarship are assessed fairly and by persons possessing the appropriate expertise:

Criteria for Assessing Non-Traditional Scholarship

28.18 Without diminishing the requirement of faculty to demonstrate a record of achievement consistent with the relevant provisions above, the parties recognize that certain faculty members or groups of faculty members may engage in non-traditional forms of scholarship.

28.19 Examples of such contributions include but are not limited to:

28.19.1 Indigenous or other non-Western forms of scholarship and/or teaching;

28.19.2 public dissemination of scholarly work through engagement with government or community organizations;

28.19.3 technology transfer of discoveries, innovations and inventions (including patents and licensing);

28.19.4 work that bridges traditionally academic and traditionally artistic forms of knowledge production;

28.19.5 products of community-engaged scholarship that bridge the boundaries of teaching, research, and service.

28.20 Faculty members who expect to engage in such scholarship are encouraged to consult with their TPC Chair well in advance of a contract renewal, tenure and/or promotion application to discuss how this work might be best presented for evaluation by the TPC.

28.21 In particular, consideration should be given to presentation of:

28.21.1 the complexity or time taken to produce the work;

28.21.2 the nature of peer or public review, the standards needed to appear in the chosen venue, and the view/usage rate of the product;

28.21.3 the impact made by the work.

37. Collective Agreement between Queen's University and the Queen's University Faculty Association (May 1, 2019 – April 30, 2022).

38. Collective Agreement between Nipissing University and the Nipissing University Faculty Association Full-time Academic Staff Bargaining Unit (May 1, 2019 – April 30, 2022).

28.22 A faculty member may request that one external referee have expertise consistent with the non-traditional work to be reviewed; where appropriate, and with agreement of the TPC, this referee may be a person with expertise and stature who may not have academic credentials.³⁹

The Wilfrid Laurier University Faculty Association (WLUFU) agreement provides another good example:

22.3.4 Equity in Tenure and Promotion:

The Parties recognize that there may be differences between the careers of men and women. These differences include, but are not limited to, the effects of primary responsibility for family care and related career interruptions, part-time education, and work history. The following measures shall be implemented to protect against forms of systemic discrimination which are a product of these career differences:

- a. the University is committed to creating an environment where these differences in career histories and family responsibilities do not bias appointment decisions, the evaluation of candidates in peer review processes, University grants, merit awards, and salary adjustments. Where such barriers are proven to exist, the University, in consultation with the Association, shall eliminate such barriers to equal opportunity and career advancement;*
- b. an employment equity representative shall sit as a non-voting member of the Senate Promotion and Tenure Committee. This person shall be selected by agreement between the President and the President of the Association from a list of Members approved annually by the Joint Liaison Committee. This person shall act as a resource to the Committee on equity processes, procedures and issues, and shall submit an annual report to the President and the President of the Association with a copy to the chair of the Senate Promotion and Tenure Committee.⁴⁰*

The LUFA/APPUL has negotiated Aboriginal Equity Initiatives that aim not only to appoint Aboriginal academic staff, but also to support candidates in meeting the criteria for tenure:

ARTICLE 5.30 ABORIGINAL EQUITY INITIATIVE

5.30.1 The Employer and the Union agree that a series of active measures are required to appoint a larger number of qualified Aboriginal professors and librarians at Laurentian University, particularly outside Aboriginal-specific programs.

5.30.2 The Employer agrees to develop a “grow-our-own” program to recruit and appoint Aboriginal professors and librarians to probationary appointments, who, on the condition of agreeing to work at Laurentian as professors/librarians for a minimum of three (3) years, shall be supported in completing the academic qualifications needed for tenure (per Article 5.10 – Academic Qualifications Guidelines). The details of the program are to be agreed to by the Employer and the Union in consultation with the Office of the Associate Vice-President, Academic and Indigenous Programs.⁴¹

Non-discriminatory evaluation criteria

Some evaluation processes commonly used in Canadian post-secondary education institutions have been demonstrated to discriminate against members of Indigenous and equity-seeking groups. Academic staff associations should work to eliminate such discriminatory mechanisms.

Student evaluations

There is growing evidence that student opinion surveys of teaching not only fail to measure teaching effectiveness, but are significantly biased against women, members of racialized groups, and academic staff teaching in a language

39. Collective Agreement between the Simon Fraser University Faculty Association and Simon Fraser University. (July 1, 2014 – June 30, 2019).

40. Collective Agreement between Wilfrid Laurier University and the Wilfrid Laurier University Faculty Association - RAS (July 1, 2017 – June 30, 2020).

41. Collective Agreement between Laurentian University and the Laurentian University Faculty Association (July 1, 2017 – June 30, 2020).

other than their first language.⁴² In addition, such surveys may provide opportunities for students to anonymously target instructors with discriminatory, harassing, or otherwise inappropriate comments. CAUT recommends that, “student opinion surveys should not be used in any career procedures and decision making involving academic staff.”⁴³

The Ryerson Faculty Association (RFA) achieved the elimination of the use of student opinion surveys as a measure of teaching effectiveness in its important 2018 interest arbitration award.⁴⁴ The arbitrator found the following:

According to the evidence, which was largely uncontested, and which came in the form of expert testimony and peer reviewed publications, numerous factors, especially personal characteristics – and this is just a partial list – such as race, gender, accent, age and “attractiveness” skew SET [student evaluation of teaching] results. It is almost impossible to adjust for bias and stereotypes... SET results have demonstrable limitations that raise real issues about their use as a measure of teaching effectiveness in tenure and promotion decisions. A further complication is the practice of reducing the FCS [Faculty Course Survey] results to averages and then comparing individuals with other individuals, the Department, Faculty and University. The evidence is clear, cogent and compelling that averages establish nothing relevant or useful about teaching effectiveness.

As a result, the arbitrator ordered that the collective agreement be amended to eliminate the use of survey results as a measure of teaching effectiveness in the tenure and promotion process, and to eliminate the use of numerical averages altogether. Following the Ryerson award, other associations have negotiated articles limiting the use of student opinion surveys. At Western, for example, the association negotiated performance evaluation criteria that characterize surveys as “information about student experience” that are considered along with contextualizing data including class size and response rates and comments from the member. Arithmetic averages are not included.⁴⁵

While associations are likely to meet significant resistance from employers as they attempt to negotiate the exclusion of student opinion surveys from evaluation processes, there are intermediate measures that may be more easily achievable. For example, a joint working group at Ontario Tech University (formerly the University of Ontario Institute of Technology) issued a set of recommendations including deleting a student’s entire survey and associated scores in cases where the student has made inappropriate comments.⁴⁶

The Mount Allison Faculty Association (MAFA) has negotiated language acknowledging the limitations of student surveys:

*B.02 The parties recognize that any results from student surveys represent only one source of information regarding student opinion and degree of satisfaction with the teaching of an employee. Information from such surveys represents only the views of students responding to the survey and does not, in and of itself, constitute an evaluation of teaching performance.*⁴⁷

Similarly, CUPE 3902 at the University of Toronto has negotiated the creation of a working group to address equity issues related to student evaluations and has language to ensure that student evaluations are not the sole determinant of performance:

Student Evaluations

18.04 Where they are available, student evaluations, whether conducted by the Department or by a student organization or by any other means, shall not be admissible as the sole determining factor to demonstrate unsatisfactory performance in either the discipline

42. See for example Anne Boring, Kellie Ottoboni, and Philip B. Stark. “Student evaluations of teaching (mostly) do not measure teaching effectiveness.” ScienceOpen Research, January 7, 2016.

43. CAUT Policy Statement on Use of Student Opinion Surveys, approved by the CAUT Council November 2016.

44. Ryerson University v Ryerson Faculty Association, 2018 CanLII 58446 (ON LA), <<http://canlii.ca/t/hsqkz>>.

45. Collective Agreement between Western University and the University of Western Ontario Faculty Association. (July 1, 2018 – June 30, 2022).

46. Student Course Evaluation Working Group Final Report. <http://www.uoitfa.ca/student-course-evaluation-working-group-final-report/>. Retrieved February 28, 2018.

47. Collective Agreement between Mount Allison University and the Mount Allison University Faculty Association – RAS (July 1, 2016 – June 30, 2019).

*procedure or in arbitration. Departments may make use of student evaluations as an element in the Department's method for assessing work performance.*⁴⁸

Performance metrics

Some measures for evaluating scholarly activity may also disadvantage members of equity seeking groups. The use of performance metrics is a particular area of concern. While quantitative metrics may appear objective, they can advantage some forms of scholarship over others for reasons that have little to do with academic merit. In particular, metrics may undervalue the contributions of heterodox and interdisciplinary scholarship, research with an equity, diversity, and inclusion focus, the dissemination of research results through means other than publication in high-impact peer-reviewed journals, and works published in languages other than English. The CAUT *Policy Statement on Performance Metrics* states that:

*Performance metrics can especially disadvantage Aboriginal scholars, members of equity-seeking groups, those publishing or disseminating knowledge in languages other than English, those who are on non-traditional career paths, as well as those who conduct unconventional teaching, research, creative activities, service, professional practice, and/or research.*⁴⁹

CAUT recommends that associations bargain language in their collective agreements that protects their members against the use of performance metrics. The CAUT model clause on Performance Metrics states that “Performance metrics shall not be used as a means to measure the performance of or budget allocations to academic departments, units, and individual staff members.” Academic staff associations have faced considerable resistance negotiating such language. The University of Manitoba Faculty Association (UMFA) was not able to secure language that would prevent tenure, promotion, and evaluation processes from requiring the submission of research metrics and allow their use in such processes only when personally and voluntarily submitted by the member.⁵⁰ Although the proposed UMFA language has not been incorporated into the collective agreement, individual departments may include it in their unit standards.

Peer review

While peer review, rather than quantitative metrics, must continue to govern academic decisions, including those relating to hiring, tenure, and promotion, there is increasing evidence that bias within the peer review process may contribute to persistent inequities within the academy. For example, a number of studies have found that gender bias in grant review processes in Canada and worldwide results in a lower rate of funding success for women applicants.⁵¹ Given the importance of external funding to career progress and the heavy weight placed on successful grant applications in many evaluation processes, bias in the review of funding applications can serve as a barrier to full participation in the academy. External funding agencies have begun to examine their review processes and issue guidelines to address the impact of bias, and associations should both undertake a similar examination of their own evaluation processes and ensure that discrimination is not compounded by assessment criteria that place excessive emphasis on success in external competitions that are compromised by bias. In the collective bargaining context, this means ensuring that the agreement requires periodic review of all evaluation policies and procedures to ensure that they do not contribute to systemic discrimination, and resisting administration proposals that would require success in externally-funded competitions or fail to recognize community-engaged scholarship and non-peer-reviewed contributions.

48. Collective Agreement between the Governing Council of the University of Toronto and the Canadian Union of Public Employees Local 3902 – Unit 3 (September 1, 2017 – August 31, 2021).

49. CAUT Policy Statement on Performance Metrics, Approved by the CAUT Council November 2019.

50. See Appendix H of the Collective agreement between the University of Manitoba and the University of Manitoba Faculty Association (April 1, 2017 – March 31, 2021). The parties agreed to strike a joint committee that would review the use of research metrics and could recommend the insertion of specific language into the collective agreement. Although the committee issued a report that was critical of the use of research metrics, the administration representatives rejected the specific language provided by the association.

51. Rosemary Morgan, Kate Hawkins and Jamie Lundine. “The foundation and consequences of gender bias in grant peer review processes.” CMAJ April 23, 2018 190 (16) E487-E488; DOI: <https://doi.org/10.1503/cmaj.180188>.

Valuing service

Evaluation of Indigenous and equity-seeking academic staff must also properly recognise their service contributions. Members of underrepresented groups may experience significant pressure to mentor students and to serve on committees, including committees mandated to promote equity, diversity, and inclusion. Too often, no adjustment is made to other areas of professional responsibility in order to accommodate this workload, and service contributions are often undervalued in hiring, tenure, and promotion decisions. The Dalhousie Faculty Association has negotiated terms that allow a Dean to authorize or approve measures to address this additional work:

20.09 With the agreement of the Member concerned and in accordance with the policies and procedures existing within the Departments or other units for establishing a normal teaching workload and establishing a normal academic administrative workload, the Dean may approve or authorize:

- b. overload academic administration within Dalhousie University for Members who belong to a designated group and who are providing higher than normal academic administrative service whose composite workload for the year is otherwise considered to be full time. In such cases Members shall be entitled to an overload stipend; and/ or*
- c. supports for teaching and/or research for Members who belong to a designated group and who are providing higher than normal academic administrative service whose composite workload for the year is otherwise considered to be full time.⁵²*

Accommodation of personal circumstances

Existing processes for assessing the potential or the contributions of academic staff members may disadvantage individuals who have followed non-traditional career paths or experienced career interruptions. In addition to negotiating articles to ensure that candidates are accommodated within appointments, tenure, and promotion processes and are not disadvantaged for taking medical, pregnancy, or parental leave, it is important to encourage candidates to seek accommodation when appropriate and to explain any circumstances that should be considered when assessing productivity. Where employers fail to address stigma and discrimination, members may be reluctant to seek appropriate accommodation and may be unwilling to disclose information that is necessary for a fair assessment of their work.

Human rights legislation requires the employer to provide reasonable accommodations regardless of whether collective agreement language addresses this requirement. However, including language in the agreement not only helps ensure that members are aware of their rights, but can establish an effective process and provide a role for the association. The Northern Ontario School of Medicine, for example, specifically states that accommodation may include a modification of assessment procedures:

2.2. Members with a physical or mental disability (permanent or temporary) have the right to accommodation, including modification of an existing accommodation. Accommodation shall entail any necessary adjustments to physical workspace and modification of any aspect of a Member's workload or accepted work practices. Such accommodation may also include, but is not limited to, modification of merit assessment and of the time requirements for tenure/permanency and promotion decisions.⁵³

Conclusion

Collective bargaining is an important tool for building a more equitable academy. Academic staff associations have an ethical and legal obligation to ensure that the agreements they negotiate do not discriminate against members and to co-operate with the employer's efforts to provide reasonable accommodation.⁵⁴ But the removal of discriminatory provisions is insufficient to overcome the legacy of systemic discrimination that persists in the academy. Realizing

52. Collective agreement between the Board of Governors of Dalhousie University and the Dalhousie Faculty Association, (July 1, 2017 – June 30, 2020).

53. Collective Agreement between Ontario Public Service Employees Union and its Northern Ontario School of Medicine Local 677 (Unit 1) and Board of Directors of The Northern Ontario School of Medicine (July 1, 2018 – June 30, 2022).

54. Central Okanagan School District No. 23 v. Renaud, [1992] 2 S.C.R. 970; Starzynski v. Canada Safeway Ltd., [2003] ABCA 246.

equity requires associations to play a leadership role, and to negotiate proactive measures to improve the recruitment, retention, and working conditions of academic staff who are members of Indigenous and equity-seeking groups.

CAUT recommends that associations review their collective agreements to identify provisions that may have a discriminatory effect, and to detect areas in which proactive equity measures could be introduced or strengthened. Although this advisory looks specifically at appointment and promotion language, all other articles -- such as leaves, access to childcare, salary anomalies, anti-harassment -- , should be reviewed with an equity lens. Associations can also play an important role in promoting inclusivity in post-secondary education and initiating projects to recruit, support, and mentor colleagues and students from target populations. While bargaining strong agreement language is essential, it is equally important that the association itself review its own structures and practices to ensure that Indigenous members and members of equity-seeking groups may participate fully in all association activities, including the development, negotiation, and enforcement of collective agreement language.