

CAUT Brief in response to Private Member's Bill 234

An act to amend the Charter of the Université de Montréal

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Introduction

Founded in 1951, the Canadian Association of University Teachers (CAUT) is the national voice for academic staff representing more than 70,000 teachers, librarians, researchers and other academic professionals at some 122 universities and colleges across the country. CAUT is an outspoken defender of academic freedom and works actively in the public interest to improve the quality and accessibility of post-secondary education in Canada.

CAUT therefore has a duty to intervene further to the tabling of Private Member's Bill 234, an Act to amend the Charter of the Université de Montréal. We would like to thank the Commission de la culture et de l'éducation at Quebec's National Assembly for the opportunity to submit and present this brief to the members of the Commission.

Academic freedom

We must stress that academic freedom is the primary motivating factor for our intervention. We lend our full support to this principle, as defined by UNESCO in 1997:

Higher-education teaching personnel are entitled to the maintaining of academic freedom, that is to say, the right, without constriction by prescribed doctrine, to freedom, of teaching and discussion, freedom in carrying out research and disseminating and publishing the results thereof, freedom to express freely their opinion about the institution or system in which they work, freedom from institutional censorship and freedom to participate in professional or representative academic bodies.

All higher-education teaching personnel should have the right to fulfil their functions without discrimination of any kind and without fear of repression by the state or any other source. Higher-education teaching personnel can effectively do justice to this principle if the environment in which they operate is conducive, which requires a democratic atmosphere; hence the challenge for all of developing a democratic society.¹

1. <http://unesdoc.unesco.org/images/0011/001102/110220e.pdf#page=36>

A triple threat

In CAUT's view, Bill 234 represents a threat on three levels: infringement on academic freedom, an undermining of collegial governance and an amendment of working conditions outside the regular collective agreement bargaining framework.

By promoting "independent members", the bill not only threatens to quash academic freedom and undermine collegiality at the Université de Montréal, but also blurs the clear line that must prevail between administrative and academic affairs. How? By increasing the number of external members and decreasing the number of internal members on University bodies. If this goes through, it will skew the balance of bicameral governance at this institution. Throughout Canada, the laws that govern our universities respect the collegiality between management and teaching.

The Charter of the Université de Montréal, as a legislative document, must remain general in scope. Specific details pertaining to governance and management would be better set out in the University's statutes and collective agreements. This bill therefore constitutes interference in the working conditions of teaching staff at the Université de Montréal. If they become law, these changes will be stuck in a legal document that members of the university community will be unable to amend or improve. We believe that any such sweeping changes must be negotiated at the bargaining table between the unions and the University administration.

Preserving the Quebec model

Our national perspective is rooted in the research we have undertaken on governance in Canada's top universities. CAUT is currently looking at the laws and policies governing the following 31 universities: Acadia, Alberta, Bishop's, UBC, Calgary, Carleton, Concordia, Dalhousie, Laval, Lethbridge, Manitoba, McGill, McMaster, Montréal, Memorial, Mount Allison, New Brunswick, Ottawa, Queen's, Regina, Saskatchewan, Sherbrooke, Simon Fraser, St. Francis Xavier, Thompson Rivers, Toronto, Trent, Victoria, Waterloo, Western and York. Our report will be made public in a matter of weeks.

With regard to university governance standards, CAUT has observed a model in Quebec that is quite unique in Canada. At Canada's English-speaking universities, we have observed a tendency for power to be concentrated around boards of governors and steering committees. At Quebec's universities, however, other university bodies tend to play a greater role—sharing the power and paving the way for dialogue.

CAUT believes we must preserve this Quebec model of university collegial governance. While it may not be a perfect model, involving the teaching staff in big decisions sets an example every university should follow.

Promoting the term "independent member"

If this bill is passed, "independent members" will then have a dominant voice within the University, relegating academic staff to the level of mere employees. Governance will no longer be a partnership between two equal parties working together in the public interest.

CAUT believes that introducing this notion of "independent member" into the Charter of the Université de Montréal is not only unnecessary in terms of managing the University, but it is also inappropriate in a context where the cornerstone of the institution is collegiality. Bringing in more people from the outside will dilute internal voices—particularly those of teaching staff, but also of students. We would like to point out that the term "independent member" does not exist in the laws governing Université Laval, Université de

Sherbrooke or the University of Toronto, to name but a few examples. What's more, this term is not used in the laws governing universities in British Columbia and Alberta.

The idea that members with no connection to the University are more impartial does not hold true in light of recent history. Over the years, CAUT has led a number of investigations and published many reports to highlight academic freedom issues caused precisely by "external" interests that have wheedled their way into university bodies. Some concrete examples of these are our 2017 Investigatory Report into *the Enbridge Centre for Corporate Sustainability* at the University of Calgary², our 2001 *Olivieri Report*³ and our 2006 *Report into the Termination of Dr. Laurent Leduc* at the University of St. Michael's College.⁴

Academic freedom is an essential tool for free thinking. It enables teachers to teach, conduct research and exercise their right of criticism without oversight and without fear of reprisal. Teachers may thus criticize the University's decisions and policies, just as they may express themselves on any topic of public interest. It is more probable that "independent" members will be less able or less inclined to protest or ask questions of an institution's administration, since their positions on the Board (or another university body) will depend on their connections with other members of the Board or with government. Moreover, the very notion of "independent member" disregards the fact that an external member's connections with outside companies and agencies may place them in a conflict of interest.

Traditionally, so-called "external" members have not come from the university community and have tended to be business people or lawyers, for instance; an investigatory report published by CAUT in September

2. https://www.caut.ca/sites/default/files/caut-ahic-report-calgary-enbridge-centre-for-corporate-sustainability_2017-10.pdf

3. <https://bulletin-archives.caut.ca/docs/af-reports-independent-committees-of-inquiry/the-olivieri-report.pdf?sfvrsn=0>

4. <https://bulletin-archives.caut.ca/docs/default-source/af-ad-hoc-investigatory-committees/report-on-the-discontinuance-of-dr-laurent-leduc-at-the-university-of-st-michael%27s-college-university-of-toronto-%282006%29.pdf?sfvrsn=6>

2016 revealed how the majority of members of university boards of governors come from the private sector.⁵

CAUT has observed that the private sector is increasingly tightening its grip on the governance of our top Canadian universities. Bankers, lawyers, company executives and other members of the business world now make up 49.1% of the membership of the boards of governors at Canada's top 15 research universities.

CAUT's investigation has revealed that 194 of the 395 governors listed as at May 1, 2016 came from the corporate world. This contrasts with 165 governors hailing from the academic community (administrators, academic and support staff, and students)—representing 41.8% of the total membership. The remainder of governors is made up of 32 individuals from within the public service (8.1%).

What this means is that these external voices are already present on the respective boards. Moreover, in addition, none of these people have any experience in the field of post-secondary education. To qualify these members as “independent” serves no purpose, other than to send a message that the opinion of teachers and students carries less weight. In short, CAUT firmly believes that by promoting the notion of “independent members”, the administration will undermine teachers' academic freedom since their voices will be diluted, if not drowned out entirely.

The most recent case in point is that of the University of Calgary. CAUT called for an independent inquiry further to alleged infringements on academic freedom at the Enbridge Centre for Corporate Sustainability⁶. Following a painstaking on-site investigation, the inquiry concluded that the school's president, Elizabeth Cannon, put herself in a conflict of interest by spearheading the opening of a research centre funded by the oil and gas giant while serving as a Board member of

the company. The ensuing problem is that according to the private-sector definition—which would be legislated into the Charter of the Université de Montréal if Bill 234 is allowed to pass — Ms. Cannon was considered to be an “independent” governor.

The case of Mount Allison University points to another danger of promoting the involvement of “independent members” on our universities' boards of governors. Between 2013 and 2015, Mount Allison University spent nearly \$1 million on legal fees billed by an outside lawyer. Meanwhile, the chair of the university's board of governors was a partner in the same firm. Stories like these should teach us that being “independent” in the university community does not mean being exempt from conflicts of interest—the result being that private interests can take advantage of public property to make money.⁷

Managing a university not at all the same as managing a private enterprise, which has no concept of academic freedom and does not have to act in the public interest. Academic freedom is a guarantee of quality in higher education and research, and it requires: bicameral governance. Teachers' voices are an essential part of a university fulfilling its duty to society

5. <https://www.caut.ca/bulletin/2016/09/do-you-know-who-sits-your-board>

6 <https://www.caut.ca/latest/2017/10/enbridge-inquiry-university-calgary-president-was-clearly-conflict-interest>

7. <http://www.mafa.ca/2016/03/18/mount-allison-legal-fees-2014-15-474000-set-another-record/>

Profiteering through philanthropy

On another note, the tendency to bring philanthropists on board and play a role in governance at the University through its various bodies is nothing but a roundabout way to allow business to influence decisions. There is simply no weight to the argument that philanthropists are independent, since they all have certain financial, commercial and professional interests and relationships, however direct or indirect.

It is not difficult to see how these interests may exert undue influence on decision-making at the University, which is constantly in search of funding. This could ultimately be a threat to academic freedom and a slippery slope for democracy.

Let's take a look at the Koch brothers in the United States, for example. The private foundations led by these billionaire industrialists pour millions of dollars into U.S. universities and colleges every year. A recent investigation by the Center for Public Integrity uncovered how the Koch brothers consider the higher educational programs they fund a "fully integrated" part of a massive organizational network fighting to enact deregulatory government policies and elect conservative political candidates. The higher educational programs bankrolled by the Koch brothers' foundations essentially go hand in hand with their philosophy of promoting free markets and laissez-faire capitalism. In some cases, the Koch brothers have succeeded in attaching strings to their contributions, such as control over curriculum, and more recently, obtaining personal information about students.

Academic freedom in these institutions is well and truly compromised.

New missions?

Bill 234 introduces two new missions—creativity and community service—that will inevitably have consequences for the working conditions and duties of academic staff. We must point out that these new missions have never been discussed in collective bargaining with teachers' legal representatives.

The current Charter of the Université de Montréal defines the University's mission as one of teaching and research. These missions are not defined in the Bill. This raises a great many questions about the impact these new missions will have on not only the University's primary *raison d'être* of teaching and research, but also on the working conditions of its academic staff.

Changes in University management

By rolling a number of changes into Bill 234, the Université de Montréal administration is trying to do indirectly what they cannot achieve directly, either through bargaining or by way of other university bodies. In so doing, the administration will unilaterally change the working conditions of its academic staff. These sweeping changes will usher in a more authoritarian, silo-like system in which the power will be increasingly concentrated in the hands of a select few managers. As the University's union of teachers (SPGUM) explained in its report to the Commission, imposing these changes in working conditions by way of legislation may even go against charter rights in Canada and Quebec, as well as labour laws.

Furthermore, the Bill explicitly lessens the influence teachers will have in academic matters, which are traditionally their domain. Among the changes, we see yet again an increase in the numbers of so-called "independent" members. CAUT finds this dilution of collegiality troubling. In order to protect their academic freedom, teachers must be free to intervene without interference in academic topics. With this in mind, it is reassuring to see a guarantee that academic staff make up at least half of the assembly.

However, the Bill strips the university assembly of its disciplinary role. Academic discipline goes hand in hand with teaching and research. It is therefore imperative that issues of this nature be examined by teachers. This is all connected to academic freedom, since members of the Board of governors who are not teachers would be able to discipline a student, teacher or researcher without understanding how alleged acts are protected by academic freedom. What's more, "independent" members of the Board could impose disciplinary

measures without having to consult with the university assembly.

The Commission des études' power to "ensure education coordination and education-research consistency" may constitute an interference with teachers' academic freedom. Currently, collegiality entrusts academic affairs to teaching staff. Even though in other universities students and managers serve on the academic bodies of their institutions, teachers normally account for the majority of seats, meaning that it is very rare to see external or "independent" members. Here at Université de Montréal, teaching staff will account for only five members of the committee while the administration, including deans, makes up the majority. At Université Laval, by contrast, the Commission des études has no external members, and the majority are teachers who are not governors.

Tightening the chain of command

All of the proposed changes to the hierarchical structure of the University will effectively tighten the chain of command for the deans, vice-rectors and rector on the Board by sidelining the university assembly.

CAUT believes it is dangerous to centralize the power in this manner with no mention of the university assembly and its jurisdiction over academic affairs. Even though vice-rectors and deans may be governors, they also have academic responsibilities. This means that they must bring any academic issues to the university assembly for debate. Yet this bill remains silent on the subject, which will effectively isolate the university assembly—the only university body in which academic staff represent the majority.

Moreover, according to the Bill, the dean will become the "gatekeeper" of vice-dean appointments, rendering the Board unable to appoint vice-deans without the recommendation of the dean. This will concentrate power in the hands of a single individual. It would be better for these positions to be decided upon by a vote of the faculty council. Collegiality necessarily requires the democratic participation of teachers—for the good of the university and for the public interest.

Neither the Charter of Université Laval nor the Charter of Université de Sherbrooke contains such provisions regarding deans and vice-deans. What's more, a similar clause was removed from the law governing the activities of the University of Toronto. Bicameral governance encompasses both hats worn by deans and vice-deans: they are governors, yes, but they are also faculty members and the chain of command should recognize both aspects of their duties.

Conclusion

In conclusion, we should point out that the last time the Université de Montréal updated its Charter was 50 years ago. In this respect, it is important to note the following:

First of all, once it is adopted, this Charter could remain set in stone for a very long time. This is a critical document that cannot be amended quickly. Any detrimental clauses could therefore remain in place for many years.

Secondly, if there is indeed a need to modernize the Charter, the fact remains that Université de Montréal is functioning well under the existing regime. Therefore, there is no hurry.

Thirdly, there is no perceived crisis, save for one exception: that which is ensuing from this process itself, which threatens to poison working relationships while infringing on teachers' academic freedom.

In our opinion, in order for such fundamental changes to be made, things should be done properly and the requisite time must be taken to do so—by conducting the necessary research and consultations in a democratic, collegial manner. We must conclude that the opposition of teachers at Université de Montréal is clear and that imposing this Charter against their will, with no bargaining, would be a serious mistake.

On the pretense of modernizing its Charter, the Université de Montréal administration is suggesting nothing more and nothing less than to bring an end to collegiality at the University and to bring about a radical change in faculty working conditions without bargaining. We are concerned about the consequences of concentrating power in the hands of the institution's

board of governors, especially in light of the radical changes being made in the composition of the board to usher in governors from outside the academic world.

Consequently, CAUT calls for the current bill to be rejected, since it threatens the principle of collegiality as well as infringing on the fundamental rights and freedoms of academic staff.