



Contribution by the Federation of New Brunswick Faculty Associations (FNBFA)

To federal consultations on insolvency legislation and public universities and colleges

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Introduction

The Federation of New Brunswick Faculty Associations represents the interests of approximately 1,500 professors, contract academic staff, librarians, and researchers at six campuses of the province's four public universities. It advocates the advancement of their profession, the protection of the institutional autonomy of universities and academic freedom and aims to improve the quality of post-secondary education and research in the province.

Institutional Autonomy of Universities

This is defined as: "the necessary degree of independence from external interference that the University requires in respect of its internal organization and governance, the internal distribution of financial resources and the generation of income from non-public sources, the recruitment of its staff, the setting of the conditions of study and, finally, the freedom to conduct teaching and research." (IAU, 1998)

Academic Freedom

Academic freedom is: "the freedom of teachers and students to teach, study, and pursue knowledge and research without unreasonable interference or restriction from law, institutional regulations, or public pressure." (Encyclopedia Britannica)

Situation in New Brunswick

In New Brunswick we have four (4) public universities: the University of New Brunswick, Mount Allison University, St. Thomas University, and the Université de Moncton.

A value at the heart of the FNBFA's mission is ensuring access to quality post-secondary education in public universities in New Brunswick for students from here and around the world.

The Federation is pleased to note that the current federal government is concerned about how to protect the public interest in the event that public post-secondary institutions are faced with the threat of insolvency.

The importance of universities for their communities, especially for minority Francophone communities

“Post-secondary education (PSE) is a vital part of civil society and any modern economy. When broadly accessible, it can enable socioeconomic mobility, improve health outcomes, advance social cohesion, and support a highly skilled workforce. It yields public benefits not only in improved well-being and economic prosperity, but also in reduced costs in healthcare and social services. Canada also relies heavily on the PSE sector for research.”¹

In Canada, in every community where we find a campus, the local university drives community economic, cultural and social development.

In New Brunswick, the only bilingual province in Canada, we have only one Francophone public university out of a total of four (4) public universities, that is, the Université de Moncton with its three campuses in Edmundston, Moncton and Shippagan.

In a mainly rural province, the presence of these three (3) campuses providing post-secondary education in French has given a large number of persons access to post-secondary education who would otherwise never have gone to university. The Université de Moncton plays a crucial role in the development of the Acadian community in Canada. The numerous economic, social and cultural advances won by the Acadian community and other Francophones in New Brunswick are in large part due to this university.

University faculty and staff are often the mainstays of many numerous social and charitable associations or organizations. Some even take charge of these groups or are part of their management structure.

Application of the CCAA

Unlike some countries where a university education is conceived of as a commodity that is “sold” for profit and is only available to a certain social elite, Canada has chosen to conceive of post-secondary education as a public good in order to ensure equitable access for all its citizens. Post-secondary instruction is a public good that educates and shapes the student population, promotes democracy and carries out essential research.

Thus, universities depend on public funding as a basic safety net for their operations. They are not commercial businesses to be assessed solely on financial calculations and revenue and expense reports.

¹ [Investing in a Better Future: Higher Education and Post-COVID Canada, RSC Policy Briefing, Executive Summary](#), March 2021.

If the mission, goals and operations of public universities are understood in this context, Canadian legislation on insolvency is poorly adapted to the goals of public universities. These latter are incompatible with the commercial objectives in the *Companies' Credit Arrangement Act (CCAA)*. As well, the CCAA is inadequate because it is designed so that private interests, those of major creditors, take precedence over the public interest, which is central to the mission of a university. Moreover, in applying the CCAA financial monitoring bodies, lawyers and judges do not have to consider the impacts of such legal proceedings on the public interest.

It must also be noted that, as a provision for possible difficult financial situations, all universities and colleges in Canada already have in their collective agreements clauses that establish the measures and procedures in a collegial process to be followed in the case of a financial emergency. These provisions in collective agreements allow these institutions to manage and contain such crises while continuing to carry out their missions, and so cause the least possible amount of damage to students, staff, and the community.

In the case of Laurentian University (LU), upper management violated the central principle of collegiality of university governance by resorting to the CCAA. LU used the CCAA to get out of its obligations, freely consented to in the collective agreement with its academic staff. By doing so, LU “put the worm in the fruit.” And since this precedent was created, certain university administrations in Canada are going farther and starting to brandish the CCAA as a means of blackmail at the bargaining table during discussions on renewing the collective agreements of academic staff. In consequence, another fundamental principle of labour legislation is being violated, that of good faith bargaining between employer and employees.

So, universities don't need the CCAA.

Funding for post-secondary educational institutions

Since post-secondary education is a public good, it is fundamental that it be ensured adequate funding to avoid having situations like that at Laurentian University occur. Unfortunately, in recent decades we've seen ongoing erosion in public funding for post-secondary education. For example, in New Brunswick, public funding of the universities' operating budgets has fallen from 82% in 1979-80 to 56% in 2019-20.

Such a trend in public funding for universities fundamentally casts doubt on the public model of post-secondary education in Canada and pushes it progressively toward becoming a commercial, for profit, business. This puts it at a greater risk of no longer being able to carry out its mission.

So, it's high time for the federal government to have as an objective, after these consultations, carrying on a frank, constructive dialogue with the provinces and territories on increasing federal funding for post-secondary education and above all, on effective distribution of federal transfers of funds to the provinces and territories for post-secondary education.

More particularly with respect to minority Francophone PSEEs, guaranteeing the duty to provide people from minority Francophone and Indigenous communities access to university education is equivalent to supporting small universities and campuses established in these communities. The nature of such universities puts them at a severe disadvantage in a situation where there is competition for students, because they are not made to (and cannot even) serve the large numbers that would allow them to achieve economies of scale,

Moreover, university instructional resources and other resources in French for the operation of Francophones universities are more expensive than resources in English, and sometimes are not even available. In consequence, additional public investments are required to obtain or fashion tools for work or study in French and create programs adapted to the needs of Francophones.

So, you will agree that it is totally inappropriate to assess the importance of a university based on financial results, as would be done to enforce the CCAA. Also, the major costs of the judicial process, calling for the services of lawyers and advisors of all sorts, involve the use of already limited financial means that would be better invested in the universities' academic mission.² In the case of LU, the fees paid to legal and financial advisors and the bank fees associated with the CCAA process totalled nearly \$55 million.

Recruitment and Retention

Two other major issues for minority Francophone communities providing post-secondary education in French are recruiting students and hiring and retaining university faculty and staff, given that the pool from which to recruit Francophones and Francophiles in Canada and abroad is smaller and more dispersed compared to the pool available to Anglophone universities. Among other things, the situation creates increasingly fierce competition among Francophone and bilingual universities in the various Canadian provinces, both for enrolling and retaining students and for attracting and retaining talented persons as faculty and staff.

Such a demographic situation makes minority Francophone PSEEs even more at risk for difficult financial situations.

Conclusion

Having recourse to the CCAA, as Laurentian University did on February 1, 2021, to break collective agreements and avoid accountability, must never happen again. Universities are not private corporations and their role is much broader than a commercial mission.

² Special report of the Auditor General of Ontario, [Special Report on Laurentian University \(caut.ca\)](#)

“Unlike private corporations, almost all post-secondary institutions are established by dedicated provincial legislation (and, in many provinces, dedicated acts for each institution). The government has a monopoly over the formation of universities and colleges exactly because they raise novel public interest considerations, represent publicly funded policy choices, and require public oversight.”³

The provincial and federal governments absolutely must prepare a university funding plan based on the true needs of the teaching and research mission of universities funded primarily by public money, in order to ensure financial stability for post-secondary education in each province and territory.

For minority Francophone communities, the governments must also ensure additional resources to overcome the challenges of living, studying and working in French.

The Federation of New Brunswick Faculty Associations (FNBFA) is imploring you to see to it that legislation on business restructuring is never used again to resolve the financial issues of public post-secondary establishments.

³ [caut submission to the standing senate committee on banking trade and commerce 2022-10.pdf](#), page 2.