

# Certification: Notes on the experiences at Canadian Universities



# Most Canadian Universities are Unionized, but some are not

- among large universities: UBC, U Sask, U Manitoba, Western, York, U de Montreal,
- among mid-sized universities: Guelph, Queen's, Carleton, Concordia, Dalhousie, Memorial, U New Bruns, Wilfrid Laurier, Windsor
- and almost all smaller institutions (e.g, Trent, Winnipeg, Regina)
- **but not:** Alberta, Calgary (where Alberta provincial law prohibits it)
- **but not:** McMaster, Waterloo (where it was rejected in the 1990s by a 68% vote), Toronto, McGill

# The universities which are not unionized have some sort of an agreement with the Faculty Association

- “special plan”, “framework agreement”, etc.
- this usually involves mandatory dues check-off, or at least mandatory dues check off as a “condition of employment” for new employees (but not retroactive before signing of first agreement)
- and it usually involves some form of salary arbitration
  - Western unionized with a 68% vote in the 1990s in part because the admin. rejected salary arbitration and dues checkoff
  - Waterloo, Toronto don’t have “full” arbitration
- the legal status of these agreements is possibly ambiguous: they may not be enforceable if one of the parties refuses to comply (or if members challenge mandatory dues check off, though even union contracts typically allow “conscientious objectors” to put an equivalent amount into university scholarships)

# Union contracts typically cover much of the same territory as the UVic “Framework Agreement”

- this includes a detailed articulation of tenure and promotion processes
- how a typical union contract differs from the Framework Agreement:
  - references to Labour Relations legislation; no strikes/lockouts during the term of the agreement, etc.
  - no binding salary arbitration (left to negotiators, with faculty having the strike weapon)
    - Note, however, that a union agreement can include salary arbitration as part of an “automatic contract renewal” process
      - UBC: in perpetuity
      - others: a “cooling out” contract (e.g., 2 year extension, after which the strike option becomes available)
  - some, but not all, union contracts provide the right to grieve on matters dealt with by the University Review Committee (more later)
  - typical provisions in a few areas may be more favourable to faculty (more later)

# Some union contracts are “minimalist”, while some non-union agreements are “comprehensive”

	UNION	NON-UNION
Minimalist	UBC	McMaster, Waterloo, Toronto, McGill
Comprehensive	Saskatchewan, Manitoba, Western, Queen’s, Windsor, Carleton	Victoria, Calgary, Alberta

“minimalist” agreements typically don’t cover anything close to the range of issues in a “comprehensive” agreement and/or defer to existing university policies on most faculty matters. Note, however, some control is often retained inasmuch as minimalist agreements can contain language, “no rule affecting employment will be changed without Association consent”

## Unionized faculty associations may or may not include part-time (sessional) faculty

- most common pattern is for the union to include these faculty members (possibly as a second “bargaining unit”)
- sessional faculty are often unionized where full-time faculty have not unionized

## Unionized faculty associations are almost never “locals” of a larger union

Exception: where part-time faculty have unionized separately, it's not uncommon for them to be members of a larger union such as CUPE

Strike support (“strike fund”) and other logistical support typically comes from CAUT (special membership category for unionized associations), but CAUT is **not** a union.

# Unionization in the 1990s:

- in Ontario, Western and Queen's both unionized
- usually, there's an issue or issues that precipitate unionization
- At Western the issues were:
  - failure of “Comprehensive Agreement” negotiations: admin. refused binding salary arbitration, dues checkoff
    - Association newsletter indicated 8% wanted “as is”, 42% wanted “Comprehensive Agreement” 48% wanted union, 2% “either”
  - aggressive 7-year tenure review and annual merit approval plan from Admin.
  - recent history of very poor salary settlements, including refusal on the part of Admin. to honour a previous “5<sup>th</sup> place” agreement
  - vote in favour of unionization was 68%
- both Western and Queen's maintained “certification committees” for years prior to actual certification.

# What union contracts provide that the Framework Agreement does not

- in BC, access to Labour legislation provisions calling for fair treatment (by the employer) on matters not directly addressed in agreement
- in BC (and elsewhere), right to representation
  - e.g. [hypothetical!] a janitor accuses a faculty member of sexual harassment; university holds meetings to discuss matter and asks the faculty member to sign an agreement to resolve the dispute (e.g., faculty member agrees not to work at his/her office after the janitor starts her shift at 3:30pm / agrees not to interact [talk to/look at] with janitor at any time, etc.; university agrees to give janitor time off and pay compensation, which is an implicit acknowledgement of guilt)
  - if unionized, Faculty member and union would have “status” at any hearing and would be a party to any agreement that the faculty member might be pushed to sign; without a union, this is not the case.
  - **note:** under the current Framework Agreement, the university cannot discipline the faculty member (there are rules for this), but the pressure to sign an agreement which might implicitly acknowledge some culpability without the full protections that would be afforded in a union environment may still constitute a problem

# What union contracts provide that the Framework Agreement does not

- Some union agreements (but not all of them) allow a faculty member to grieve if the university failed to follow the rules and procedures established in the agreement for tenure, promotion, renewal, merit and/or leave cases
  - At Uvic, the “rules” for the above are well established in the Framework Agreement
  - There is a mandated process (the University Review Committee) for reviewing decisions, and this process typically concentrates on whether the Framework Agreement rules have been followed
    - the Association, however, has no “status” in this review process (it cannot grieve, for example)

# What union contracts provide that the Framework Agreement does not

- The question of who belongs in the bargaining unit and who does not is determined by a Labour Board (in the respective province). In some cases, it is almost impossible for an employer to argue that a particular group ought to be excluded.
  - the issue of whether sessionals are represented by the Association has already been resolved at UVic: a different union would continue to represent them whether or not UVic faculty unionized
  - at UVic, full-time faculty on one year contracts (or less) are not represented by any employee association.
  - in a non-union “Framework Agreement” environment, inclusion of one-year term faculty would require agreement with the administration (the Association failed to achieve this in the 2008 negotiations)
  - in a union environment, it is highly likely that the Labour Relations Board would accept any argument that this group belongs in the bargaining unit (especially since they essentially do the same or similar work and are at present totally unrepresented).

# Areas where the Framework Agreement is (arguably) weak in relation to a typical union contract

- salaries and benefits

- comparisons are always difficult, because of ceteris paribus concerns: different universities have different disciplinary distributions (engineers, lawyers and business profs get higher salaries), different age distributions (years of service is a major factor determining university salaries with or without a strong merit scheme)
- it is possible, however, to look at recent settlements (say, last 10 years) and compare mixes of scale + progress-through-the-ranks + merit and, typically, UVic settlements have been 1-2% lower than most (but not all) Canadian universities
- a big factor in BC is PSEC – the “Public Sector Employers’ Council”. This group has the mandate to restrain university faculty salaries
  - In other provinces, it’s up to the universities, given budget allocations, to decide what to pay faculty
  - In BC, PSEC will “cap” salary/benefit increases (except, possibly, merit)
  - In other provinces, there have been similar restraints, but typically administered for finite periods of time (e.g., “Bob Rae days” of 0% increases and unpaid leave days for 3-5 years in Ontario)

# Areas where the Framework Agreement is (arguably) weak in relation to a typical union contract

- **salaries and benefits**

- some matters are “outside the agreement” at UVic and at other universities
  - free tuition not always in union agreement; if it were in the agreement at UVic, PSEC would insist on a corresponding salary cut for all faculty
  - childcare provision (very poor at UVic) is not usually mentioned in union agreements, but a matter of what admin. will provide
- dental, extended health coverage and premiums at UVic are among the poorest in Canada (in terms of total cost to members versus cost borne by employer)
- pension plan is good by Canadian standards, but it is mostly a defined contribution plan (which means employee bears risk). Most university plans are defined benefit, but some are defined contribution (e.g., Western), possibly with a defined benefit option/top-up (Queen’s) such as at UVic.

# Areas where the Framework Agreement is (arguably) weak in relation to a typical union contract

- layoff
  - layoff threat is reduced at UVic, just as in most union contracts, by the provision that a commission of inquiry must conclude no other budget reduction method is possible
  - everyone agrees that the likelihood of layoff is very small
    - layoff is thus usually not a “big issue” either for the administration or the Faculty Association
  - however, if there ever were a “financial exigency”, UVic has what amounts to one of the poorest articles:
    - Union agreements (except Queen’s) lay off faculty on a strict seniority basis. However unfair some might feel this is, it provides a disincentive for administrations to lay people off (some of the junior faculty “stars” get hit first; the more expensive, higher salary faculty are retained while the less expensive junior faculty are let go).
    - The notice/severance provisions for laid off faculty at UVic are among the worst in Canada (only Lethbridge and McMaster are worse), and probably provide less in the way of severance pay than would have occurred had there been no agreement (!)
    - Once laid off, recall rights are sufficiently short that the likelihood of ever being recalled are close to zero. (They are longer at many, though not all, unionized institutions).

# Areas where the Framework Agreement is (arguably) weak in relation to a typical union contract

- course assignment
  - some, but not all, union agreements have provisions that prohibit the university from insisting on “carry forward” of courses when courses are cancelled for reasons beyond the control of faculty members
    - While this practice of making professors “owe” the university for low enrolment courses (and teach extra in a subsequent year) is unusual at Uvic, it has occurred in a few units
- merit scheme
  - Uvic has one of the most aggressive merit schemes in Canada.
  - Some faculty might regard this as a good thing.
  - Some of the features that make this scheme aggressive, though are (arguably) dubious. These include distributional constraints (including requirements, worse in the past, whereby some faculty members must get zero or are highly likely to get zero even if their performance is “acceptable +”), the step-function (no such thing as 1.5 merit increments), etc.

This having been said, most of the provisions found in a typical union agreement are found in the UVic Framework Agreement

# A note about “binding arbitration”

- Binding arbitration is used in most non-union agreements as a salary mechanism in the event that salary negotiating parties cannot come to agreement
- Binding arbitration is occasionally used in union agreements too
  - UBC: in perpetuity
  - others: the “next” agreement (often with a maximum duration)
- Could be “general” (arbitrator gets to pick/choose) or “final offer selection”

# A note about “binding arbitration”

- Arbitrators will often try to mediate a dispute first, even if there is a separate prior mediation step in the negotiating procedure
- Arbitrators do not answer the question, “what is fair?”. They rule on the basis of prior agreements that the parties have made.
- Sometimes, arbitrators will look at “provincial standards” in making their judgements; this isn’t always guaranteed
- In BC, a salary arbitration is constrained by PSEC (arbitrator will take PSEC guidelines into consideration)
- Arbitration is good, generally, for a party that seeks to preserve the status quo, and bad for a party that seeks change

# Does unionization solve things?

- Unionization can imply more bargaining power during negotiations, but this is not guaranteed
  - a lot depends on the administration's perception of the “resolve” of faculty members
- Unionization without the “strike threat” may be next to worthless, yet no one ever wants a strike

# The “S” word

- faculty strikes are rare
  - usually, some issue other than money
- university faculty strikes are typically short in duration
  - often, missteps or mistakes in negotiations
  - example: strikes at Windsor
- sometimes, both parties resolve to improve relations after a “wake up” strike”
- but there are institutions where there is a permanent toxicity in labour-management relations; these have been characterized by one or more long strikes
  - York is a primary example

# Does “collegiality” get lost with unionization?

- Usually, collegiality has already taken the form of heavy-handed top-down management by the time university faculty unionize
- Faculty at Queen’s reported improvements in faculty-admin. relations after unionization (new co-operative spirit)
- It’s not so clear relations improved at Western (but they didn’t get worse) after unionization
- Whether unionization affected “toxic administration” (e.g., York) in one way or another is not clear

# Timing is a big issue

- If UVic were to unionize, it is highly likely that the Framework Agreement, with revisions discussed at the time, would form the basis for the first Collective Agreement
  - unless one or more of the provisions constitutes a “burning issue” around which unionization occurred, all of the deficiencies of the present agreement would become bound into a new, more enforceable, agreement
  - the present Framework Agreement would be superseded by any Collective Agreement if unionization occurred in “mid term” (thus, if unionization occurs around some contentious provision, it is possible – though not guaranteed as this needs to be negotiated – that this provision could be reworked)

# (Immediate) Relative Salary and Benefit Improvement is not likely with unionization

- PSEC could simply “refuse” any settlement that seeks to bring UVic back up to the level of peer universities
  - of course, since PSEC is basically the public sector employers (UVic’s President sits on it), it’s *possible* that it could be indirectly pressured by militant strike action (which no one wants), but this added “layer of defence” against salary (and usually benefit) increases complicates matters
- unionization might, as a form of “non-confidence vote” pressure the administration into making a better case in front of PSEC for UVic (we have, if anything suffered relative to other BC universities and not just universities in Canada), but this is far from guaranteed

# Should UVic unionize?

- complex question, as suggested by previous slides
- the question could be reframed: is there an issue or set of issues around which we are going nowhere with the existing agreement and which might compel Faculty to seek another negotiating method? (in other words, what thing or things are “broken” with the present arrangement, or are there, essentially, no such issues?)
  - Note, though, that the threat of unionization can and has been a powerful inducement at some universities (objectives can be achieved without actual unionization)
    - though there have been administration miscalculations: at Western, the administration assumed that faculty were “on its side” and viewed their own Association as “backward and obstructionist” (they were wrong, by a margin of 68:32!)
    - At UVic, there is a very low level of faculty engagement. This implies that the bargaining leverage of the Association is correspondingly low (it is not seen as having the strong support of faculty)

(end)

