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Our File: 215-17-012 KM

September 25, 2018

Alberta Labour Relations Board
308, 1212 - 31 Avenue NE
(Deerfoot Junction-Tower 3)
Calgary, AB T2E 7S8

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Attention: Aaron Padnivean, Manager of Settlement

Dear Sir:

**Re: An Application for Determination brought by The Faculty Association of the
University of Calgary affecting the Board of Governors of the University of
Calgary**

We are counsel for The Faculty Association of the University of Calgary. Please find enclosed an application for determination, as noted above.

Yours truly,

CHIVERS CARPENTER

KRISTAN A. MCLEOD
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KM/ljn

Enclosure

c.c.: Board of Governors of the University of Calgary, Attn: Jill Wyatt, Chair – via fax
(403) 284 5245
The Faculty Association of the University of Calgary, Attn: Sheila Miller – via
email

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LABOUR RELATIONS BOARD

An application respecting academic staff designations under sections 12(2)(a), 16(3), and 58.6(1) of the *Labour Relations Code*, RSA 2000, c L-1 [Code].

I. APPLICANT:**THE FACULTY ASSOCIATION OF THE UNIVERSITY OF CALGARY (the "Association")****MAILING ADDRESS:**

Education Tower
1402, 2500 University Drive NW
Calgary, AB T2N 1N4

CONTACT PERSON:

Sheila Miller
Executive Director
The Faculty Association of the
University of Calgary
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LEGAL COUNSEL:

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101, 10426 - 81 Avenue
Edmonton, AB T6E 1X5
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II. NAME OF EMPLOYER (RESPONDENT):**BOARD OF GOVERNORS OF THE UNIVERSITY OF CALGARY (the "Employer" or the "University")****MAILING ADDRESS:**

Administration Building, A168
2500 University Drive NW
Calgary, AB T2N 1N4

CONTACT PERSON:

Jill Wyatt
Chair, Board of Governors
PHONE: 403-220-7212
FAX: 403-284-5245

LEGAL COUNSEL:**III. SECTION AND SUBSECTION ALLEGED TO HAVE BEEN VIOLATED:**

The Association relies upon s. 58.6 of the *Code*.

IV. PARTICULARS

Background

1. The University of Calgary is a “public post-secondary institution” pursuant to the *Post-Secondary Learning Act*, SA 2003, c P-19.5 [*PSLA*]. The Board of Governors of the University of Calgary is a statutory corporation continued pursuant to the *PSLA*. The Board of Governors operates and manages the University of Calgary, including by employing the staff at the University of Calgary, in accordance with the *PSLA*.
2. The University is classified as a Comprehensive Academic and Research Institution by the Ministry of Advanced Education. It offers degree programs at the bachelor, masters, and doctoral level across most academic disciplines.
3. The Association is an academic staff association established pursuant to section 85 of the *PSLA*. Section 58.3(c) of the *Code*, in conjunction with the *PSLA*, designates the Association as the exclusive bargaining agent for all academic staff at the University.
4. The Association represents approximately 2400 academic staff members employed by the University.
5. The University has designated employees, at minimum, in the following classifications as academic staff:
 - a. Professors, Associate Professors, Assistant Professors, Teaching Professors, Senior Instructors, Instructors, Lecturers, and Sessional Instructors, an employee of the University, other than a Dean or other senior leadership team member, who is the instructor of record for a course offered for degree credit;
 - b. Professional Librarians, Archivists, and Curators, including Assistants and Associates, in Libraries and Cultural Resources;
 - c. Counsellors in the Counselling and Student Success Centre (or any successor organizational unit);
 - d. Heads of Academic Departments and Associate Deans and Assistant Deans of Faculties and any other employees of the University, other than a Dean, Vice-Dean Large Faculty, or other senior leadership team member who directs or supervises the work of the academic staff;
 - e. Counsellors, Sr. Counsellors, Sexual Harrasment Advisors, Curriculum Development Specialists, Education Development Specialists;

- f. Directors of the International Centre, the Indigenous Strategy, the Educational Development Unit, and the Office of Diversity, Equity, and Protected Disclosure; and
 - g. Advisor, Office of Diversity, Equity, and Protected Disclosure.
6. The Alberta Union of Provincial Employees represents all employees of the University when employed in general support services pursuant to Board Certificate #BR-50053.

Management and Professional Staff

7. In addition to those employees currently designated as academic staff and those employed in general support services, the University employs people in the category described as Management and Professional Staff ("MaPS").
8. The Association understands that the University employs approximately 1300 people in the MaPS classification.
9. The University has not designated any MaPS as academic staff, nor are any MaPS included within the bargaining unit represented by the Alberta Union of Provincial Employees.
10. MaPS are identified as a distinct group at the University. There is a MaPS Executive Committee composed of nine members, which is tasked with representing MaPS to the University. Moreover, the MaPS Executive Committee is not a registered bargaining agent, and there is no collective bargaining process or collective bargaining agreement. MaPS employees are not represented by any registered bargaining agent and do not participate in collective bargaining.
11. MaPS are employed in most University Faculties and Units, including: Arctic Institute of NA, Cumming School of Medicine, Environmental Design, Continuing Education, Faculty of Arts, Faculty of Graduate Studies, Faculty of Kinesiology, Faculty of Law, Office of Institutional Analysis, Faculty of Nursing, Faculty of Science, Faculty of Social Work, Faculty of Veterinary Medicine, Haskayne School of Business, Institute of Energy, Library and Cultural Resources, Indigenous Engagement, Office of Diversity, Equity and Protected Disclosure, Office of the Provost and VP Academic, Schulich School of Engineering, Student and Enrolment Services, School of Public Policy, Taylor Institute for Teaching and Learning, University of Calgary International, VP Research, and Werklund School of Education.

12. The University also employs MaPS in most Administrative and Business Units including: Ancillary Services, Facilities Development, Facilities Management, Finance, Human Resources, Legal Services, Information Technologies, Office of Sustainability, Planning and Resource Allocation, Risk, Supply Chain Management, University Secretariat, VP Development, VP Facilities, VP (Finance and Services), VP University Relations, and Office of the President.
13. MaPS are generally classified into one of five career bands based on their duties:
 - a. Operational and Administrative Support;
 - b. Technical Professional
 - c. Professional
 - d. Research; and
 - e. Management
14. MaPS often have graduate, PhDs, or equivalent, are involved in research, publish, are involved in decisions regarding pedagogy, or make other academic-related decisions.
15. MaPS clearly occupy many positions in which academic work is required at the University. Individuals employed as MaPS include, but are not limited to, the following:
 - Jessica Abt, MBA, Director of the Westman Centre for Real Estate Studies in the Haskayne School of Business;
 - Jennifer Krahn, PhD, Director of the Canadian Centre for Advanced Leadership in Business (Haskayne School of Business);
 - Adam Legge, MEd, Director, Global Business Futures Summit (Haskayne School of Business);
 - David Milia, MBA, Director, Energy and Environmental Initiative (Haskayne School of Business)
 - Stacy Kozak, MSc, Program Manager – Sport Injury Prevention Research Centre (Kinesiology).
 - Catherine Valestuk, JD, Assistant Dean, Recruiting and Admissions (Law);
 - Angela Gallo-Dewar, LL. B., Assistant Dean, Student Services (Law);
 - Alyona Belikova, PhD, Analyst – Research Funding and Feltn [sic] (Social Work); and
 - Lobsang Galak, MA, Advisor – Centre for Social Work Research and Professional Development (Social Work).

16. Several of the individuals referred to above regularly teach credit courses at the University. In particular, Dr. Krahn has taught at least 36 credit courses since 2007. Mr. Milia taught three courses in the 2017-18 academic year.
17. In addition, some MaPS referred to above publish academic articles. For example, Ms. Kozak has multiple academic publications.
18. Many MaPS perform duties that support the academic mission of the areas in which they work.
19. MaPS are also members of the University Academic Pension Plan ("UAPP"). The only other employees that are part of the UAPP are academic staff, and senior leadership.
20. The University has attempted to use MaPS to reduce the number of academic staff at the University. In particular, the University has increased the amount of academic work it assigns to MaPS and hired additional MaPS while not hiring additional academic staff. Between 2009 and 2016, the number of MaPS increased by 35.9% while the number of academic staff grew only 2%.

Designations of Academic Staff at the University

21. To the best of the Association's knowledge, the University does not have any specific policies on who is or is not academic staff.
22. Based on the number and variety of categories of employees designated by the University as academic staff, described above, the scope of academic staff at the University is broad. People who perform traditional academic work such as teaching, research, and other scholarly activities are clearly academic staff. Further, others who are engaged in the academic enterprise of the University, but whom have no traditional teaching or research obligations, such as Counsellors, Librarians, Curators, and the professional staff the Office of Diversity, Equity and Protected Disclosure, are also academic staff.
23. The Collective Agreement contains some express provisions regarding the designation of academic staff. In particular, Article 1.4(b) of the Collective Agreement recognizes that academic freedom is an important factor for the University and the Association when determining whether to designate an employee or category of employees as academic staff.
24. The Collective Agreement also contains clauses regarding the University's duty to consult with the Association about designations or de-designations. Article 1.4 of the Collective

Agreement requires the University to provide at least three months' notice of any proposal to designate or de-designate an employee or category of employees as academic staff, and the details of the proposal. The Association and the University then must meet to discuss the proposal. If no agreement is reached, the Collective Agreement contains a dispute resolution process.

25. Although there is a consultation process in the Collective Agreement, Article 1.4(a) expressly recognizes that it is not a substitute for the consultation process contained in the *PSLA*.
26. In practice, the University only notifies or consults with the Association when the University wants to designate or de-designate an employee or category of employees as academic staff. There is no consultation when the University fails or chooses not to make a designation.

Discussions Regarding Designation of MaPS

27. The Association has raised the issue of the designation of MaPS with the University in various ways over at least the last 10 years. On every occasion, the University refused to designate any MaPS as academic staff.
28. On June 30, 2016, the Association filed a grievance alleging that the University had not made reasonable efforts to identify those employees who had been doing academic work as defined by the Collective Agreement, among other things. Although the Association and the University have met a few times to discuss this grievance, no dates for arbitration have been set. Further, the grievance was not intended to address completely the Association's concerns about the designation of MaPS. While the Association believes there are MaPS who are doing academic staff work defined within the Collective Agreement, there may also be MaPS who should be designated as academic staff but who may not be doing work within the Collective Agreement.
29. Most recently, on April 12, 2018, the Association advised the University by letter that it believed all MaPS employees, except those employed in a confidential labour relations capacity, should be designated as academic staff. The Association advised that, if it did not receive a positive response to its letter by the end of May, 2018, it would bring an application to the Labour Relations Board.

30. On May 31, 2018, the University responded to the Association that it would implement a process for reviewing the Association's designation request and provided an outline of its proposed designation process.
31. On June 14, 2018, the Association wrote the University indicating its concerns with the process for reviewing the designation request. Generally, the process presumes that the existing understanding of academic staff contained in the Collective Agreement between the Association and the University would be used to determine whether MaPS are academic. As mentioned above, the Association currently has a grievance alleging that certain MaPS are academic staff within the meaning of the Collective Agreement, which this process may address. However, the process does not respond to the Association's concerns that the concept of academic staff in the Collective Agreement should be expanded to include all MaPS (and excluding those in a confidential labour relations capacity).
32. Moreover, in its letter of June 14, 2018, the Association also listed the following concerns with the process proposed by the University:
 - a. The description of the process suggests a predetermined outcome that several categories of MaPS will not be academic staff, as they will be in either management or administrative positions;
 - b. The proposed members of the working group are all or primarily all people who are not academic staff or involved in the academic enterprise of the University; and
 - c. The description of tasks that will be considered indicators of whether a person is academic is unduly narrow and would, for example, exclude several categories of employees who are currently academic staff members.
33. The University responded to the Association's concerns by a letter dated June 26, 2018. Although the University reiterated that it is committed to addressing the Association's request to designate all MaPS as academic staff, the letter also states that the University is committed to the process it previously described, and which the Association remains reasonably concerned about.

V. SUMMARY AND BASIS OF THE APPLICATION

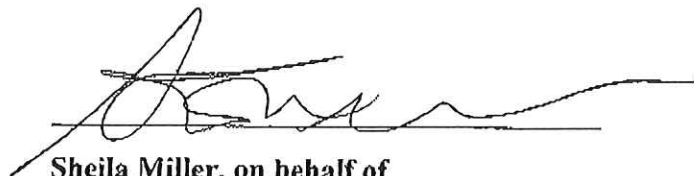
34. Section 58.6 of the *Code* permits any person or bargaining agent affected by a failure to designate an employee or category of employees to apply to the Labour Relations Board to decide whether the employee or category of employees are academic staff members.
35. The University has failed to designate the category of MaPS employees as academic staff, which academic staff are represented by the Association.
36. People employed as MaPS at the University are a coherent and identifiable category of employees. This is obvious from the existence of and the election process for the MaPS Executive Committee.
37. There is no express definition of academic staff at the University. However, the Collective Agreement suggests that the scope of academic staff at the University is broad, and includes anyone involved in the University's academic mission. The categories of employees who constitute academic staff are not limited to those people who perform teaching or research activities. Academic work at the University is accomplished by several means, which includes but is not limited to teaching and research.
38. While there is variation of the duties performed by people employed as MaPS, all MaPS are fundamentally engaged in the academic mission of the University. This is evident from the description of the MaPS positions described above.
39. Further, MaPS often are required to have advanced degrees similar to other academic staff at the University.
40. Until recently, the University has refused to consult with the Association about the designation of MaPS. Although the University has now indicated it will begin a process for consultation, the process described by the University appears biased from the outset. The Association reasonably believes the process described by the University will not address the Association's request.
41. While some MaPS perform management functions, in no case do those managerial responsibilities create the potential for significant conflict. Heads of Academic Departments, Associate Deans, and Vice Deans of small faculties – who are all responsible for the day-to-day management of their respective departments and faculties – are included within the academic staff bargaining unit. On those limited occasions where there has been a conflict between a Head of an Academic Department, an Associate Dean, an Assistant

Dean, or a Vice-Dean of a small faculty, and another academic staff member, the Association has made adjustments to manage the conflict.

VI. REMEDY REQUESTED

42. On the basis of the above, the Association seeks the following remedies:
- a. A declaration that any employee of the University within the category of MaPS, except those employed in a confidential labour relations capacity, is an academic staff member;
 - b. An order that the University post notices for employees setting out the Board's orders in this matter; and
 - c. Any other order or direction that is appropriate in the circumstances.

DATED at the City of Calgary, in the Province of Alberta, this 24th day of September, 2018.



**Sheila Miller, on behalf of
The Faculty Association of the University
of Calgary**