



Executive Committee's Response to Proposed YUFA Constitutional Amendments

January 2019

Last update: 29 January

Summary and Recommendations

BACKGROUND

At the end of October 2018, Prof. Ida Ferrara submitted to the YUFA Executive a wide-ranging package of proposed amendments to the [YUFA Constitution](#), signed by 91 YUFA members. The package with 17 proposals can be found on the YUFA website (click [here](#)). It includes proposed changes that would significantly alter the objectives and purpose of YUFA, as well as its operations regarding meetings, voting, collective bargaining with our employer, and a number of other central aspects of the YUFA mandate.

The YUFA Constitution permits amendments to be submitted to the Executive Committee by 50 or more members. Amendments must be ratified by a two-thirds ($\frac{2}{3}$) majority of voting members via electronic voting. We invite members to discuss the proposed amendments and the Executive Committee's response at the YUFA Winter General Membership Meeting. Our membership meeting is scheduled for **Wednesday, February 13, 2019 from 10:00 a.m. to 1:00 p.m. in 152 Founders College**. Electronic voting will commence as soon as possible afterwards.

RESPONSE FROM YUFA'S EXECUTIVE: UNANIMOUS REJECTION OF THE PROPOSED CHANGES

The YUFA Executive has carefully reviewed these proposals and sought advice from legal counsel, Stewards' Council, the Ontario Confederation of University Faculty Associations, and the Canadian Association of University Teachers. **The YUFA Executive unanimously opposes these changes in the strongest possible terms and urges members to reject all the proposals except for one** – the last one, proposal 17 (change to Article 11). We have concluded that the proposals would substantially weaken YUFA as a faculty association and certified bargaining agent for our members. Evidence about other faculty associations and their constitutions helped us define our views on these proposed amendments to our constitution, and we will summarize these findings.

We have prepared a proposal-by-proposal explanation of our position that you can read in the Appendix on the YUFA website (click [here](#)). Here we summarize the general shortcomings of these proposals:

Purpose and objectives of the Association. The proposed changes to Article 1 fundamentally change what YUFA is and what it strives for. First, the altered wording abandons

YUFA members who are not full-time members (e.g., post-doctoral visitors, members on reduced load), who could, arguably, present a legal claim against YUFA for failing its “duty of fair representation” on their behalf. Second, seeking to advance our members’ compensation and working conditions through collective bargaining should not conflict with the well-being of the University. If approved, this amendment places YUFA in a situation where it may be obligated to defend the Employer’s interests rather than those of its members. This could influence YUFA’s ability to negotiate a contract or support any cause opposed by the Employer, as well as give rise to a “duty of fair representation” complaint at the Labour Board.

Meeting quorum. Under the proposal, the quorum for membership meetings would be doubled, giving YUFA the strictest quorum requirement among large faculty associations in Canada and making it very difficult to conduct the business of the Association. As a result, YUFA would meet obstacles in conducting its basic duties on behalf of its members.

Electronic votes. Currently, important YUFA decisions are made through electronic voting, including officer elections, budget approvals, constitutional changes, strike votes, and ratification of the collective agreement. The proposed changes substantially expand the realm of e-voting. In the proposed amendments, any motion raised at a meeting would proceed to an electronic vote. This procedural requirement is unprecedented in the university sector. There is a reason for this: it separates members’ decision-making about policy from the opportunity to deliberate and debate at meetings. It would move political interaction and decision making to online venues, which research and precedence show is likely to increase polarization and divisiveness. It will certainly promote disengagement since membership meetings would become less relevant.

The e-vote proposals are formulated in a way that fails to make the procedure clear: would amendments to a motion be allowed in a meeting, and would those be voted on electronically as well as the motion itself? And if an amendment fails, would a new vote be required? Would it include procedural motions, such as a challenge to the chair? Furthermore, transferring many votes to e-voting clearly disincentivizes members from attending meetings, which would make it even harder to achieve quorum (particularly if our quorum mandate were raised by 100%!). The combination of raising quorum and moving decision-making to e-voting would make YUFA an ineffective and weakened Association. We would struggle to do our business according to the Constitution.

Procedural logic. The proposals are full of inconsistencies, cumbersome procedures, and proposals that simply do not make sense for those committed to belonging to a well-governed, effective, democratic Association. We provide a number of other illustrations in the detailed analysis in the Appendix (click [here](#)). Another example is the proposal to hold separate votes on the Association’s annual budget and on the fee structure necessary for the budget to be pursued. Moreover, the proposers want different levels of approval – regular majority for budget and

super-majority for fee structure – although these are interdependent decisions. What would happen if a budget were to be approved and then the fee structure on which it depends was defeated? Then another meeting would have to be called and a second electronic vote be held. How many YUFA members would attend not one, but two (or more) budget approval meetings?

Bargaining procedures. The amendments would introduce new detailed provisions for the regulation of the YUFA bargaining process that do not exist in any comparable faculty association's constitution. For example, the YUFA bargaining team would be required to negotiate for four weeks after a strike mandate vote was passed before a strike could be held, at which point the academic term would be nearing an end. Clearly, YUFA's leverage is lost in this scenario. This provision would be categorically required no matter how long YUFA has been in negotiations and whether our bargaining team believes that this strategy would succeed in producing a better bargaining outcome. Our lawyers have advised us that this and other provisions in the proposals regarding bargaining – such as punctuating bargaining with frequent votes about seeking arbitration – are unusual and that they could significantly weaken YUFA's bargaining power in negotiations with our employer. It is our informed view that if the proposed bargaining provisions had been in place for the last decade or two, YUFA members would today have much worse working conditions and remuneration.

We acknowledge that the proponents of these constitutional changes are concerned about the number of strikes at York in recent years and about the need for fuller and broader membership involvement in YUFA policy making and decision making. These are concerns we share. *However, these proposals do not offer effective solutions to these concerns. We argue this for the following reasons.*

First, YUFA has not been on strike since 1997. YUFA has not even held a strike vote since that year, i.e., for 22 years! While other Canadian faculty associations have held numerous strikes and strike votes in recent years, YUFA's record is as one of the most cautious faculty associations in our sector. In our last round of bargaining (settled in October), we were successful because members turned out to meetings to show their support for the YUFA bargaining team. Our successful motion to endorse a possible strike mandate vote if negotiations continued to stall was passed at a well attended General Membership Meeting. This vote sent a strong message to the Employer and we were able to negotiate a much better contract.

Second, we concur with the authors of these constitutional amendments that there should be more membership involvement in YUFA, and are committed to seeking ways of broadening the number of voices that are heard in YUFA. Consider the quality and frequency of reporting to our members during bargaining, including numerous unit visits by YUFA officers, frequent information and update bulletins, and other means of involving members. Since the fall, your Executive has been engaged with the conceptualization and design of a new website and

communication infrastructure that will make communication more energetic and more effective. It includes a blog for YUFA members that would cater to a diversity of views and provide a space for respectful, engaged, and open debate about the key issues that matter to us.

Although much work remains in promoting member engagement, we are certain that procedurally rigid constitutional requirements and mandatory frequent electronic referenda with unclear procedures are the wrong way to attain this goal. We believe that the energy spent on constitutional amendments such as those proposed would be better spent on engaging members and encouraging them to attend meetings and participate in YUFA activities.

Third, we are now working in a political climate in which governments and boards have no hesitation in altering our institutional priorities and practices. The strength of faculty associations to negotiate their own teaching and learning conditions is more vital than ever, as demonstrated this month by our employer's shocking [betrayal of their commitments](#) on pension indexation that both parties signed in the recent bargaining settlement. We need to gather together to work together, to maintain our collegial connections, and to defend our pedagogical and professional values. This is not the time to paralyze or weaken YUFA.

WHAT ARE THE NEXT STEPS?

The YUFA Executive strongly urges the membership to vote against all but one of these proposed amendments (see Recommendations below). Please see the Appendix for the YUFA Executive's full case against them (click [here](#)).

We also recommend that you take the following initiatives:

- Invite members of the YUFA Executive to speak with your colleagues and answer any questions related to the proposed amendments;
- Familiarize yourself with the materials – weigh the arguments offered by the YUFA Executive and the proponents of the amendments;
- Reach out to your department and unit Steward and organize a meeting of your colleagues to discuss the changes being proposed;
- Reflect on the positive gains that YUFA has secured with the Employer in recent rounds of bargaining such as salary increases, benefits improvements, and better working conditions, and whether major changes to the bargaining procedures in our association are wise in light of these gains; and
- Please attend, and encourage your colleagues to attend, the General Membership Meeting to discuss these proposals: **Wednesday, February 13, 2019, 10:00 a.m. to 1:00 p.m., 152 Founders College.**

RECOMMENDATIONS

The YUFA Executive unanimously opposes the proposed constitutional changes in the strongest possible terms and urges members to reject all the proposals except for one. We have concluded that the proposals would substantially weaken YUFA as a faculty association and certified bargaining agent for our members. We recommend that members **vote NO to proposals 1-16 and vote YES to proposal 17** (proposal 17 is the last item in the ballot – change to Article 11). Please see the Appendix for a detailed analysis of the proposals, our recommendations, and their rationale (click [here](#)).

QUESTIONS?

Relevant documents are on the YUFA website (click [here](#)). Direct questions and comments to yufa@yorku.ca.

Appendix
The 17 Proposals: Recommendations and Rationale

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Formatting note: Proposed additions to the constitution are in bold and underline. Proposed deletions are in strike-through and bold.

1 PROPOSAL TO REVISE STATEMENT OF YUFA’S ORGANIZATIONAL OBJECTIVES

PROPOSED CHANGES: ARTICLE 1.2 – OBJECTIVES

[1.2] The **primary** purposes of the Association shall be to promote the welfare of the University as an institution of higher learning and **to promote** the social-economic and general welfare of **its the University’s full-time** academic staff, including the regulation of employment relations between the **University** Administration and its **full-time** academic staff. Further, the Association shall promote the defence and extension of the civil rights and liberties of **full-time** academic staff and the preservation and advancement of free democratic trade unionism, **provided that a focus on trade unionism does not conflict with promoting the well-being of the University and/or the interests of its full-time academic staff.**

YUFA EXECUTIVE RECOMMENDATION: VOTE NO

RATIONALE

This amendment assumes that all members of YUFA are full time academic staff. YUFA represents postdoctoral visitors and members on reduced load; excluding these employees from union protection represents a serious risk. We are concerned that these members could claim that such a change means that YUFA is not representing their interests and they could file a “Duty of Fair Representation” claim at the Ontario Labour Relations Board.

The proposed changes to Article 1 fundamentally change what YUFA is and what it strives for. Placing the employer’s interest as paramount in the organizational objective of the faculty association has far-reaching and potentially harmful consequences for our members. We mention a couple of the possible impacts.

For example, the last part of the amendment asserting that promoting trade unionism should not conflict with the well-being of the university is very problematic. Someone might argue that a strike by YUFA members – or by other employees - conflicts with the well-being of the university. This could encourage the view that it is unconstitutional for YUFA to call a strike or

could prohibit YUFA from expressing solidarity with other campus unions in any circumstances. The Executive strongly believes that the decision about whether YUFA should take strike action or support strike action should be decided in each circumstance on its merits.

Second, YUFA’s lawyers have advised that if YUFA failed to pursue or protect member’s interests as union members because doing so might be in conflict with “the welfare of the university” then it is possible that members could bring a “duty of Fair Representation” complaint at the Labour Board.

2 PROPOSAL TO INCREASE THE NUMBER OF MEMBERS REQUIRED TO CALL FOR A YUFA GENERAL MEETING

PROPOSED CHANGES: ARTICLE 3.1.B.3. – MEETINGS

[3.1.b.3.]

b. General Meetings may be called:

...

3. at the written request of ~~fifty~~ **seventy-five (75)** or more members of the Association.

YUFA EXECUTIVE RECOMMENDATION: VOTE NO

RATIONALE

This proposal would raise the number of signatures required for a member petition calling for a general meeting from 50 to 75. The Executive does not believe it would be wise to make it more difficult for members to take the initiative to call meetings and make their voices heard. YUFA already has a comparatively high threshold of 50. Requirements at most other associations are much lower, even relative to their size. For example, Ottawa and Carleton require a petition by 15 members and Queen’s requires a petition submitted by 20.

3 PROPOSAL TO DOUBLE THE SIZE OF QUORUM REQUIREMENT FOR YUFA MEMBERSHIP MEETINGS

PROPOSED CHANGES: ARTICLE 3.1.C - MEETINGS

[3.1.c.] One quarter or ~~fifty~~ **one hundred (100)**, whichever is the lesser, of the members of the Association in good standing shall constitute a quorum for General Meetings of the Association.

YUFA EXECUTIVE RECOMMENDATION: VOTE NO

RATIONALE

The authors have presented no evidence about quorum levels at comparable faculty associations to support this amendment. By doubling YUFA's current quorum, according to the evidence that the YUFA Executive has collected, the proposed change would lift our meeting quorum to a level much higher than that of most other large faculty associations (more than 850 members). Combined with other proposals to conduct decision-making through electronic votes, this proposal would make quorum much harder to achieve and our tradition of collegial discussion and debate would come to an end.

For example:

- UBC Faculty association has a meeting quorum of 50, the same as YUFA's, but their association has 3200 members which is more than twice as large as YUFA's (1500). On a proportionate basis, then YUFA's meeting quorum is already twice as strict as Canada's largest faculty association, and the proposed amendment would make it four times as strict.
- The faculty association at the University of Regina has 1400 members (only 100 less than YUFA) but a quorum of 25 members.
- The faculty association at the University of Ottawa has a meeting quorum of 40 (compared to YUFA's 50) and they have 1250 members, so their quorum requirement is roughly proportionate to YUFA's.
- The meeting quorum at Queen's is 35 members and they have 1200 members, which is roughly proportionate to YUFA's.
- Western University Faculty Association has 1278 members and a quorum of 25 for general meetings. On a proportionate basis, this is a much lower quorum.

- Dalhousie University Faculty Association has 1000 members and a meeting quorum of 25 members, which, like Regina, is proportionately lower than YUFA’s meeting quorum.
- Ryerson has a meeting quorum of 50 and a membership of 930. Their quorum requirement is somewhat stricter than YUFA’s, but they often have difficulty obtaining quorum.

The proposed amendment is either not based on research into sectoral norms, or seeks to move YUFA’s quorum well above comparable unionized faculty associations. This would place a significant burden on the ability of YUFA to conduct its business, compared to our peers. We strongly urge members to vote against this proposal. What YUFA needs is a strong effort to engage members so that they want to participate in meetings, not a context where important meetings will fail to materialize due to lack of quorum and the business of the Association will suffer.

4 PROPOSAL TO REQUIRE ELECTRONIC VOTING ON MOTIONS RAISED FROM THE FLOOR AT MEETINGS

PROPOSED CHANGES: ARTICLE 3.1.D. - MEETINGS

[3.1.] d. No motion from the floor shall be voted on during the General Meeting at which the motion is raised. If a motion from the floor arises at a General Meeting and is deemed to be in order, debate on the motion will ensue at the meeting but voting will take place electronically subsequent to the meeting. Accommodations for voting are available as per the relevant By-Law. No proxy voting is permitted.

YUFA EXECUTIVE RECOMMENDATION: VOTE NO

RATIONALE:

The Executive is not aware of any other faculty Association or union with language that requires that any motion moved from the floor of a meeting be put to an electronic vote. This motion ensures that most people voting on a motion will not be part of the debate on the issues. At meetings, it is very common for people to change their votes in response to debate since decision making on matters of policy is traditionally a deliberative process in democratic and constitutional organizations. Such a process allows members to strive for consensus, while electronic voting can become more divisive as people tend to retreat towards “echo chambers.” A significant body of research shows that when political interaction is moved online it leads to

increased polarization and “confirmation bias” and therefore increases divisiveness, isolates people from opposing points of view and lowers the quality of discussion and decision-making.

The amendment is also ambiguous from a procedural standpoint. During the course of debate at meetings, it is common for motions to be amended through a motion raised on the floor. The proposed procedure does not make it clear whether such ‘motions to amend’ would have to be voted on electronically. On the face of it, this proposed amendment appears to require this, which would then require a least one additional subsequent meeting at which the full motion would then be debated, possible new amendments could be proposed, etc. Would the amendment also include procedural motions, such as a challenge to the chair?

This proposed amendment fails to recognize the recursive nature of decision making within organizations, which explains why such a procedure is so rare, if not unprecedented. Moreover, this amendment would introduce procedural confusion to the business transacted at YUFA meetings. The amendment does not even say whether the motion needs to be seconded to go to an electronic vote.

5 PROPOSAL TO REQUIRE ELECTRONIC VOTING ON MOTIONS AT SPECIAL MEETINGS

PROPOSED CHANGES: ARTICLE 3.2 - NOTICE

[3.2] For the Annual or any General Meeting of the Association, written notice, with a statement of the agenda, shall be sent to members no less than one week prior to the Meeting in question. Special General Meetings, for discussion of particular and pressing matters, may be called on forty-eight hours’ notice, but must be widely publicized in every area of the University. **For a Special General Meeting, no motions are permitted from the floor, and motions for which notice is given must be voted on electronically subsequent to the meeting. Accommodations for voting are available as per the relevant By-Law. No proxy voting is permitted.**

YUFA EXECUTIVE RECOMMENDATION: VOTE NO

RATIONALE

This proposal similarly makes it more difficult to conduct business and to make any decisions at YUFA meetings, and could lead to increased polarization as described above (see

discussion of Proposal 4). *Special Meetings are called to discuss an important issue facing YUFA members where it may be desirable for members to come together to formulate proposals, ideas and solutions through discussion.* This proposal makes it impossible to do this and removes incentives to attend Special Meetings, an outcome that clearly conflicts with the earlier proposal to raise quorum requirements for meetings. It also requires that motions be circulated in advance to be voted upon through a referendum that would be separated from such discussion. There would be no opportunity to amend the original motion or propose alternatives. This places a greater restriction on the conduct and decision-making process of Special Meetings than what is typical at other faculty associations.

6 PROPOSAL TO CHANGE RULES OF ORDER

PROPOSED CHANGES: ARTICLE 3.4 - ORDER

[3.4] The President of the Association or her / his designate shall conduct the proceedings of the Association in conformity with the rules and procedures of the Association. In cases not covered by these rules and procedures, meetings and proceedings of the Association shall be conducted in conformity with **the current edition of** Bourinot's Rules of Order ~~as revised by J.G. Dubroy~~. The exception shall be that if a motion to put a question is passed by a two-thirds **(2/3)** majority, then the motion must be put **only immediately after those already on the speakers' list have had their chance to speak.** If a motion to put the question fails to receive a two-thirds **(2/3)** majority, then debate on the motion continues and further amendments are in order.

YUFA EXECUTIVE RECOMMENDATION: VOTE NO

RATIONALE

At a meeting, a vote to "call the question" ends debate. Everyone agrees that it is normally preferable to allow those whom the Chair has added to a speakers' list to speak before a question should be "called." However, most rules of order have provision for "calling the question" if a majority of members vote in favour of that option after sufficient debate has taken place. This is widely acknowledged to be necessary to avoid the possibility of "filibusters," a disrupted meeting, or to finish the remaining business in the agenda. *The YUFA constitution already requires a two-thirds majority vote to call the question, which is beyond what is required in Bourinot's rules of order.* Our constitution therefore has a built in preference in favour of letting a large number of speakers to continue to participate. This helps ensure that more views can be

heard. Unfortunately, the proposed amendment could make it practically impossible to limit debate after a long discussion has already taken place. It would allow a small minority at a meeting to “filibuster” or prolong the meeting preventing all or some of the business to be addressed. There is no democratic justification for allowing a small minority of members to prevent a super-majority of members from taking a vote on matters where the views of that majority have been clearly expressed.

7 PROPOSAL TO ELECT TRUSTEES THROUGH ELECTRONIC VOTING INSTEAD OF AT ANNUAL GENERAL MEETING.

PROPOSED CHANGES: ARTICLE 3.5.B. - ANNUAL GENERAL MEETING

[3.5]

a. Annual reports of the Officers and the Trustees shall be approved by the Executive Committee and circulated to all members prior to the Annual Meeting. At this Meeting members of the Association have the responsibility of reviewing the previous year’s activities and policies, and shall have an opportunity to suggest policy revision or altered activities for the coming year.

b. Two Trustees shall be ~~elected~~ nominated from the floor of the Annual General Meeting for the purpose of assisting the members of the Association in performing their duties under this clause. Election shall be arranged subsequent to the meeting by electronic voting, and assent shall be given by a simply majority decision (i.e., 50% plus 1 vote). Accommodations for voting are available as per the relevant By-Law. No proxy voting is permitted. The elected Trustees ~~elected at the Meeting~~ shall prepare an Annual Report for the following year’s Meeting that reviews the Association’s activities and operations during their year in office and recommend improvements in the methods of operation.

YUFA EXECUTIVE RECOMMENDATION: VOTE NO

RATIONALE

If passed, this proposal would establish that Trustees would only be nominated at the Annual General Meeting but their election would no longer take place by a vote held at the meeting, but rather subsequent to a meeting by an electronic vote. The proposal misses the point that it is almost always difficult to get members to put their name forward to serve as a Trustee. Nominees are typically coaxed to volunteer at the meeting. It would be unfortunate to ask

members who selflessly (and often reluctantly) take on this work to be subject to an electronic public referendum on their candidacy after being convinced to serve by their grateful colleagues at the Annual General Meeting. The requirement of an electronic vote could deter members from volunteering. And, since it is almost unheard of to have more nominations than positions, it achieves nothing.

8 PROPOSAL TO CHANGE VOTING ON YUFA BUDGET AND MEMBERSHIP DUES

PROPOSED CHANGES: ARTICLE 3.5.C AND 3.5.D – ANNUAL GENERAL MEETING

[3.5]

c. Subject to Article 10 below the annual budget ~~and fee structure~~ shall be prepared by the Executive Committee and presented to the general membership at the Annual Meeting. Assent shall be given by a simple majority decision of those members voting electronically (**i.e., 50% plus 1 vote**) subsequent to the meeting. Accommodations **for voting are available as per the relevant By-Law** ~~will be made for those who do not have access to the Internet and who request such accommodation~~. No proxy voting is permitted.

d. Subject to Article 10 below, the fee structure shall be prepared by the Executive Committee and presented to the general membership at the Annual Meeting. If no change in the fee structure is being recommended, members shall vote electronically on the fee structure as part of the annual budget according to Article 3.5(c) above. If instead a change in the fee structure is being recommended, members shall vote electronically on the revised fee structure separately from the vote on the annual budget. For any change in the fee structure to pass, a two-thirds (2/3) majority of those members voting electronically subsequent to the meeting is required. Accommodations for voting are available as per the relevant By-Law. No proxy voting is permitted.

YUFA EXECUTIVE RECOMMENDATION: VOTE NO

RATIONALE

This proposal would require separate votes on YUFA's annual budget and on the fee (dues) structure even though these are logically dependent on one another (expenditures depend on revenues). *This makes it possible for a budget to be passed when the fee level that is needed to support the budget is defeated.* If this were to happen then another meeting would have to be called since the two votes are logically and financially dependent upon one other.

The YUFA Constitution already requires that an electronic vote be held for approving the fees and the budget. If voting for the budget and fees was conducted by motions voted on at a meeting then separate votes on each item would be feasible since the results of the vote to approve fees would be known before members voted on the budget. With electronic voting such separation is not feasible.

The proposed amendment would also require a higher threshold to approve the fee (dues) level (two-thirds majority) than the simple majority (50%+1) to approve the budget expenditures. This can lead to the same problem of creating separation and disparity between two financial decisions that are logically (and practically) linked.

We are not aware of another union that requires different levels of approval for the expenditures and revenues of the organization. We are also not aware of another union that requires a super-majority to approve membership fees. Since the expenditures need to be paid for by the fees which bring in all of the revenues of YUFA, it makes no sense to require different levels of approval. This is evidently the reason why it appears that no other unions and organizations have such a disparity.

9 PROPOSAL (1) TO REQUIRE EXECUTIVE TO CONDUCT ELECTRONIC POLLS UPON REQUEST OF 75 MEMBERS AND (2) PROPOSAL TO REQUIRE ELECTRONIC VOTING FOR BY-LAW CHANGES

PROPOSED CHANGES: ARTICLE 5.1 – MANDATE

[5.1] The Executive Committee shall be responsible for the administration of the affairs and activities of the Association, for developing policies and programs, and for carrying out the decisions of the Stewards' Council and General Meetings between meetings of those bodies. **The Executive Committee shall endeavor to represent the diversity of opinions across all members and commits to polling its members upon request by seventy-five (75) or more members of the Association.** The Executive Committee may from time to time enact and amend By-laws of the Association, subject to approval by ~~the Stewards' Council~~ **the Association membership via e-voting** and providing they do not conflict with this Constitution. **Accommodations for voting are available as per the relevant By-Law. No proxy voting is permitted.**

YUFA EXECUTIVE RECOMMENDATION: VOTE NO

RATIONALE

Rationale for (1) requiring executive to conduct electronic polls upon request of 75 members

This proposed amendment is very unusual, and we are not aware of a similar provision in other faculty constitutions. YUFA has conducted polls in the past, but it does not seem prudent to have a constitutional allowance for polls to be determined by request of a small minority of members nor clear how such a provision would be applied. Frequent polling would have both an alienating and a divisive effect, signaling distrust of the elected Executive and the members who elected them.

There are serious practical issues as well. By what process would the poll be designed and formulated? Who would be permitted to communicate background information to members? Note that polling is not excluded by our current constitution; at any time members can call for a special meeting and vote to instruct the Executive to conduct a poll.

The requirement that the Executive “represent the diversity of opinions across all members” is even more unclear for it is hard to imagine what this constitutional requirement would mean in practice. Executive members are accountable to members as they are democratically elected by an electronic vote in a general election. Moreover, they can be recalled by a majority vote of members in a Special Election. Finally, there is ample provision for members to call meetings at any time, or to participate in scheduled meetings. This proposal opens the door to governance by referendum. (Remember the Doris Day referendum Rick Mercer announced when Harper wanted to rule by referendum?)

A representative democracy requires balance from its elected officials; they take a risk when they do not endeavour to represent the views of all constituents, but they also know that it is impossible to achieve unanimity or to represent contradictory views.

Rationale for (2) proposal to require electronic voting approval for by-law changes

This proposal would shift responsibility for approving by-laws from the representative body of Stewards’ Council to all members in an electronic vote. While it is not unusual in other faculty associations for by-laws to be approved at a general meeting, it is very unusual for by-laws to be subject to approval by members through an electronic vote. We are not aware of another faculty association with a similar provision, nor have the proponents given examples of unions or faculty associations with a similar provision. Electronic voting makes it impossible for members to

discuss the merits of the by-laws with each other or to ask questions of the union representatives proposing the by-law.

10 PROPOSAL TO INTRODUCE RECALL PROCEDURE FOR OUTGOING PRESIDENT PREVENTING THEM FROM SERVING AS PAST PRESIDENT ON NEXT EXECUTIVE

PROPOSED CHANGES: ARTICLE 8.4 – RECALL

[8.4] If at any time a petition carrying the signatures of at least **fifty one hundred (100)** members or 25 percent, whichever is the lesser, of the constituents of any Officer or Representative is submitted to the Executive Committee demanding a new election of such Officer or elected Representative, a special by-election shall be held within one month's time. The incumbent may be a candidate in that election. The by-election shall be conducted in accordance with Article 6.2 above. **Such a petition may be submitted in relation to any members of the Executive Committee. If the special by-election results in the recall of the outgoing President after the next President has been elected, then the Past President position will remain vacant for the duration of the new President's term.**

YUFA EXECUTIVE RECOMMENDATION: VOTE NO

RATIONALE

This proposed amendment specifies that if the outgoing President loses the special recall vote they would not assume the role of Past President. While it would increase the number of signatures needed to trigger a special election that could result in the recall of a current elected representative or Executive Officer, the Executive does not support this proposal for two reasons:

First, it is not clear that members voting to remove an incumbent President are also voting in favour of leaving the Past President position vacant. The position of Past President plays a different role than the President who is the leading representative of the union. The position of Past President exists to ensure that the incoming President – even if they are political opponents - is familiar with the position and that the President - and YUFA as an organization - has access to the (often confidential) background knowledge and resources that only the Past President is in a position to provide.

Secondly, the Amendment would cause our constitution to become internally inconsistent on the matter of recalling an outgoing President. This is because a successful recall challenge of an incumbent President would normally lead to the election of a new President on an interim basis who, according to the constitution (article 6.3) would then become the outgoing President and therefore attain the position of Past President upon the end of their term. If a President was recalled they would not become Past President, but the person who succeeded them on an interim basis should. The proposal fails to account for this outcome required by the constitution.

11 PROPOSAL TO REQUIRE SEPARATE ELECTRONIC VOTES FOR EACH PROPOSAL SUBMITTED TO THE EMPLOYER IN COLLECTIVE BARGAINING

PROPOSED CHANGES: ARTICLE 9.1 – PRIMARY NEGOTIATING POSITIONS

Upon approval of Stewards' Council, the Executive Committee will present the primary negotiating positions to the general membership at a General or a Special General Meeting. Assent on each proposal shall be given by a simple majority decision of those members voting electronically (i.e., 50% plus 1 vote) subsequent to the meeting. Accommodations for voting are available as per the relevant By-Law. No proxy voting is permitted. Upon approval of Stewards' Council, the Executive Committee shall seek ratification of primary negotiating positions at a General or a Special General Meeting. Assent shall be given by a simple majority of those members present and voting. Voting shall be by show of hands.

YUFA EXECUTIVE RECOMMENDATION: VOTE NO

RATIONALE

This proposal ignores the fact that bargaining priorities are interdependent with one another and involves balances and trade-offs: asking for more of X often means asking for less of Y. Voting electronically on each proposal separately precludes the ability to vote intelligently or strategically on an entire package, which in some years has included more than 100 individual proposals. In short, this proposal would eliminate the necessarily deliberative decision making at membership meetings called to discuss bargaining proposals and to arrive at an integral package to be presented to the employer.

In addition, the proposed constitutional amendment could create procedural confusion and inefficiency at the meeting scheduled to discuss the proposals. For example, it would make it cumbersome to propose amendments to the bargaining proposals at the general meeting since such amendments would have to proceed to an electronic vote before the main motion could be dealt with. Once the amendment was voted on, would members have to reconvene another meeting to discuss the main motion that was amended?

12 PROPOSAL FOR CONSISTENCY OF LANGUAGE

PROPOSED CHANGE: ARTICLE 9.2 – RATIFICATION OF SUBSTANTIVE CHANGE TO OR RENEWAL OF COLLECTIVE AGREEMENT

9.2 Ratification of substantive change to or renewal of Collective Agreement

The Executive Committee shall seek ratification of a contract or a substantive change in an existing contract by an electronic ballot procedure. Such ratification may take place only following a General or Special General Meeting in which the matter has been discussed. Assent shall be given by a simple majority of those members of the bargaining unit voting **(i.e., 50% plus 1 vote)**. Accommodations **for voting are available as per the relevant By-Law will be made for those who do not have access to the Internet and who request such accommodation.** No proxy voting is permitted.

YUFA EXECUTIVE RECOMMENDATION: VOTE NO

RATIONALE

This is a minor change in language to create consistency with the proposed changes elsewhere in the constitution. Since we are recommending to vote against almost all the proposed changes, there is no need for this change.

13 PROPOSAL TO REQUIRE (1) MEMBERSHIP REFERENDUM ON ARBITRATION OPTION IN BARGAINING AND (2) DELAYS AND OTHER VOTES BEFORE CONDUCTING STRIKE MANDATE VOTES AND TAKING JOB ACTION

PROPOSED CHANGES: ARTICLE 9.3 - JOB ACTION

[9.3]

Job action shall be contemplated only as a last resort, following attempts to reach a settlement with the assistance of a neutral third party . Any decision pertaining to job action shall be voted on electronically by the membership. Notices of voting by electronic ballot, which shall indicate the nature of the choices to be available on the ballot, shall be sent to voters at least one week prior to the vote. Assent shall be given by a simple majority of those voting (i.e., 50% plus 1 vote). Accommodations for voting are available as per the relevant By-Law. No proxy voting is permitted.

a. After attempts at reaching a settlement through a neutral third party, the Executive Committee shall provide members with the opportunity to vote on whether to propose to the Employer to send outstanding items to binding arbitration or to hold a strike mandate vote. Voting shall be held subsequent to a General or Special Meeting.

b. If the vote in 9.3(a) is held and if either the membership votes in favour of binding arbitration but the Employer does not agree or the membership votes in favour of a strike mandate vote, ~~the Executive Committee must~~ may proceed to schedule a strike mandate vote. ~~seek authorization from the bargaining unit before the imposition of any strike action or other sanction against the Employer. Voting shall be by electronic ballot, held subsequent to a General or Special Meeting. Assent shall be given by a simple majority of those voting. Notice of such a vote, indicating the nature of the choices to be available on the ballot, shall be sent to voters at least one week prior to the balloting. Accommodations for voting are available as per the relevant By-law.~~

c. If the strike mandate vote in 9.3(b) is held and members vote in favour of the mandate, the Bargaining Team shall nonetheless continue to negotiate with the Employer in the hopes of reaching a settlement. In the event the Bargaining Team is unable to reach a tentative settlement out of the post-strike mandate negotiations during a minimum of four (4) weeks subsequent to the strike mandate vote, the Executive Committee shall update members at a General or Special meeting and provide all members with the opportunity to vote on whether to propose to the Employer to send outstanding items to binding arbitration or take job action, up to and including a full strike. Voting shall be

subsequent to the meeting. If the membership supports binding arbitration but the Employer does not agree, the Association will be in the position to initiate job action.

d. For certainty, the membership must vote in favour of both a strike mandate and to take job action before the imposition of any strike action or other sanction against the Employer.

YUFA EXECUTIVE RECOMMENDATION: VOTE NO

RATIONALE

The proposed amendments around job action are intended to bring greater thoughtfulness and caution to decisions about job action. In reality, the record shows that no faculty association has been more cautious around job action than YUFA. No union leadership ever wants to engage in job action unless most of its members support that strategy. We have not held a strike vote since 1997, the last time YUFA took job action. This compares to other faculty associations in Ontario (Queen's, Western, Carleton, Ottawa, etc.) where strike votes are almost routine and strikes have been held more recently.

From this point of view, we offer the following analysis of the proposed amendments:

(i) Requirement to use neutral third party before holding job action

The proposed amendment would require assistance of a neutral third party before taking strike action. It appears that *the proponents are not aware of the requirements of the Ontario Labour Relations Act (OLRA). Under that Act, no strike action can be taken by any trade union without resort to conciliation by a neutral third party.* Moreover, that conciliator must agree that an impasse has been reached that is unlikely to be resolved by the appointment of a 3-person conciliation board before there is a request from the Labour Ministry to issue a “no board” report. Only then are the parties in a position to strike or to lock out union members. Conciliation normally continues after a “no board” report is issued and, depending on the will of the parties, even after a job action has begun. Under the OLRA, this is already required by law, and is not needed in our constitution. Parties must apply for conciliation and the conciliator has to issue a no board report.

The Executive believes that we should not adopt language in our constitution that reflects ignorance of the OLRA, which governs collective bargaining in the province. Our colleagues in OCUFA state that no other union has such language.

Moreover, the proposed amendment would require a one week delay in taking strike action, which, depending on the circumstances, could give a strong advantage to the employer. It is

unwise to “bake in” these kinds of constraints in our constitution (again, other unions do not have such constraints).

(ii) Requirement to seek arbitration on outstanding issues

Most of the rest of this proposal requires YUFA’s negotiating process to be punctuated by attempts to consider and vote on whether to seek arbitration of outstanding issues with the employer. While there are times when arbitration is appropriate, in the long run, most unions (except those with clearly sub-par collective agreements) will not achieve things in arbitration than they cannot achieve through negotiations or labour action. Arbitration is a process that favours solutions close to the status quo; thus, it is not a good way to achieve innovative aims or changes to the status quo. Moreover, it is widely acknowledged that there are some issues where arbitrators prefer to have the parties negotiate to a resolution. In those cases, arbitration will not change the status quo and works to the advantage of the employer. Negotiations backed by the possibility of labor disruption – even if the strike option is rarely used - provide the only real leverage that unions possess to make change. Arbitration may be appropriate sometimes, but should not be seen as the normal approach to solving disputes in collective bargaining.

For all of these reasons, YUFA’s lawyers have advised that the provisions in this section could weaken YUFA’s bargaining power with our employer. Based on our discussions with OCUFA, no other union in Canada includes these kinds of clauses in its constitution.

This motion would constitutionally prescribe votes on arbitration. We need to remember that members currently have the democratic opportunity to call a meeting (through a petition by 50 members) and pass a motion directing the Executive to propose arbitration. This new proposal would impose a more inflexible approach. A better alternative is for members to come together at a meeting to try to find consensus on how to push forward in negotiations or discuss which issues should be sent to arbitration, if any. In many cases, the Executive itself may want to propose arbitration.

It is widely acknowledged that where a union sees some advantages in arbitration, it is often best to hold a strike vote first, an approach which this amendment would effectively preclude. Receiving a strike mandate allows a union to create pressure for the employer to agree to arbitration. This proposal would weaken the union’s bargaining power and leverage by placing a formal requirement to pursue options such as arbitration that the parties normally entertain without such a procedure.

Finally, this proposal is ambiguous in its application; it misleadingly sees ‘arbitration’ vs. ‘strike mandate vote’ as a clear either/or alternative. As we saw in the CUPE 3903 strike, the employer is most likely to offer to send only some outstanding items to arbitration and not others. The question arises: if the employer offered to send a few items to arbitration, would we

then be precluded from holding a strike mandate vote? Again, this proposal is inflexible and unnecessary. The members can come together at any time at the request of 50 members and vote in favour of asking for arbitration on all or some issues. This strategy need not come at the expense of holding a strike vote, and, once again, the pressure needed to send issues to arbitration may be weakened by failing to hold a strike vote first.

(iii) Requiring delays and additional votes on job action

The proposal to require four weeks of bargaining even after conducting a strike mandate vote is unprecedented in any union constitution and severely limits our flexibility. Four weeks is a long time in a 12 week academic term, and is likely to delay bargaining in a way that weakens the leverage of the union as the end of term approaches. The requirement to hold yet another final vote on whether to seek binding arbitration before the final decision of taking strike action suffers from the same shortcomings described above; it bakes into our constitution a required delay in the process which clearly advantages the employer and also fails to deal with the grey area of which issues could be sent to arbitration.

Finally, if the union must, according to its constitution, hold a final membership vote even after an earlier strike vote has been taken, this creates ambiguity under the OLRA. That Act requires a strike mandate vote be held before strike action can be taken, but, under this provision, it might not be clear whether the first or the second vote would fulfill the legal requirement of receiving a strike mandate.

14 PROPOSAL TO REQUIRE ELECTRONIC REFERENDUM ON DISCONTINUING STRIKE ACTION UPON REQUEST OF 75 MEMBERS ANY TIME DURING A STRIKE

PROPOSED CHANGES: ARTICLE 9.4 - DISCONTINUATION OF JOB ACTION

Once ~~the decision to impose a strike or other sanction~~ job action against the Employer has been authorized by the membership, picket lines or other job actions shall not normally be discontinued, except by decision of the Executive Committee. However, at any time upon the request of at least seventy-five (75) members, the Executive Committee shall arrange for members to vote electronically on whether to discontinue the strike, picket lines or any other job action, as the case may be, if the Employer agrees to send unresolved matters to binding arbitration. Assent shall be given by a simple majority of those voting (i.e., 50% plus 1 vote). Accommodations for voting are available as per the By-Law. No proxy voting is permitted.

YUFA EXECUTIVE RECOMMENDATION: VOTE NO

RATIONALE

This proposal is redundant. Members already have the right to call a special meeting (with 50 signatures) to direct the Executive to accept the offer, seek arbitration, or to call a vote. No union ever has an interest in conducting a strike that has inadequate membership support. A better approach may be to require the Executive to call a meeting at least once every seven days during a strike and to hear from members whether they want to continue the strike. Based on the experience from the last YUFA strike in 1997, and faculty strikes elsewhere, meetings are held at least once per week in any case. A constitutional amendment is not necessary to give an opportunity for members to call for an end to the strike. The requirement of electronic voting (a process that normally takes about 7-10 days) would simply cause further delays and would separate the decision about continuing the strike from discussion at the meeting where one can hear opposing points of view and ask questions of YUFA's negotiators about the complex issues in bargaining. Once again, YUFA has been advised that there are no other faculty associations with a similar provision.

15 PROPOSAL TO REQUIRE ELECTRONIC REFERENDUM ON UNION DONATIONS OVER \$2000.

PROPOSED CHANGES: ARTICLE 10 - DUES

10.1 Amount

The annual membership dues rate of the Association shall be approved as per procedures in Article 3.5 (c and d) above. The annual dues shall be expressed as a fixed percentage of each individual member's annual base salary rate and remain unchanged until a higher or lower percentage is approved. From this amount, all obligations of the Association shall be paid, including ~~but not limited to~~: operating expenses; CAUT Defence Fund contributions; membership fees paid to the CAUT; membership fees paid to the OCUFA; contributions to the YUFA Defence Fund; contributions to the YUFA Arbitration Fund. **For any decision involving expenses in excess of \$2,000 unrelated to the Association's obligations as they are described above, including supporting other unions during strikes, the Executive Committee shall seek electronic approval of the membership, and assent shall be given by a simple majority decision of those members voting electronically (i.e., 50% plus 1 vote). This \$2,000 ceiling is for both a single donation and cumulative donations to the**

same recipient per cause in a single budget year. Accommodations for voting are available as per the relevant By-Law. No proxy voting is permitted.

YUFA EXECUTIVE RECOMMENDATION: VOTE NO

RATIONALE

The Executive has two concerns with this proposed amendment.

First, the proposal to conduct electronic voting on donations – rather than considering them at meetings – means that there will be no opportunity to discuss the merits of the proposal, propose amendments or to ask questions of YUFA members or officers who have made the proposal or received the request. It is very rare to find a donations ceiling or a requirement for electronic voting on donations in a faculty association constitution rather than in its by-laws. The YUFA by-laws already include approval requirements for donations and other expenditures.

Secondly, it is important to recall that unions in the academic sector regularly support each other with mutual donations. Adding a new requirement and delay of a membership referendum before YUFA can provide donations to other academic unions on strike sends a negative message to other unions in our sector who have procedures for sending prompt financial support to an allied union like YUFA on principle without a membership vote. YUFA has always sent timely donations to other faculty associations and we would expect the same from them if YUFA was ever on strike. This proposed amendment could undermine that reciprocity between other academic unions in our sector and would signal a lack of trust in the YUFA's leadership's ability to respond to calls for support and solidarity from those faculty associations.

16 PROPOSAL TO REQUIRE SUPER-MAJORITY TO APPROVE SPECIAL LEVY

PROPOSED CHANGES: ARTICLE 10.2 – SPECIAL LEVIES

10.2 Special levies

The Executive Committee may, from time to time, request a special levy over and above the amount of the annual membership fee, normally for a specific purpose. **Assent shall be given by a two-thirds (2/3) majority decision of those members voting electronically.** **Accommodations for voting are available as per the relevant By-Law. No proxy voting is permitted.** Once approved ~~by the general membership~~, such a levy shall become part of the annual membership fee for the year in which it is approved.

YUFA EXECUTIVE RECOMMENDATION: VOTE NO

RATIONALE

Special levies are common at other unions and faculty associations. Our review of constitutions and by-laws at other faculty associations shows that this proposal requiring a super-majority (two-thirds) for approval of a special levy would be unprecedented, or at least extremely rare. Again, the requirement of electronic voting would remove the matter from meeting-based deliberative decision making or opportunities to amend the proposal for the levy.

17 PROPOSAL TO REQUIRE MORE SIGNATORIES FOR PROPOSED CONSTITUTIONAL AMENDMENTS SUBMITTED BY A GROUP OF MEMBERS

PROPOSED CHANGES: ARTICLE 11 - AMENDMENTS

Article 11. Amendments

The Stewards' Council may submit to any General Meeting ~~for approval,~~ proposals for amendments to this Constitution. Such proposals may also be submitted to the Executive Committee by ~~fifty-seventy-five (75)~~ fifty-seventy-five (75) or more members of the Association ~~must be submitted to the general membership for consideration.~~ In both processes, the proposed amendments must then be submitted to the general membership for discussion and then subsequent decision making by electronic voting. Assent of two-thirds of those members who vote shall carry amendments. Notice of motion(s) to amend the Constitution shall be given in writing in the notice of ~~the a~~ a General Meeting. Amendments to the Constitution shall not be presented to Special General Meetings. ~~Voting shall be by electronic voting.~~ Accommodations for voting are available as per the relevant By-Law ~~will be made for those who do not have access to the Internet and who request such accommodation.~~ No proxy voting is permitted.

YUFA EXECUTIVE RECOMMENDATION: VOTE YES

RATIONALE

This proposed amendment includes housekeeping changes to the current language and an increase in the required signatures accompanying a members' petition to amend the constitution. The Executive agrees that a larger number of signatures should be required for initiating important matters of YUFA governance such as constitutional amendments. We recommend that members vote in favour of this proposed amendment.