

Response to YUFA Executive's General Comments (Executive's comments included after p. 4; click on headings to go from response to comment and back)

It is most unfortunate that the Executive responded to the proposals without attempting to give the proponents of the changes an opportunity to clarify or discuss possible amendments. It is equally unfortunate that the Executive was unresponsive to the request to set up a forum accessible to all YUFA members to discuss the proposals and possibly amend them to address concerns.

At the outset, it is important to understand that the proposed changes are based on principles, and not on pragmatic reflections (e.g., we should keep quorum at 50 because members do not attend meetings). The changes are also based on the notion that whoever takes on the role of representing YUFA members does so with a commitment to democracy, inclusiveness, and representativeness. That some proposals may entail some logistical hurdles (e.g., voting on dues, if a change is contemplated, before voting on the budget) or potential challenges to overcome (e.g., meeting quorum to transact business at meetings) should not discount the importance of the commitment to democracy, inclusiveness, and representativeness that the Executive must uphold.

Below we provide a response to the Executive's general comments. In the end, we have to trust that each YUFA member will consider the changes for what they are truly intended to achieve, namely, a Faculty Association that strives to represent the complexity of views of its members to the best of its abilities, that seeks opportunities to hear from its members as often as necessary, that leaves no one behind and can compromise for the well-being of its members. What makes a Faculty Association strong is unity, but unity requires trust, and we currently have a lack of trust and thus no unity. The current Constitution has not served YUFA well, and we must be open to try to do better. Nothing is cast on stone, and nothing prevents us from pursuing changes in the future to improve in areas we see potential for improvement. While change may not always be convenient, it is sometimes necessary and even inevitable.

Purpose and objectives of the Association

Firstly, the addition of the "full-time" descriptor was never intended to exclude any members of the Association. Indeed, according to the Constitution, "[r]egular membership in the Association shall be open to full-time members of the academic staff engaged in teaching and/or research, including professional librarians whether on a reduced load, or on leave, etc." (see Article 2: 2.1.a). It has always been understood that YUFA represents full-time academic staff, and thus any YUFA member is considered a full-time academic staff member as per Article 2.1. With respect to YUFA members on reduced load, Article 18.26 of the YUFA Collective Agreement specifically designates them as "full-time; reduced-load." It is hard to imagine how the Executive could make the claim that "the altered wording abandons YUFA members who are not full-time members (e.g., post-doctoral visitors, members on reduced load)" when the Constitution and Collective Agreement spell out that (i) YUFA members are full-time members of the academic staff and (ii) YUFA members on reduced load are still considered full-time members. Nonetheless, if the addition of the descriptor is to become a contentious issue, adding a reference to Article 2.1 (Constitution) which defines regular membership should be sufficient to eliminate any doubt.

Secondly, the suggested changes for objectives (Article 1: 1.2 Objectives) **explicitly** refer to situations which involve a trade off between promoting **trade unionism** on one end and promoting **the well-being of the University and/or the interests of YUFA members** on the other end; in such instances, the changes are intended to clarify that the well-being of the University and/or the interests of YUFA members are not to be sacrificed for the preservation and advancement of free democratic trade unionism. The changes are **NOT** about situations which involve the interests of YUFA members on one

hand (e.g., compensation and working conditions) and the well-being of the University on the other hand. The example provided in the Executive's response is thus irrelevant and misleading about the implications of the change.

However, it may be useful to note, with regards to objectives, that there are associations which do not include the preservation and advancement of free democratic trade unionism in their mandate, and a more drastic proposal would have entailed the removal of any reference to trade unionism, as opposed to the addition of the clarification that YUFA members and the University must come first. For example,

- the purpose of the Faculty Association at the University of British Columbia is
 - to promote the welfare of faculty members and other persons in its bargaining unit employed by the University of British Columbia
 - to act as the bargaining agent for all persons in its bargaining unit with the University of British Columbia and to regulate relations between the persons in its bargaining unit and the University through collective bargaining
- the purpose of the Faculty Association at the University of Toronto is
 - to promote the welfare of the current and retired faculty, librarians, and research associates of the University of Toronto, the University of St. Michael's College, the University of Trinity College, and Victoria University
 - to advance the interests of teachers, researchers and librarians in Canadian universities
- the purpose of the Faculty Association at Queen's University is
 - to serve as the exclusive bargaining agent of the members of the bargaining unit and any other group of employees which the Association may represent
 - to promote the interests of and regulate employment relations between Queen's University and its academic staff (faculty, librarians, and archivists)
 - to promote equity in the recruitment and hiring of academic staff
 - to promote a positive working environment for academic staff, free of discrimination, interference, restriction, or coercion relating to any term or condition of employment
 - to provide appropriate representation for all members of the Association
 - to promote academic interests at Queen's and in the broader community

Electronic votes

If YUFA currently enjoys e-voting for certain decisions is to the credit of the efforts of a group of YUFA members who, tired of the concentration of decision making in the hands of the very few members who regularly attended meetings, decided to do exactly what we are currently doing. The then Executive and other YUFA members presented the same arguments against e-voting as the current Executive is putting forward, and yet most YUFA members seem to be quite content with the current e-voting system. Apparently, unless you attend a meeting, you have no right to be part of decision making, and the reasons for missing the meeting, which are likely related to your professional responsibilities, do not really matter. Merits or demerits of e-voting aside, the change in question is not about e-voting per se but about curbing the undesirable incentive to introduce motions from the floor to have YUFA take a specific position or issue a specific statement at meetings which are not well attended and thus unrepresentative. Nonetheless, if e-voting on motions typically transacted at meetings is the issue of concern, the language could easily be revised to say that motions from the floor would be debated and even amended at the meeting but would be voted on at a subsequent meeting.

In terms of e-voting, the only substantive change is to allow members to vote electronically over bargaining proposals (extending e-voting to by-laws is not a substantive change given that YUFA members already enjoy e-voting for changes in the Constitution). This actually achieves several goals: (1) it gives not

only more information but also more reliable information about what members value and what they may be willing to strike for; (2) it strengthens YUFA's bargaining position and gives credibility to any job action threat through wider support than 50 members; (3) it facilitates voting on individual proposals; (4) it supports a level playing field and ensures an equal opportunity to contributing to decision making across all YUFA members (juniors and seniors alike) as individual votes are not observable.

Procedural logic

To claim that the proposals are "full of inconsistencies, cumbersome procedures, and..." is superficial and narrow-minded. As an example, there is no valid reason to argue that separating the decision over dues from the decision over the budget is problematic. Firstly, dues are not revised frequently. Secondly, when the need to revise dues arises, the vote on dues can be arranged before the budget is presented. Once the fee structure is confirmed, the Executive can propose the budget and arrange for members to vote on it. There is absolutely nothing cumbersome here, there is no inconsistency, and to claim inconsistency based on a sequence of events which the proposed change does not suggest or even imply is misleading. Indeed, the two decisions are considered separately at other institutions. For example,

- at the University of Toronto,
11.1 The annual membership fees shall be proposed by the Council and approved at a general meeting of the Association by a majority of those regular members present and voting. The fees shall become payable on July 1st of each year (<https://www.utfa.org/content/utfa-constitution>).
- at Queen's University,
Article 4(iii) There shall be a fee structure, including dues and any levies or assessments, ratified by the membership. Any changes to the fee structure shall be made at a scheduled General Meeting (<https://qufa.ca/wp-content/uploads/2018/07/QUFA-Constitution-April-2016.pdf>).

Bargaining procedures

Yes, the proposals would introduce some additional steps into the process but **do not remove our ability to strike**. If having to bargain for a minimum of 4 weeks after a failed strike mandate vote is a matter of disagreement, the requirement can be removed. Having a long enough period to try to reach an agreement before moving to the next step seems reasonable, but this is not a critical element of the proposed change. The table below summarizes the current steps and the proposed steps.

| | CURRENT LANGUAGE | PROPOSAL |
|--------|---|--|
| Step 1 | | Executive may arrange for e-voting on whether to propose binding arbitration or a strike mandate |
| Step 2 | Executive may authorize strike mandate vote | Executive may authorize a strike mandate vote only if the vote in step 1 favours a strike mandate vote or if it favours binding arbitration but the Employer disagrees |
| Step 3 | | Executive may arrange for e-voting on whether to propose binding arbitration or job action following a minimum of 4 weeks of bargaining after a positive strike mandate vote |
| Step 4 | Executive may authorize job action following a positive strike mandate vote | Executive may authorize job action if the vote in step 3 favours job action or if it favours binding arbitration but the Employer disagrees |

In response, the Executive notes:

- (1) YUFA has not been on strike since 1997.

True, but YUFA has threatened to go on strike on several occasions. It is fair to say that its ability and willingness to pursue the strike path have been hampered by the frequent CUPE strikes, given that YUFA negotiates immediately after CUPE. Indeed, YUFA has tried to propose in the past a different timeline to align its bargaining with CUPE bargaining, thus strengthening the joint position of the two unions.

- (2) The motion to endorse a possible strike mandate vote at the last round of negotiations sent a strong message to the Employer and helped us achieve a better contract.

Whether the move helped YUFA is a question of debate. Some would argue that dropping the governance proposals was the triggering factor, and many knew that from the very beginning. In any event, the proposed changes include formalizing such a vote, and not removing its possibility which the Executive's comment may suggest, with the addition of arbitration as an option (step 1 in the table above). If a third option is desired to allow members to turn down both a strike mandate vote and arbitration, this can easily be accommodated through a friendly amendment.

- (3) Political climate is not ideal to propose changes that weaken Faculty Associations.

The proposals are not about weakening or paralyzing YUFA. The proposals are about a more thoughtful process for declaring job action and do not change our ability to strike. Given what is at stake, the additional steps simply ensure that, if YUFA is to strike, members get to make that call. That members should have multiple opportunities to be consulted on whether to strike is not really a debatable position, is it? Support for a position, whatever that position may be, does not paralyze but strengthens YUFA. This is particularly important as strikes are typically contentious and tend to result in division, which is ultimately what weakens YUFA. If YUFA is at this juncture, fractured and weak, it is precisely because of strike-related events.

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.