

OCUFA: Implications for Faculty Associations for Bill 132
Meeting in Toronto on 12 October 2017
Some observations by Kristin Lord, WLUFA Grievance Committee

Preamble:

Bill 132 is an **Ontario** law which deals with amendments to the Ontario Human Rights Code and also updates OSHA/workplace harassment policies. It defines sexual violence and harassment. Regulation 131/16 deals specifically with implementation and contains applications to Ontario colleges and universities. Bill 132 updates Bill 168 to deal with issues of sexual harassment and violence. It came into effect on January 1, 2017.

Bill C-16, on the other hand, is **federal** legislation. It received royal assent in July of 2017. Bill 16 adds “gender identity or expression” to the Canadian Human Rights Act and the list of groups protected from hate propaganda under the Criminal Code. “It also adds that evidence that an offence was motivated by bias, prejudice or hate based on a person’s gender identity or expression constitutes an aggravating circumstance for a court to consider when imposing a criminal sentence.” (summary from Library of Parliament research publications, quoted in Wikipedia article on the bill.

While the text of the two laws, their relevant regulations, and future case law may determine overlap between the two pieces of legislation, Bill C-16 was mentioned only in passing in this meeting.

Issues for Faculty Associations and Unions:

In general, this law is new enough that its implications need to be reviewed now and at the time each contract is renegotiated. Faculty Associations should pay special attention to the development of any further regulations and case law surrounding this legislation. Stakeholders should also develop mechanisms to ensure that reporting requirements are met.

A. Bill 132 treats both sexual harassment and sexual violence. Those working with this legislation should be aware of the definitions and implications for each. The student association (CASA) reporting through its own recommendations is somewhat narrower, and some CA’s have also tightened language.

B. All members of the university/college community (faculty, staff, students, administrators) have the right to lodge a complaint to the university/college regarding incidents of sexual harassment and violence. Members of WLUFA who are the initiators of, or the respondent to, such complaints have the right to be represented by WLUFA (or its designates) and to have a WLUFA representative accompany them to meetings.

C. People **do not** have to make an official report in order to receive support from the university or the faculty association (or whatever services/entities of the university are relevant). They are entitled to accommodation regardless of whether they make a report.

D. The environment surrounding the legislation has the goals of transparency and privacy, to the extent that each can be maintained in the context of an investigation. These goals may conflict in practice if not in theory (e.g., a faculty member who is put on administrative leave without reasons being given to colleagues and students). To what extent can we anticipate potential conflicts?

E. re D above, people preparing cases or having cases prepared on their behalf need to have summaries of evidence, especially when they are respondents. The summary should be available in a timely manner (deadlines would help if they are not already in a CA/MOA) and be detailed enough to enable adequate representation, without violating confidentiality.

F. The province is aiming for a 90-day resolution of such cases. This is a tight timeline, given the need to interview witnesses and investigate all related issues. For this reason WLUFAs and the university did not include the 90-day limit in the latest round of negotiations. However, given the regulatory environment, this perhaps should be reconsidered. Rationale: a respondent's confidentiality, and/or a complainant's need for accommodation, may be violated if cases drag on, and the University and/or a Faculty Association might need to cover its tracks if that Member (or another affected person) lodges a complaint about this. This could be resolved by the University and WLUFAs each recognizing the need for any given delay.

G. Language of trigger warnings. Consider using "context warning" or some other wording, avoiding language that itself has connotations of violence.

H. Those who are complainants or respondents, either formal or informal, are advised to keep paper trails, and to put documents in a safe location.

I. Faculty members (and many administrators and staff) should not try to help colleagues or students resolve complaints or concerns, but rather act with sympathy and help those involved get help from someone qualified to offer it. These issues require assistance from people trained in handling the law and its regulations. Problems have arisen when people have tried to do too much.

J. In each university, it should be clear which office handles which kinds of cases, and in what capacity.