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The Honourable Nolan Quinn
Minister of Colleges, Universities, Research
Excellence and Security ("MCURES")

By email only to: minister.mcures@ontario.ca

Dear Minister Quinn,

Re: "OCUFA's Submission on Improving University Governance Structures Submitted to the Ministry of Colleges, Universities, Research Excellence and Security on August 31, 2025".

OCUFA's Submission on Improving University Governance Structures published by the Ontario Confederation of University Faculty Associations ("OCUFA") on its website on September 23rd, 2025 ("Submission"), has only recently been drawn to my attention. The purpose of this letter is to correct, clarify and address three paragraphs under the heading "Faculty association members and Senate membership are compatible" as those paragraphs incorrectly characterize "recommendations" made by me (no source cited). I make no comment on the remainder of the Submission.

Not Engaged on behalf of MCURES to conduct Efficiency Reviews: I think it's important to clarify that (contrary to the OCUFA statement that I have "participated in multiple efficiency reviews") I have conducted no efficiency reviews on behalf of MCURES. The MCURES EAF initiative included a request that participating universities explore opportunities for more effective financial governance including effective board composition, training of board members, and financial orientation for new members and review the role of the senate (where applicable) in effective

organizational decision-making. Two universities participating in the EAF initiative requested that I undertake a governance review to respond to those two questions. The remaining questions in the review were answered by consultants approved by MCURES. I was engaged directly by the universities for governance advice.

Faculty Association Membership and Senate Membership Compatibility:

Faculty members are essential members of senates. Shared governance rests upon the informed, engaged and active participation of faculty in university governance. Most faculty are unionized. I have never stated, nor would I, that mere membership in a faculty association or union is incompatible with service as a member of a senate. It is important to note that some universities and faculty unions across the country have agreed to the exclusion of board members (specifically faculty serving on university boards) from the faculty union bargaining unit or to restricted union activities while serving on the Board¹. As senates are composed of a majority of faculty, it is not feasible or desirable to have them step out of the bargaining unit while serving on senate, but it is crucial that conflicts of interest and role clarity are carefully and rigorously managed.

Mischaracterization of My Concerns about Competing Fiduciary Duties: OCUFA has mischaracterized my concerns about competing fiduciary duties and I would like to state clearly my views: As you are no doubt aware, those in leadership positions in organizations (board members and senior leaders) are in a position of trust and owe fiduciary and other legal duties to the organization. They must always act in the best interests of the organization, avoiding conflicts of interest.

In the university context, in addition to board members, and senior leaders, those serving on university senates share responsibility to govern the institution. They are charged with legislative responsibility to oversee the academic governance and educational policy of the institution. As such senators should also always act in the best interests of the university.

Leaders or executive officers of unions are fiduciaries of the union and must always act in the best interests of the union². The work of a union is deeply intertwined with the work of the university. With respect to matters coming before a university senate, the fiduciary duty of union leaders demands that they focus on the

¹ See, for example (and there are others): Queen's, Ontario Tech, York, UOttawa, and Western, Dalhousie and UNB. Brock faculty who serve on the Board have restricted rights to participate in union affairs. This has presumably been done because of the strict legal obligations imposed on board members, and to avoid even the perception of conflict of interest for board members.

² St. Denis v. Manoni, 2011 ONSC 3308, paras. 73 to 77.

potential effects of senate decisions on the terms and conditions of employment of their members and that they ensure that the best interests of their members are protected. When I offer professional development sessions to university board members and senators, I counsel constituent members that their role is to take their constituent hats off. As governors of the institution, they are not representatives of their constituents, their role is to share the perspective of their constituent and then to make decisions in the best interests of the university³. The legal obligations of union officers are such that their fiduciary duty to their unions and members doesn't permit them to take that union officer hat off. As a result, using normal conflict of interest processes is insufficient because the conflict of interest is ongoing or irreconcilable. It is not possible for a union officer to serve the union and the senate and to act always in the best interests of both - their duties compete and conflict.

Weakening of the Faculty Voice in Governance: OCUFA asserts that the voice of faculty in governance is weaker than it should be. I agree. While conducting governance reviews, training and advice to tens of Canadian universities in the past few years, I have interviewed many faculty. In my view, the reasons for a weak faculty voice are many and complex including a lack of sufficient training and education about their roles and the role of Senate and a lack of diverse engagement. Addressing these issues is essential to enhancing the faculty voice and ensuring successful shared governance.

A significant aspect of weak role clarity is a blurring of the lines between university governance activity and labour relations activity. This often plays out in senates and weakens the effectiveness of senate as an academic governing body. Discussions focus on or are diverted by labour relations implications rather than university implications. Finally, the adversarial tone that characterizes many labour relations interactions carries over into academic governance to the detriment of senates and to the concern of many faculty and other senators serving on senates. Senates and boards should strive to be partners in governance, not adversaries.

Faulty Reasoning or Misunderstanding re. Non-Unionized Senior

Administrators: The Submission states that senior administrators are in a conflict of interest like union leaders because they are "similarly interested in preserving their own job". This assertion reflects faulty reasoning and a misunderstanding of my point entirely. It is not the fact of employment or status as a student that

³ See also page 116 of my book, *An Introduction to University Governance*, Irwin Law (now UTPress), 2021.

creates the continuing conflict of interest – it is competing and conflicting legal duties for the officers of unions (whether faculty or student union).

The shared governance context of Canadian universities provides for the inclusion of constituents like students, faculty, and staff on governing boards and senates. In Canada this unique board/senate composition is at the heart of shared governance and is also part of what makes university governance more challenging - it is rare in most corporate entities in Canada that any employee or related person other than the President/CEO serves on the board (this is presumably why OCUFA provided a German example, which in my view is out of context and unhelpful). This makes university governance unique in Canada. Given the potential for conflict of interest of constituent members of governing bodies must be vigilant about role clarity and legal duties.

As noted above, university senior administrative and academic leaders are fiduciaries with legal obligations to act in the best interests of the university in all aspects of their work. These duties apply when they are acting in their administrative leadership roles and when they serve on senate – they apply at all times. Union leaders owe a duty to the union and its members to always act in their best interests. If union leaders serve simultaneously on senate, their duty to the union and members conflicts with their duty to always act in the best interests of the university as a senator. Senior administrative leaders are subject to no such competing duties.

Attempts to Discredit My Work: As a former union-side labour lawyer, I take exceptions to the erroneous, unfounded and potentially professionally damaging allegations respecting my opinions about unions. I have said many times and reiterate that unions have a significant role to play in governance and in supporting faculty to exercise a strong and informed voice. Unions also play a role in the nomination and selection of faculty for governance roles. As we share many goals, it is disappointing that OCUFA has chosen to resort to personal attacks to attempt to discredit my work.

This letter is copied to OCUFA with a request that as I have been named in their submission, they extend the courtesy of publishing this response or a link to it (as it will be posted on my website) on the page on which the Submission is posted.

I look forward to continuing to work in good faith with all constituents engaged in university governance toward more effective governance that enables Ontario universities to be successful and to serve Ontario.

Very sincerely,

A handwritten signature in black ink, appearing to read 'Cheryl A. Foy', with a stylized flourish at the end.

Cheryl A. Foy, BAH, LLB

President

Strategic Governance Consulting Services Ltd.

With copy sent to the Ontario Confederation of University Faculty Associations