

President's Message



Toward a University Framework Law

Subject to political, economic, and religious pressures, the Quebec university is currently having difficulty defending its historic mission and fundamental values. Many analysts have described the subsequent denaturing of universities using terms such as “peril,” “collapse,” and “ruins,” and are calling for greater protection of the mission and a reassertion of its value.

Responsibility of the Quebec Government

The FQPPU is of the opinion that the Quebec government needs to continue to play an important role in the university system in at least five key areas:

1. General orientations;
2. The configuration of the university system;
3. Funding and use of public funds;
4. Evaluation of the university system; and
5. Studies and research on the system itself.

However, for this role to be optimal, it is important to properly establish the power and responsibilities of the government and of the university by reaching a consensus on basic principles to guide the development of the university network.

Part 1 of the États généraux de l'enseignement supérieur (the general state of higher education), which will take place in May 2017, will provide us with an opportunity to reaffirm what we want for Quebec universities.

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• **Federal Council Meetings** February 9 and 10, 2017
April 27 and 28, 2017

• **ACFAS Seminar** May 8 and 9, 2017

Topic: Current Transformations of Universities

• **Training Session** April 7, 2017

Topic: Psychological Harassment Among Colleagues (Part 2)

Toward a Quebec University Framework Law

In the past 30 years, several studies and reports have called for, after the separation from the Church, a better definition of the relationships in academia, in particular between universities and the government and businesses. For example, in 1979, the Pagé Commission proposed three measures:

1. Establishing a ministry of universities (which led to the creation of the Ministère de l'Enseignement supérieur, de la Recherche, de la Science et de la Technologie);
2. Continuing (at the time) to have a Council of Universities (planned to be revived in 2017);
3. Enacting a university law that would make the government's actions more transparent, give more autonomy to universities, confirm the diversity of their charters and statutes, clarify their rights and responsibilities resulting from their public funding, and determine the implications of being part of the Quebec university network.

The time has therefore come for Quebec to declare loud and clear the values upon which the university is based that it wants to preserve and to have a frame of reference for decades to come. This is why we are calling for the adoption of a university framework law.

This request will be at the heart of the work carried out for the États généraux de l'enseignement supérieur, which will occur in Québec from May 18 to 20, 2017. The FQPPU is organizing four workshops to share its analyses of university funding issues, abuses related to university administration, worrisome research conditions, and the commercial approach of the Quebec government with regard to developing the university network.

Until then, our efforts will be focused on questioning Minister David and Minister Anglade in order to ensure, on one hand, that the project of creating a Council of Universities draws on the eight positions put forward by the Table des partenaires universitaires (board of university partners; see sidebar) and, on the other hand, that the next Quebec budget responds to the most urgent concerns of the academic community, by investing substantial amounts into both operating funds and research into how to improve working and studying conditions, which have deteriorated after a long period of austerity.

In solidarity,

Jean-Marie Lafortune

8 Consensus Agreements in the Academic Community Regarding the Creation of a Council of Universities

As members of Quebec's academic community, we support the creation of a Council of Universities if

- 1) the majority of the Council is made up of members of various groups that are part of the academic community;
- 2) it is a public body, independent from the government and ministries, as well as from university administrations;
- 3) it is autonomous in its design, operation, and administration, by means of a separate budget voted on annually by the National Assembly. In particular, it must have the necessary resources to document and analyze data related to the sources, distribution, and use of funding for Quebec universities;
- 4) its mission includes guiding and coordinating the development of the university network in order to put an end to competition between universities;
- 5) it is guided by the following principles: accessibility to post-secondary education, institutional autonomy, academic freedom, collegial management, collaboration between institutions, and the concept of university as a public service;
- 6) it promotes freedom, democracy, and accessibility in universities across Quebec, while protecting them from commercialization;
- 7) it does not lead to the implementation of quality control mechanisms, which result in coercion of both employees and students, or to the standardization of curriculum content; and
- 8) the creation of this new structure is accompanied by substantial, recurring reinvestment.

Let us be clear: Minister David's current proposal does not meet our expectations.

SIGNATORIES

AVEQ, FAECUM, FAEUQEP, FNEEQ-CSN,
FPPU, FP-CSN, FQPPU, RSU-CSQ, UEQ

From the Executive Committee

Denis Bélisle, Vice-President
Five Courses Is Too Many



I taught my first university course in 1986. It was an undergraduate statistics course, and I was a PhD student. I was very proud to have been assigned the course, but a little nervous as well—I, of course, really wanted my first course to be a success.

At the time, preparing a course was easy and did not take very long. First, we would choose a book on which to base the course, which, intended for university teaching, was already divided into 12 or 13 chapters—one per week. Then we would skim the textbook to find extra material, compile supplementary references, prepare some documents to be photocopied by the secretary, prepare two exams, as well as a statement of the work to be done.

Of course, there was weekly preparation, but it was mainly of a mental nature: thinking of examples, playing around with concepts in our heads to become more comfortable with them, and even, maybe, coming up with a joke or two to use when the time was right. Course outlines were “flexible,” if not vague, and were often distributed the second or third week of the semester.

Lately, that is not enough. Often, a detailed course outline, specific and inflexible, must be submitted several months in advance to receive departmental approval. While there is now an astronomical amount of reference material, it makes it that much more difficult to find a textbook on which to base a course. These books are all specialized to varying degrees, and there are few that outright correspond to our needs for a course. Several books must be consulted, sorted through, and put together in a document. Then, a form must be filled out for each portion of a book used, which must be handed in at the same time as the originals. The forms are then checked and approved—or not, in which case, the material would need to be revised.

More recently, photocopies are being eliminated in favour of digitization. Professors therefore need to buy scanners and learn how to use them, or learn how to use

the ones available to us at the university, which are often complicated by network connections that do not always function as they should. If files are already in a digital format, chances are that they are not formatted in the way we would like. We then must write a set of instructions to list which pages to read, or we need to edit the digital document in question. If we are lucky, it is possible to do so using software that we already know how to use, such as a word processor, but more often than not, the document is a PDF, and we need to learn how to use the professional version of Acrobat.

Once the digital files are properly formatted, they need to be distributed. The university’s preferred method is the learning platform—which we need to learn how to use. Free training sessions are offered, but the frequency of use of each of the various features during the term is so low that we almost need to relearn everything each semester.

The documents are put online, only one of a seemingly infinite number of features of the platform in question. Cramping all of the documents onto one page does not look very professional. The page needs to be set up with a certain basic look, separated by week, with announcements as to when tests will occur, etc.

In addition, the activities that have been prepared are expected to be posted on the site. If there are assignments due, we must set up instructions on how to submit them, manage dates, and handle late submissions—all through an interface that we have only somewhat mastered. This does not even include inevitable errors, unavailable documents, an activity that will not post, an assignment that a student could not submit because the system was not working, etc.

For each weekly class, we feel obliged to prepare a PowerPoint, which the students then want to obtain at all costs, in addition to our course notes. The PowerPoint must be well done and aesthetically pleasing, and must contain no errors. We need to practise it: a PowerPoint does not allow for as much flexibility as good, old-fashioned ad libbing. There are not only documents to be written, but also animations, videos, and sound files that, if we cannot find them already prepared, must be designed, developed, and produced.

For assignments and tests, students now want “educational corrections,” which usually means that we must correct twice as much and develop more tools. Assignments can also be submitted in several digital formats, which we must learn how to manage. Regulations may even require us to record oral presentations, which entails reserving, installing, and using a camera, as well as saving the files.

Then there is communication, which consists in a great deal of interaction, using several channels of communication (emails, forums, etc.), from both the students and the university at which we teach. These messages must all be answered in a limited time period that is constantly becoming even more limited.

One thing is for certain—teaching has undergone a considerable transformation and has become more complex over the past three decades. There is no doubt that, in the end, the student wins; the pedagogy is better, knowledge is more complete and appealing, and, all in all, the studying experience is more enriching.

However, in the past 30 years, while the number of hours in a week has not changed, research requirements have been on the rise, and we have been solicited for more service and university life activities; it seems that the only recognition that we have received with regard to teaching is the administration's desire to increase our teaching load by requiring us to teach an extra course. In the current context, the "fifth course" toward which many university administrations are surreptitiously heading is a tactic that is underhanded, unfair, and unacceptable.

Sylvain Beaudry, Secretary-Treasurer
Codes of Ethics and Restriction of Freedoms



Codes of ethics or of conduct that apply to the academic community as a whole are fairly common in Quebec universities. These codes are found in most chartered universities: McGill university, Polytechnique, Université de Montréal, Concordia university, Université Laval (faculty of administration), and Université de Sherbrooke (faculty of medicine and health sciences). At HEC Montréal, the same code of ethics is found specifically for professors.

In the UQ network, these codes of ethics can be found at UQO, INRS, ÉNAP (code of professional conduct), ÉTS, TÉLUQ (conflicts of interest), UQAT (regulation regarding ethics, professional conduct, and integrity in relation to conflicts of interest), and UQAC (codes of ethics and of professional conduct). Only UQAM, UQAR, and UQTR do not have this form of code.

A draft of a code of ethics for staff members was prepared by UQTR in May by the human resources committee of the university's board of directors. The draft was inspired more by codes of professional conduct found in the private sector or in Crown corporations such as Hydro-Québec, than by what is usually found in university codes of ethics. In addition, the draft contained clauses that contradicted the collective agreement for professors. Section 4.3 of the draft focused on loyalty and was aimed at restricting the right to criticize UQTR, thus limiting freedom of expression, particularly for professors, who are the members of the academic community that publicly express themselves most often.

All staff members must be loyal to UQTR and avoid causing it harm through their words or actions. All staff members must abstain from stating any fact or making any remarks with malicious intent to discredit UQTR, undermine its credibility, or tarnish its image or reputation with its partners and the general public (our translation; excerpt from the draft of the code of ethics for UQTR staff members presented to the board of directors, p.5).

When the draft was released in May, the Syndicat des professeurs et professeurs de l'UQTR (SPPUQTR) immediately reacted, as its labour council adopted a resolution to reject the draft. One month later, the Intersyndicale des personnels de l'UQTR (IPUQTR) also opposed the draft. Nevertheless, in October, the human resources committee recommended to the UQTR board of directors that the unions have until December 23 to propose amendments to the draft of the code, otherwise it would be adopted in its entirety during the board of directors meeting on February 13, 2017. The union newsletter, *Le point d'ancre* reported this in their November issue, and the Mauricie-Centre-du-Québec media picked up the story.

The mobilization of the academic community and the release of the story to the media put pressure on the administration, and the board of directors called off their ultimatum. Ever since, the administration has been working with the unions to agree on a draft that would satisfy the academic community. At the time of publication of this article, a new, much more acceptable, draft of the code of ethics has been submitted.

This story shows the importance of being constantly vigilant about attempts to undermine academic freedom, and even freedom of speech, of professors. Academic communities must be on the lookout for changes that may be proposed for codes of ethics or any related policies.



The Superior Court recently ordered researcher Marie-Ève Maillé, who was working on the community acceptance of a wind project, to reveal the identity of all the people she interviewed to the project's promotor, the business Éoliennes de l'Érable. This controversial decision calls into question a principle that has been known for quite some time, that research data belongs to the researcher (read the text about this case on p. 10). Another major principle was brushed aside during this decision, that researchers are responsible for protecting their sources. In the same vein, but in a different area, in the fall, SPUQO received an arbitral award that called into question several principles that we hold dear and that we assumed were givens.¹

This award was in response to a grievance brought forward in March 2011 after the implementation of the "Règlement sur l'utilisation des ressources informatiques et de télécommunication" (regulation on the use of computer and telecommunications resources), prepared and approved unilaterally by the Université du Québec en Outaouais (UQO) administration. The regulation authorized the employer to access all computer tools (devices and content, including databases) of all staff members, including, of course, professors. The Regulation states the following:

"The vice-rectorate of administration and resources (VRAR) can carry out any verifications deemed necessary to ensure compliance with its provisions [...] and provincial and federal acts and regulations. A verification of personal and private information [...] on computer resources [...] cannot be carried out without the consent of the user, unless the supervisor has reasonable and probable grounds to believe that the user is violating the Regulation or abusing resources that have been provided. [...] When the verification is carried out without the user's consent, the user must be informed that the verification took place, of the grounds justifying it, and of the information that was consulted during the verification.

In the event that the user is not at the workstation, access to the information contained on any computer resource [...] can be demanded by the vice-rectorate of teaching and research, and must be authorized by the VRAR." (our translation)

The Regulation also provides that the VRAR can authorize other people to carry out verifications and investigations, that it can investigate on the basis of denunciation, and that it has the right to take all necessary steps to carry out the required verifications, including accessing data. It can impose penalties that are different from those provided for in the collective agreement. These decisions are final and cannot be appealed, which, according to the union, goes against the collective agreement.

The university is invoking its capacity as owner of the equipment to justify the Regulation. The union claims that the "intellectual property rights of the university do not extend to the content of the documents that are in the possession [...] of professors [...]." According to SPUQO, the Regulation goes against the collective agreement, Quebec's *Labour Code*, the *Charter of Human Rights and Freedoms*, and the laws and regulations that govern UQO.

The union claims that the Regulation violates the academic freedom provided for in the collective agreement. According to SPUQO, academic freedom involves "professional autonomy, the right to criticize (even strongly), the protection of data, the protection of sources, etc." The arbitrator replied that "academic freedom" does not mean "absolute freedom," citing, in the process, Guy Dulude in an earlier decision.²

Also according to the arbitrator, academic freedom "cannot go beyond laws, institutional regulations, and limits dictated by the values of our modern society." He added that not only does the Regulation not violate academic freedom, but it contributes to the protection of data and sources.

Similarly, SPUQO claims that the Regulation violates the right to professional confidentiality, contrary to section 9 of the *Charter of Human Rights and Freedoms*. According to the union, a computer is an extension of the professor's office. However, the collective agreement provides that the university can access the professor's office only for maintenance and security purposes. The union argues that the contents of a computer are similar, by extension, to the contents of drawers in a filing cabinet and that no one should be able to access the computer.

¹ <http://uqo.ca/docs/11858>. (Available in French only).

² Université du Québec à Montréal and Syndicat des professeurs de l'Université du Québec à Montréal (A.T., Guy A. Dulude, 1991-12-20, p.28).

The arbitrator replied that, on the contrary, the contents of a computer are an extension of the notion of security, and that it is the employer's right, or even duty, to access the computer for security purposes.

SPUQO thus claims that the Regulation violates the rights of dignity and privacy, contrary to sections 3, 35, and 36 of the *Civil Code*. In fact, it is acknowledged that professors can use their computers in part for personal purposes, and therefore, "searching" their computers results in the access of private data. According to the arbitrator, a workplace is not a private living space. The arbitrator cited two earlier decisions³ to this effect, which involved the viewing of pornography on computers used by employees and belonging to the employer.

However, none of the employees implicated were under the obligation to protect confidential data. Thus, for these cases, obligations to protect data and sources were not competing with security and protection issues against potential user abuse.

Finally, SPUQO claimed that the terminology used in the Regulation makes its application too permissive, since it gives the employer an excessive capacity to carry out verifications arbitrarily. The arbitrator replied that flexibility was necessary so that the Regulation could be applied in a conscientious manner.

In reflecting on this policy, could we argue that special considerations could apply in academia and, particularly, to the work of professors? In the co-management context, there is unease related to the fact that the employer wrote and unilaterally applied this regulation. In this regard, the arbitrator concluded that it was the right of management to do so and agreed that the policy should be imposed on professors. On the other hand, he pointed out that no regulation can go against the collective agreement.

There is an even greater feeling of unease with regard to commitments made to granting agencies, reflected in certificates of ethics, to and under which we promise to keep sources anonymous and to protect research data. When they are made aware of this regulation, how will granting agencies react?

Finally, could this type of regulation permit the employer to carry out a sentence for the Superior Court or another court of law and seize data? We are not there yet, but that may be where we are headed.

³ Supreme Court of Canada, *R. v. Cole*, 2012-05-15, and Alberta Court of Appeal, *Poliquin v. Devon Canada Corporation*, 2009-06-17.

THE "PROF PORTRAITS" CAMPAIGN

The FQPPU is currently leading a campaign to assert the value of Quebec university professors. The video clips produced for this initiative are now being broadcast on Canal Savoir; they are also on Facebook, Twitter, and the FQPPU's website.



*Portraits
de profs*



For more information, go to fqppu.org/valorisation (content available in French only).

DAILY PRESS REVIEW

For several months, the FQPPU has prepared a daily press review for its members that contains journal, newspaper, and blog articles from Quebec and around the world, and covers subjects as higher education, research, and unions.



To sign-up to receive the press review by email every day, please contact Marie-Claude Thomas (info@fqppu.org).



On the initiative of the FQPPU and the Syndicat général des professeurs et professeures de l'Université de Montréal (SGPUM), a seminar on "Current Transformations in Universities" will take place in May during the 85th annual ACFAS congress (see box, p.12).

The seminar aims, in particular, to show how transformations at the international level are endangering the concept of a university that serves the common good, undermining the collegial nature of university management, and ultimately, altering the working conditions of professors and other groups of university actors.

In Canada, the undermining of the university is not unique to Quebec, as illustrated in the recent labour dispute between the University of Manitoba Faculty Association (UMFA) and the university administration. UMFA represents 1200 professors, instructors, and librarians.

When the collective agreement expired on March 31, 2016, the negotiations took place in a context of deterioration of the working conditions of UMFA's members: large, random increases in teaching loads, more administrative tasks, desire of the administration to evaluate professors using quantitative performance indicators, pay for professors that was less than that at comparable Canadian universities, and fewer instructor and librarian positions.

The negotiations thus touched directly on students' quality of education. Students realized this, and during UMFA's strike activities, several student associations supported their professors' claims.

As noted elsewhere, the fiscal austerity used to justify the deterioration in working and learning conditions did not stop the university's administration from spending tens of millions of dollars on capital projects.⁴

⁴ http://www.umfa.ca/images/pdfs/newsletters/UMFABargaini ngNewsletter6_StrikeVoteandBargainingPriorities.pdf

After several months, negotiations stalled, and the union leadership received a strike mandate, which would be carried out starting November 1.

Several days before, the provincial government got involved in the negotiations by imposing a one-year freeze on the remuneration of all public organizations in the province, including the University of Manitoba. UMFA was then held to this freeze, but launched proceedings claiming unfair labour practices.

On November 21, following a three-week strike, the parties came to an agreement for an employment contract that would last one year. UMFA made gains with regard to several of its claims: adoption of a collegial method of assigning professors' teaching loads, limits imposed for the use of quantitative evaluation tools, creation of a committee of professors to evaluate risks and effects, increased administrative support, and other progress made with regard to less important issues.

The union, however, could not obtain better protection against instructor and librarian layoffs for economic reasons.

What can be taken out of this labour dispute? Mark Hudson, UMFA President, noted that

"[s]ome of the most important gains, however, are not in the [collective agreement]. There is a clarified sense of the contrasting visions of the university held by central administration and by UMFA members. There are new and renewed collegial relationships and friendships. There is a sharpened understanding of our capacities to act collectively."⁵

The strike carried out by UMFA members received a great deal of support from local unions and Canadian and international federations of unions of university professors.⁶

The concept inspired by the private sector is still widely pervasive in the academic world, and solidarity is our best weapon against it, in order for our values to prevail.

This is what our colleagues at the University of Manitoba have shown us.

⁵ <http://www.umfa.ca/news/45-thank-you-from-umfa-president-mark-hudson>

⁶ <http://www.umfa.ca/news/44-messages-of-support>

Reinvestment in the University Network: Resources Not Lacking

Christine Proulx, Professional Researcher

In July, the Quebec government announced in a budget surplus of 1.8 billion dollars for the 2015–2016 fiscal year, after two years of fiscal austerity⁷ that strongly affected all public services, including universities. These amounts could have been reinvested in social programs, particularly in higher education and research, but the government made the political choice to wall itself in with the *Balanced Budget Act*, which requires that it appropriate a large amount of the surplus toward servicing the debt. However, the urgent need to pay down the debt cannot be justified, as Quebec has a net debt less than OECD average and an excellent credit score.⁸ Choices are just as much behind the allocation of resources, as they are behind government methods of revenue collection. With a willingness to act, a significant reinvestment into the university network is within reach.

The FQPPU's call for reinvestment (see box, p. 9) is especially realistic because there are other sources from which to draw the necessary funds. Among the avenues to explore to generate larger profit margins is an increase in the tax contribution of large businesses and financial institutions, which seems particularly justified. The maximum tax amount paid by businesses in 2013 was 26.9% of their taxable income (federal: 15%, provincial: 11.90%).⁹ The decrease over about fifteen years of the federal portion of this tax, from 28% to 15%, was not offset by an increase in the provincial rate.

⁷ Dion, M. (2016, July 5). "Québec passe de l'équilibre budgétaire à un surplus de 1,8 milliard" (Quebec goes from a fiscal balance to a surplus of 1.8 billion dollars) *Radio-Canada.ca*. Online at <http://ici.radio-canada.ca/nouvelle/791067/quebec-gouvernement-budget-surplus-finances>. (Available in French only).

⁸ Santerre, C. (2016, November 29). *Des mythes à déconstruire: « Il y a urgence de rembourser la dette »* (debunking myths: "there is an urgent need to service the debt"). Lecture-discussion at Solutions fiscales: nous avons les moyens de faire autrement (tax alternatives: we have the resources to do it differently), Montréal (in French).

⁹ Coalition opposée à la tarification et à la privatisation des services publics. (2015). 10 milliards \$ de solutions: Nous avons les moyens de faire autrement ! (10 billion dollars of solutions: we have the resources to do it differently). Online at <http://nonauxhaussees.org/wp-content/uploads/Document10milliards2015.pdf>. (Available in French only).

An increase in the provincial corporate tax rate, which excludes small and medium-sized enterprises (SMEs), from 11.9% to 15% would enable the government to collect \$1.22 billion more each year without driving away businesses, which would still benefit from favourable conditions as compared to those in other countries.

In addition, restoring the capital tax for financial firms could provide an additional 600 to 800 million dollars without curbing economic growth.¹⁰ Amounts of \$1.2 billion could also come from restricting tax expenditures that large enterprises favour, particularly by abolishing the capital gains tax credit for corporations, by eliminating tax deferrals, and by revising tax holiday policies.¹¹ Together, these measures would result in an additional \$3 billion annually for the Quebec government.

It is the same story for the federal government, since several tax measures, deemed unfair by the Canadian Centre for Policy Alternatives, deprive the government of slightly more than \$100 billion each year.¹² Thus, it is not so far-fetched to think that the federal and provincial governments could provide more support for research-creation by allocating more funds to granting agencies in Canada and Quebec.

The same goes for awarding an annual base research grant to every university professor, a measure called for over the past few months by the FQPPU, which would represent a commitment of only \$100 million for the Quebec government.

Financial efforts must continue to be devoted to catch-up with regard to the rate of university graduation in Quebec as compared to the rest of Canada. This investment would guarantee not only accessibility and quality of university education, but also the social, cultural, and economic development of Quebec and all of its regions. Only then will we collectively overcome the challenges of the 21st century.

We could have the resources needed to revitalize the Quebec university network, unless, like the current governments, we knowingly choose to deprive ourselves of them.

¹⁰ Tremblay-Pépin, S. (2013). Jacques Parizeau, la taxe sur le capital et Francis Vailles. (Jacques Parizeau, capital tax, and Francis Vailles). Online at <http://iris-recherche.qc.ca/blogue/jacques-parizeau-la-taxe-sur-le-capital-et-francis-vailles>. (Available in French only).

¹¹ Coalition opposée à la tarification et à la privatisation des services publics. (2015). *Op cit*.

¹² Macdonald, D. (2016). *Out of the shadows: Shining a light on Canada's unequal distribution of federal tax expenditures*. Ottawa: Canadian Centre for Policy Alternatives.

To re-establish and strengthen academic quality of life, the critical shortage of professors and academic resource people must be addressed. In the 2016–2017 academic year, universities should be able to hire 2585 new professors and as many academic resource people. Since 2012, while the number of administrators and management staff members and the full-time equivalent of the student population (EEETP) have increased by 5% (from 3582 to 3771, excluding deans) and by 10% (from 219 000 to 241 000), respectively, the number of professors has fallen by 5% (from 9961 to 9465). It follows that the ratio of full-time student equivalents (FTEs) to professors increased significantly, undermining the quality of education provided to students and overall research capacity.

To reduce the current ratio from 25.5 FTEs/professor in Quebec to 20 FTEs/professor (the Canadian average is about 18.5 FTEs/professor), 12 050 professors are required, which means 2585 additional professors must be hired. Of course, the arrival of new professors requires the hiring of other academic resource people (lecturers, librarians, professional researchers, support staff, etc.). The overall financial investment would be \$426 million. Significant amounts can also be saved by reducing university bureaucracy, because with the simplification of excessive reporting requirements that the FQPPU is calling for, the number of administrators and management staff members can be reduced, from its number in 2012, by 189 people at \$140 000 each (\$26.5 million).

Target ratio (based on 9465 profs and 241 000 students)	20 FTEs/prof
Number of professors to hire	2585
Funding for hiring professors (average cost of \$100 000/prof, including expenses)	\$258.5 million
Funding for hiring other academic resource people (average cost of \$75 000/person, including expenses)	\$194 million
Partial total	\$452.5 million
MINUS 189 administrators and management staff members (average cost of \$140 000/person, including expenses)	(\$26.5 million)
Total reinvestment	\$426 million



On October 20, recipient of the 2016 Guy Rocher Award for promoting and defending Quebec universities during the 25th anniversary celebrations of the FQPPU, Pierre Hébert, professor of literature at Université de Sherbrooke, delivered an inspiring lecture entitled “Jalons de l’histoire et défis actuels du syndicalisme universitaire professoral” (historic milestones and current challenges of unions of university professors), which can be viewed at <http://bit.ly/2h81FVH> (in French only).

Legal Advice

Hans Poirier, Professional Researcher

The “Maillé Affair” and the Protection of Sources and Research Data

The unbelievable story of Marie-Ève Maillé, an associate professor at UQAM involved in a dispute with Éoliennes de l'Érable, a business that hopes to obtain raw data from her PhD research, sparked anger in the scientific community in the fall.

This returns us to a complex issue that calls into question the existing framework to protect the privileged relationship between researchers and the human participants with whom researchers interact in the context of their research. More specifically, what is now referred to as the “Maillé Affair” brings us back to the consequences of a clash between “university rules,” supported by basic ethical principles that guide the work of researchers, and a strict interpretation of existing law by judges who are insensitive to or unaware of the customs on which scientific work is based.

Background

Marie-Ève Maillé received her PhD in communications from UQAM in 2012. Her thesis, entitled “Information, trust, and social cohesion in an environmental conflict related to a wind farm project in Quebec, Canada,” discusses the social divide caused by a project aimed at establishing a wind farm in the Érable Regional County Municipality in Quebec. For her fieldwork, she conducted interviews with 93 citizens from the community neighbouring the wind farm.

In October 2014, a class action lawsuit was brought by two citizens, and involved the business Éoliennes de l'Érable; it was allowed by Justice Marc St-Pierre of the Superior Court. These citizens felt that their quality of life had deteriorated since the wind farm had been built in their neighbourhood.

Among other things, they noted that there had been deterioration of the social climate in their community, which was divided over the wind farm. In September 2015, Ms. Maillé accepted to act as a co-expert in support of the class action lawsuit, and her PhD thesis was filed as an expert report.

To prepare a second opinion, the business required the raw data that allowed the researcher to come to the conclusions written in her thesis.



Drawing on the “right to make full answer and defence,” based on section 7 of the *Canadian Charter of Rights and Freedoms* (fundamental justice), on January 13, 2016, Justice St-Pierre allowed the business to interrogate Ms. Maillé out of court and ordered her to produce, for the benefit of the defence, the following documents:¹³ the documentation provided by members of the community related to the wind project; the list of events the researcher attended as part of her fieldwork; the audio recordings of all of her interviews, as well as the questionnaires filled out by her research participants; the names of all her research participants; and her research agenda (or logbook), as well as the names of any people cited in her PhD thesis, to whom the researcher had attributed codes so they would remain anonymous.

Ms. Maillé then contacted UQAM’s legal services, where she was advised to withdraw completely from the case and no longer act as an expert on the issue. She relayed to the judge on January 29, 2016, through the lawyers of the plaintiffs, her intention to no longer act as an expert witness for the case, and to withdraw her thesis, which was serving as an expert report for the case. This way, she believed, the order forcing her to share her raw data with the defendant would no longer be applicable, since the business would no longer need to validate her expertise, as she had removed herself from the case.

However, Justice St-Pierre saw things differently and confirmed, in a telephone meeting to manage the case, that his decision had been handed down and all that was left was for it to be carried out. In March 2016, Éoliennes de l'Érable sent a formal notice to Ms. Maillé

¹³ *Rivard and Bourque v. Éoliennes de l'Érable S.E.C.* Decision dated January 13, 2016. Superior Court #415-06-000002-128. (Available in French only).

requiring her to produce the data mentioned above as soon as possible; otherwise, she would be in contempt of court. She still refused to provide the business with the data that would allow it to identify her research participants.

An Obstacle Course

Marie-Ève Maillé, a post-doctoral researcher, is not a member of a union. Given the troubling turn of events, she was convinced that she needed to be personally represented in an adequate manner for the case. However, her family income did not allow her to cover the legal fees. She therefore spoke to various bodies at UQAM (ombudsman, research ethics board, legal services, vice-rectorates)¹⁴ to get help after receiving the formal notice.

However, the response was disappointing. Despite the provisions included in the policy of the three federal granting agencies relating to the responsibility of universities to support their researchers to maintain their commitments to confidentiality,¹⁵ and in violation of its own institutional policy,¹⁶ UQAM removed itself from any responsibility. In a communication addressed to Ms. Maillé, the university confirmed that, as she is the holder of the intellectual property rights of her thesis and since she voluntarily agreed to be an expert witness in a legal case, it is her responsibility to provide for her own defence. Finally, she turned to the organization Pro Bono Québec, which agreed to provide her with a lawyer free of charge. The organization, an initiative of the Barreau du Québec, provides resources to those who do not have the necessary funds for their defence and whose cases are of interest to the public.

Now duly represented, Ms. Maillé filed an application on August 11, 2016, to set aside the decision of January 13, 2016. She argued that she was no longer an expert witness and that her thesis had been withdrawn from the case. She also pointed out the commitments to confidentiality that she made to the participants in her research, in compliance with the requirements of

granting agency policies, UQAM institutional policies, and the certificate of ethics approval she obtained from the university to carry out her PhD research.

Meanwhile, the researcher obtained strong support from Rémi Quirion, the Chief Scientist of Quebec, who, through the Fonds de recherche du Québec (FRQ), filed a conservatory voluntary intervention with Justice St-Pierre, highlighting the interests of the Fonds and the principles of confidentiality of the sources of research for which the Fonds advocates.

The voluntary intervention also points out the importance of carrying out research activities in a democratic society and the disastrous consequences that may ensue as a result of the breach of citizens' trust of scientific research. It argues that the validity of research carried out with human participants rests on the ability to recruit people from all areas. Recruitment may be compromised if researchers' commitments with regard to confidentiality are then overturned in court.

In fall 2016, the media also began to take interest in the case. An article published by Radio-Canada on October 31 created a wave of panic in the scientific community, which did not wait long to respond, through an open letter in *Le Devoir*, signed by over 200 researchers in Quebec and Canada. The journal *Science* also took interest in the story on November 22, which led to a wave of solidarity with the researcher from other English Canada and international researchers.

Following this media hype, UQAM changed its position and filed, on November 25, 2016, a voluntary intervention with Justice St-Pierre, pointing out the university's interests in the case. It reiterated the principles mentioned in the FRQ's document and confirmed the commitments made, by the researcher, Ms. Maillé, with regard to ethics and confidentiality, to research participants, to UQAM, and to the granting agencies from which she received funding.

What Lies Ahead

At the time of publication of this article, Justice St-Pierre had not yet determined the application of the researcher, Ms. Maillé, to annul her appearance notice, to review the decision of January 13, 2016, and to retract the decision, in light of new facts that were presented by the researcher, the FRQ, and UQAM. A number of scenarios are therefore possible.

If the judge agrees to change his decision, this could mean the end of the legal proceedings for Ms. Maillé (we can only hope!). However, the business Éolienne de l'Érable would still be able to appeal the decision, which

¹⁴ Bergeron, U. (2016, October 31). "Une chercheuse forcée par la justice de révéler l'identité de ses sources" (researcher forced by judge to reveal the identity of her sources). *Radio-Canada*. (Available in French only).

¹⁵ Panel on Research Ethics. TCPS 2, Chapter 5: Privacy and Confidentiality, Section 5.4. *Government of Canada*. Online at: <http://www.pre.ethics.gc.ca/eng/policy-politique/initiatives/tcps2-eptc2/chapter5-chapitre5/>

¹⁶ Université du Québec à Montréal. Policy 54, Politique sur l'éthique de la recherche avec des êtres humains (policy on ethics for research with human participants). Section 7.2.1, Responsabilité des différents intervenants: L'Université (responsibility of various stakeholders: the university). *Université du Québec à Montréal*. (Available in French only).

means that the case could then be heard by a judge from the Quebec Court of Appeal. A reversed appeal scenario could also be possible, if the judge is determined to reaffirm the validity of his decision from January 2015. In such a case, the researcher would very likely appeal.

In addition to the defence of her own interests (no one wants to be convicted of contempt of court), it is clear that the researcher's legal battle seeks to defend the basic principles of confidentiality that pertain to research data and, more specifically, that allow for fostering the necessary relationship of trust between researchers and research participants.

If Ms. Maillé would have agreed to the business's demands, not only would public confidence in scientific research very likely be compromised, but other businesses could have argued for similar requirements in other cases, which would without a doubt seriously destabilize Quebec and Canadian research systems.

However, despite the fact that the FRQ and UQAM finally got involved in the case, the researcher is still

being represented by lawyers working for free and is still paying for other legal costs herself. This situation could quickly become unsustainable, especially if the case is appealed before the Quebec Court of Appeal or, eventually, before the Supreme Court. It is clear that UQAM must fulfil its responsibilities with regard to this matter, in compliance with its institutional policies. The FQPPU has also made representations in this regard to Rector Proulx and the vice-rectorate of research. The FRQ, as well as the three Canadian granting agencies, should also provide support to the researcher, who in this case, is shouldering the defence of principles referred to in the policies of these granting agencies, such as the TCPS 2. Finally, if the case goes further, Ms. Maillé needs to be able to rely on solidarity, as well as financial and moral support from the academic and scientific communities, which have everything to gain from the continued legal protection of the ethical principles upon which all of the work carried out in our universities relies. A decision in favour of the researcher is thus essential in order to ensure that the case law upon which judges will rely in the future respects the basic principles that guide academic and scientific activities.

As part of the 85th ACFAS Congress, the FQPPU and the SGPUM are organizing a seminar entitled "Current Transformation of Universities." It will take place on May 8 and 9, 2017, at McGill University. The main organizers are Martin Maltais (UQAR), Marie Toupin (TÉLUQ), and Geneviève Sirois (Université de Montréal)



The current transformation of universities will be scrutinized on three fronts: 1) systemic transformations resulting from international dynamics, where the university mission has been reduced to an economic contribution that accompanies changes in administration and funding methods; 2) institutional transformations related to the actions of university leaders who are looking to adapt to new funding realities using an entrepreneurial model; and 3) transformations with regard to working conditions, in the sense that there is less job security for both teaching and research staff.

The aim of the seminar is to raise issues that have resulted from these transformations, with regard to current operations and the future of Quebec universities, by comparing the situation to those of other provinces and countries.