

## CONCILIATION BOARD REPORT

BETWEEN:

BOARD OF GOVERNORS OF DALHOUSIE UNIVERSITY  
(hereinafter called the “Board” or the “Employer”)

AND:

DALHOUSIE FACULTY ASSOCIATION  
(hereinafter called the “DFA” or the “Association”)

REPRESENTATIVES:     For the Employer

Laura Neals

For the Association

Raymond Larkin, Q.C.

CONCILIATION BOARD: James C. Oakley, Q.C., Chairperson  
Hugh Wright, Employer Nominee  
Faye Woodman, Association Nominee

DATE:                     December 16, 2020

## **Background**

1. The Conciliation Board was appointed by the Honourable Lena Metlege Diab, Q.C., Minister of Labour and Advanced Education, Province of Nova Scotia, under the *Trade Union Act*, RSNS 1989, c. 475 (the “*Act*”). The Chair was appointed to the Conciliation Board on November 10, 2020. Section 68 of the *Act* requires the Conciliation Board to report its findings and recommendations to the Minister within fourteen (14) days of the appointment of the Chair, except where an extension of time is agreed by the parties. The parties agreed to an extension of time to December 18, 2020 for the Conciliation Board to file its Report.
2. Dalhousie University is a leading university in Canada, with enrolment of about twenty thousand students. The Dalhousie Faculty Association represents about one thousand academic staff in a bargaining unit of Professors, Instructors, Professional Librarians and Professional Counsellors. DFA became the certified bargaining agent in 1978. The parties have negotiated numerous Collective Agreements since then, with the most recent Collective Agreement having a three year term with an expiry date of June 30, 2020.
3. In response to public health concerns related to the COVID pandemic, on March 17, 2020, the University moved to virtual operations. The University continues to operate virtually with partial return to work on campus.
4. In the current round of bargaining, the parties held several meetings for the purpose of collective bargaining, and also met with a Conciliation Officer, prior to the appointment of the Conciliation Board.
5. The Conciliation Board met with the parties in Halifax on November 18, 19, 20, 21 and 22, 2020 to endeavour to resolve all matters in dispute. The parties made submissions to the Conciliation Board and exchanged proposals on the issues. The Conciliation Board and the parties met with two actuarial consultants to discuss issues related to the pension plan.
6. The Conciliation Board would like to extend its appreciation to the parties for their cooperation and assistance in the conciliation process. During the meetings held by the Conciliation Board with the parties, the parties resolved the non-monetary and monetary issues in dispute, with the exception of two issues, Educational Leave (Article 30.32) and Salaries (IMC). The parties agreed that the term of the new Collective Agreement will be two years effective from July 1, 2020 to June 30, 2022. With respect to the two issues in dispute, the parties filed written submissions on December 1, 2020 and rebuttal submissions on December 3, 2020.
7. In this Report, the Conciliation Board will make recommendations that, if acceptable to the parties, may comprise terms of the new Collective Agreement or may assist the parties in further collective bargaining to resolve the remaining issues. The Conciliation Board has considered the written submissions filed by the parties on the two issues, together with the documents and other information submitted in meetings with the

parties. The discussion of the issues in this Report will include a brief summary of the positions of the parties. This Report represents the findings and recommendations of the Conciliation Board on the two remaining issues.

### **Principles Applied by the Conciliation Board**

8. The Conciliation Board notes that this Report is not an interest arbitration award, and that the recommendations made in the Report may be accepted by the parties or may assist the parties in further collective bargaining. The Conciliation Board has endeavoured to make recommendations that will facilitate a negotiated settlement between the parties. The Conciliation Board has considered that its recommendations should correspond to what each party would likely persuade the other party to accept in bargaining. When considering the rationale to support its recommendations, the Conciliation Board has given the greatest weight to the factors likely to be accepted as persuasive by the parties, having regard to the factors discussed with the parties and the dynamics of the collective bargaining relationship.

### **Discussion of Issues**

#### ***Article 30.32 - Educational Leave***

##### *DFA Submission*

9. The DFA has proposed adding the following language to the Collective Agreement:
  - 30.32 (a) (i) Service in a limited term appointment at Dalhousie in the six academic years preceding a continuing stream appointment or appointment to the rank of Senior Instructor will count towards eligibility for educational leave at a ratio of 1:1 provided that the Member succeeds in achieving a continuing stream appointment or appointment to the rank of Senior Instructor at Dalhousie University.
10. The DFA submits that the proposal would permit eligibility for educational leave for Instructors to correspond to eligibility for sabbatical leave for Professors and Instructors who are University Teaching Fellows. With respect to eligibility for sabbatical leave, Article 30.17 (c) states that service in a limited term appointment in the six academic years preceding a tenure stream appointment, or appointment or promotion to the rank of University Teaching Fellow, will count towards eligibility. The DFA submits that the same rule for eligibility for sabbatical leave should apply to eligibility for educational leave. The DFA submits that its proposal is justified as a matter of fairness and equity. The purpose of educational leave is addressed in Article 30.32 (a) of the Collective Agreement, which states that “The Board agrees to grant educational leave to pursue academic studies that complement their work at Dalhousie University and which will also benefit their department to instructor Members on the conditions set out in this Clause 30.32.” The DFA submits that educational leave has been granted for a variety of purposes and has not been limited to improving educational qualifications. The DFA

referred to approved educational leaves granted to Instructors between 2018 and 2020. The DFA submits that there is no valid reason to distinguish between counting service for educational leave and counting service for sabbatical leave.

#### *Board Submission*

11. The Board objects to the DFA proposal. The purpose of educational leave may be distinguished from sabbatical leave. The Collective Agreement distinguishes Professors from Instructors. Educational leave is generally designed to assist members in gaining new qualifications, credentials or training. Sabbatical leave is generally designed to further a program of research or other pursuit. The effect of granting the DFA proposal would be that newly hired Instructors could be eligible for educational leave in the first years after appointment. Upon hiring, Instructors have been assessed as qualified, and they would have no need to upgrade qualifications, credentials or training. It would not be in the Employer's interest to send newly hired Instructors on educational leave. The granting of educational leave has a cost to the Employer in situations when a replacement Instructor is hired to perform the duties of the Instructor on leave. The Board submits that educational leave is not designed to allow Instructors to refresh course materials or design manuals, because these tasks are part of the regular workload. In the last round of collective bargaining, the parties negotiated new language for sabbatical leave in Article 30.17 (c) and did not agree at that time to apply similar eligibility rules to Instructors.

#### *Conciliation Board Recommendation*

12. The Conciliation Board recommends that the parties include the DFA proposal on educational leave in the new Collective Agreement. The information provided by the DFA supports its submission based on fairness and equity when comparing the language on educational leave in Article 30.32 with the language on sabbatical leave in Article 30.17. The Conciliation Board's recommendation is made without any comment on the submissions made by the parties on the purpose of educational leave, for the reason that the language describing educational leave was not the subject of an issue before the Conciliation Board.

#### *Salaries (IMC)*

##### *DFA Submission*

13. The DFA proposal on salaries (IMC) is 1.25% on July 1, 2020 and 1.5% on July 1, 2021. The DFA submits that its proposal is reasonable and takes into account economic and budgetary factors. The DFA submits that the salary increases should be no less than the increases in the last Board proposal that was made subject to pension reform. The DFA submits that there would be no increased costs to the Board, in the two year term of the Collective Agreement, due to the continuation of the current pension structure. The pension costs of the Board, as a percentage of payroll, are actually less in 2020-21 than in the previous year. The Board's proposal on the cessation of transfers would not have created savings in the first year of the renewed Collective Agreement due to the fact that the costs are locked in for three years based on the Actuarial Report. The new Provincial

regulations on pension plan funding will be phased in over five years, with no additional contributions required in the first year.

14. The DFA submits that salaries should be comparable with salaries at universities across Canada. The DFA accepts that the parties previously agreed to a group of comparable universities. There was a consensus that Dalhousie's salaries should reach parity with the average salaries in this group. Over the last decade there has been gradual progress towards this objective, but Dalhousie Faculty salaries were still below the average salaries. The DFA's proposal is consistent with progress towards the goal of parity. With respect to the comparables, the DFA submits that there were no settlements by universities in Nova Scotia since the start of the COVID 19 pandemic in March, 2020. In the Atlantic Provinces, there were settlements at St. Thomas University of 5% over three years and rollover settlements at Université de Moncton of 3% over two years, University of Prince Edward Island at 4% over two years, and University of New Brunswick at 1.8% for one year. The DFA submits that the most weight should be given to freely bargained settlements in universities since the onset of the pandemic. The DFA submits that weight should be given to public sector settlements in Nova Scotia, which included increases of 2% annually over the next two years and referred to settlements for paramedics, crown attorneys and teachers. The university settlements in Ontario were subject to wage restraint legislation limiting increases to 1% and should not be considered. The Memorial University settlement of 0% was also subject to a provincial restraint mandate. With respect to the University of Manitoba settlement of 0%, there had been a payment of \$2,000 per year which represented an amount between 1.3% and 2% of average salaries for various ranks of Professors.
15. The DFA submits, with respect to the Dalhousie budget, that the financial crisis that had been anticipated due to the pandemic had not occurred. There was a 3% increase in total enrolment. The Board makes choices in budget expenditures. DFA submits that, at the recent Board of Governors meeting, when the Board adopted the budget, the University President stated that he expected a provincial government relief package and that the request from Dalhousie had related to lost revenue from ancillary sources.
16. The DFA submits, with respect to the Board's reference in its submission to acceptance by DFA of the Board's lower salary offer in 2017, made on the basis of no pension reform, that the agreed increases of 1.5%, 1.25% and 1.25% over three years contained percentage increases identical to the current DFA proposal. The DFA's proposed percentage increases are more affordable now than when the same percentage increases were proposed by the Board in 2017. Also, compared to 2017, the salary increases should reflect the movement on pensions in the current round of collective bargaining, including agreement on the principle of integrating the enhanced portion of the Canada Pension Plan with the Dalhousie Pension Plan and agreement for an independent assessment of the impact of cessation of transfers.

*Board Submission*

17. The Board proposal on salaries (IMC) is 0.75% on July 1, 2020 and 0.75% on July 1, 2021.
18. The Board submits that its proposal was based on a variety of factors, including comparator data, the impact of COVID, the bargaining context and pension reform. The parties had agreed to the following comparators since collective bargaining in 1990:
- Regional: University of Prince Edward Island, Acadia, St. Francis Xavier University, Saint Mary's University, Mount Allison University and University of New Brunswick.
- National: Memorial University, University of New Brunswick, McMaster University, University of Ottawa, Queens University, Western University, Windsor University, University of Manitoba, University of Saskatchewan, University of Calgary and University of Alberta.
19. The Board does not accept the use of institutions as comparators other than the agreed list of comparators. The Board refers to recent settlements, since the start of the pandemic, at the University of Prince Edward Island and the University of New Brunswick. The Board notes that in the prior round of bargaining between UPEI and its Faculty Association, the parties had agreed to a 2% wage increase in exchange for pension changes, in particular moving from an employer sponsored pension plan to a jointly sponsored plan. The University of New Brunswick also had a jointly sponsored pension plan. Dalhousie has an employer sponsored pension plan. The University of Alberta had proposed a 3% rollback of wages consistent with the provincial mandate. The University of Manitoba has negotiated a 0% increase for two years and agreed to a COVID stipend of \$2,000 per year. The Board urged caution with respect to wage increases negotiated prior to the context of the COVID pandemic. The financial position of Dalhousie University is uncertain in this context. The Board submits that provincial public sector comparators have not informed collective bargaining in the past and should not be introduced at this time.
20. The Board submits that the COVID pandemic has had an impact on revenue, with \$7.3 million in revenue losses from parking, student athletic fees, dental clinics and specialized programs, and \$11.7 million in revenue losses from services such as residences, food services and the fitness centre. There was a projected \$10 million deficit in the budget. There remain various uncertainties affecting revenues. Although there was an increase in enrolment overall, there was a 5.3% decrease in enrolment from high school students, which will impact enrolment and revenue in future years. Also, the travel restrictions as a result of the pandemic will have an impact on the enrolment of international students.

21. The Board states that it is concerned about the long term financial impact without pension reform. Salary increases were directly connected with pension reform. In 2017, the DFA rejected a higher salary offer that would have included pension reform and accepted a lower salary offer without pension reform. Under the current Employer sponsored pension plan, the Employer is responsible for financial risks and additional costs. As a result of new Provincial pension funding regulations, an additional \$6.9 million in annual funding will be required once fully implemented, following a five year implementation period. Without structural reform to the pension plan, the Board is not in a position to provide significant salary increases. The Board submits that its offer is reasonable and appropriate.

#### *Conciliation Board Recommendation*

22. The Conciliation Board has considered the factors of comparator salaries, COVID pandemic costs, COVID related budget constraints and uncertainties, pension structure and collective bargaining history. With respect to the comparators, the Conciliation Board finds that greater weight should be given to university settlements negotiated in the context of the COVID pandemic, including the University of Manitoba and the rollovers at the University of Prince Edward Island and the University of New Brunswick. The DFA proposal is more consistent than the Board proposal with the range of university comparator settlements. However, there is a limited amount of data available at this time.
23. The Conciliation Board notes that the Dalhousie 2020-21 operating budget, published November, 2020, includes an operating deficit of \$9.8 million, to be addressed through prior year's reserves. The budget deficit, as known at the time of submissions to the Conciliation Board on December 3, 2020, is a factor in the 2020-21 salary increase recommended by the Conciliation Board. The COVID pandemic has brought challenges and risks. The Board proposal is more consistent than the DFA proposal with the budget deficit and the COVID pandemic challenges and risks.
24. The Conciliation Board has considered the submissions by the parties with respect to the IMC increases agreed in the last round of collective bargaining, for the 2017 to 2020 Collective Agreement. The DFA proposal is more consistent than the Board proposal with the increases in the 2017 to 2020 Collective Agreement.
25. Having regard to the factors that the Conciliation Board considers most persuasive, the Conciliation Board recommends salary increases of 1% effective July 1, 2020 and 1.25% effective July 1, 2021.

**Summary**

26. The Conciliation Board makes the following recommendations:


Educational Leave (Article 30.32) - Acceptance of the DFA proposal.

Salaries (IMC) - Increases of 1% effective July 1, 2020 and 1.25% effective July 1, 2021

27. The Conciliation Board is prepared to report on any additional matters or to clarify its Report, as may be required, pursuant to the *Trade Union Act*.

28. Respectfully submitted as the Report of the Conciliation Board.

DATED this 16<sup>th</sup> day of December, 2020.



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James C. Oakley, Q.C., Chairperson



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Faye Woodman, Association Nominee



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Hugh Wright, Employer Nominee