





[msvufa-discussion] FA President's report on the October 10 BoG meeting

 **From** <tianyuan.yu@msvufa.ca>
Sender msvufa-discussion <msvufa-discussion-bounces@msvufa.ca>
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 1-FA Report to BoG Meeting Oct 10.pdf (~212 KB)  2-Oct 4 Email.pdf (~191 KB)
 3-caut-legal-advisory-fiduciary-duties-of-university-board-members-2018-02 copy.pdf (~169 KB)

Dear MSVUFA members,

I'm writing to report to you a serious incident (I'd call it a "drama") during the October 10 Board of Governors (BoG) meeting, wherein Mr. Tyrone Cotie, the Board Chair, obstructed me from giving an oral report on behalf of FA. I found it a downright violation of faculty members' rights and board members' rights to the detriment of the University. Below I will firstly provide you some background information of the "drama". I will then tell the drama, followed by a clarification of some confusions or myths. Lastly, I will invite discussions on our next steps. I'd also suggest that knowing some of the legal things up front will help understand this critical incident, which can be found in "The Clarifications" in this report and the attached documents.

Background information:

- On September 24 I submitted my signed confidentiality agreement as Board members (Acknowledgement and Agreement, or A&A) to the Board Secretary with an added notation on my signature: "Note: As President of MSVU Faculty Association I do have obligations to keep the FA informed of discussions at the Board (and committee) table whenever deemed necessary." My signed document was accepted without challenge.
- On October 2 I submitted my Faculty Report (see attached document 1) at the request of Ms. Pat Comeau, Executive Administrative Advisor to the President, for the October 10th board meeting.
- On the morning of October 3 Mr. Cotie sent me an email (see attached document 2), saying that the content of my Faculty Report was "not appropriate" and that I must remove the notation on my signed A&A before I can participate in any Board meeting. At 3:39pm, Ms. Comeau asked me to provide a signed A&A without notation. At 7:30pm, Ms. Comeau emailed me again, saying that the board materials would be distributed that evening and that she would not include me in the distribution since she had not received the requested document. She said she would forward me the link to the Board materials upon receipt of my "clean" A&A.
- On October 4 I wrote back to Mr. Cotie (see attached document 2), condemning his attempts of censorship and demanding my report to be circulated to Board members and included on the agenda. I also submitted my A&A with an updated and more comprehensive annotation: "Note: I do not abdicate my responsibilities in my role as President of Faculty Association."
- On October 8 Mr. Cotie emailed back (see attached document 2), acknowledging receipt of my updated A&A and agreed to include my report in the distribution of Board materials as well as on the agenda. I was also sent the link to the Board materials by Ms. Comeau. I noticed that my report was noted with a five-minute time limit on the agenda. So I prepared a concise oral report based on the written report to abide by the time limit. I also added an update on some recent progress to the report.

Below is a memoir of what happened at the meeting on October 10. Some of the language in the conversations recorded in this memoir may not be 100% accurate, but I have written it to the best of my memory.

The Prelude

There was a noteworthy conversation during the question period following the University President's report.

A Board member, X, gently expressed dissatisfaction with the BoG for lack of communication on the labour dispute at the Mount. She said she only came to learn something about the issue through the Faculty Report circulated on Tuesday, which included concerning information. She wanted to ask why it has taken so long to conclude the CA whereas in the last BoG meeting in June there was a shared understanding to "rebuild the relationship".

X: "as a board member, I do not have enough information on why, except from the FA report that was just shared the day before yesterday. I'm uneasy of the length of the time, from March 5 to October 10. And I'm uneasy to read the FA report about the hostility. Can you explain why?"

J. Dickinson: "Thank you."

T. Cotie: "Any other questions?"

I (T. Yu): "I share the concern and sentiment of X's question. I also want to ask why? And why did the board members receive so little information on the issue? Why did the President not answer the question? I found the silence deafening."

J. Dickinson: "Because I cannot answer any questions regarding labour relations which is going through the Labour Board process."

The Drama

When it came to my turn to give my oral report, the Board Chair quickly added that it would be inappropriate to discuss labour relations at the Board meeting, especially during the Labour Board adjudication. Then he asked me to give my faculty report.

I was just beginning to read the first line of my report, and the Board Chair abruptly interrupted me: "Dr. Yu, your written report has already been circulated. You cannot discuss labour relations at the Board meeting."

This was VERY surprising to me. I immediately argued that I have the right to give my oral report at the Board meeting. And I do have five minutes to give it.

T. Cotie: "According to the MSVU Charter, the Faculty Report is to report on the faculty's work, teaching activities and research accomplishments. Labour relations are not an appropriate topic at the Board."

I: "You do not have the authority to dictate the appropriateness of my report."

T. Cotie: "Yes I do!"

I: "Can I move to have a vote by all attendants on whether I can give an oral Faculty Report?"

T. Cotie: "No. You just can't discuss labour relations at the Board meeting."

I (becoming agitated): "Okay. I have to disclose that the reason my report was not distributed until this Tuesday was because Mr. Cotie tried to block it from being circulated. He even tried to block me from attending the meeting, using the excuse that I added a notation on my confidentiality agreement. And now he is trying to silence me!"

Y (former Board Chair): "I have to clarify here. Board members must sign the confidentiality agreement without any notation. If Dr. Yu does not obey the rule, the Board is happy to find a replacement of her."

I: "I was appointed by the Faculty, not by the Board. And I was appointed precisely because I am FA President. The Board cannot remove me. And there was precedence of having notations on the confidentiality agreement."

Y: "There is no such precedence."

I: "The former FA President, Susie Brigham, added a notation on her confidentiality agreement, and was never challenged or prevented from giving a written or oral report!"

Y: "I knew. I have asked her to remove the notation.... "[I had difficulty understanding the rest of her comment as she was attending online and speaking really fast]

T. Cotie: "Dr. Yu, there is a part of your written report that is irrelevant with labour relation. You can discuss that."

I: "Okay. That is actually very relevant to what I'm experiencing right now!"

I then read aloud the paragraph in my report about the Sep 20 FA General Meeting motion to restate the FA's statement on academic freedom, to protect the rights and safety of all FA members including but not limited to those who are targeted because of their scholarship and political work concerning the war in Gaza.

I: "Mr. Cotie, you are now violating my academic freedom and freedom of speech! I'm now feeling the righteous anger in me!"

T. Cotie: "You just can't discuss labour relations at the Board, especially when it is under the Labour Board process!"

I: "The Labour Board Confidentiality Agreement only requires that anything communicated during the Labour Board Facilitated Discussion must be kept confidential. But what I'm talking about is not generated from the Labour Board discussion!"

T. Cotie: "No you just can't talk about it!"

I: "What I'm talking about is the single biggest issue inflicting the University right now. I need to talk about it because it is in the best interest of the University for the board members to know it and discuss it! I would certainly like to report on faculty's research and achievements if the CA has been signed. Don't you see the immense pain suffered by the faculty members? How can you disregard this pain?"

T.Cotie: "Okay. Dr. Yu, your report has been circulated. And you have made your point. We look forward to your next Faculty Report that focuses on teaching and research activities. "

I: "Only if the CA is signed!"

There was a silence. No one spoke.

Deborah Norris (another new Board member appointed by the faculty): "I want to give a comment to support my colleague. I hope the Board would understand the difficulties we are facing and work to end the dispute..." [I can't remember the rest of her comment as I was quite agitated at the moment]T. Cotie: "Thank you Dr. Norris. I appreciate your comments."

The Epilogue

As soon as announcing the adjournment of the meeting, the Board Chair approached me.

T. Cotie: "I'm sorry, Dr. Yu. I hope you would not take it personally. I had to do this. I have consulted our lawyer. And after consulting her I decided to include your report in the distribution, although I didn't have to."

I: "I can assure you I won't take it personally. You and I can still work together. But this is more serious than a personal attack. This is silencing the collective voice of all faculty members. What happened was completely out of my expectation. You didn't give me any notice that you would not allow me to give an oral report. As a minority member I'm striving to overcome multiple challenges including language barriers to participate in BoG meetings. I need your support to voice, not your crackdown. I would not have disclosed your past attempts to censor me had you allowed me to speak today. I can now give you a heads-up: I will report what happened today to the FA General Meeting and to the Senate meeting this month."

T. Cotie: "Well, I cannot dictate your Senate report... But I really do not know anything about the details of the Labour Board process. I do not have a say on that level."

I: "You do have an influence on the process. And this lengthy Labour Board process could have completely been avoided. The Labour Board process can't bring us a signed agreement – do you know? The Labour Board cannot force us to sign an agreement."

T. Cotie: "Yes, I know it. I understand it."

I: "Ok that's good. I'm glad you know it. The FA has suggested a mediator-arbitrator process but the Employer never responded. The retroactive pay and the RTPP process is still being withheld. Do you understand the relationship cannot be rebuilt if the CA is not signed? - It will only get worsened."

T. Cotie: "Yes. I understand. Thank you."

After the Board Chair went away, the President of MSVU Student Union and another student Representative approached me. They said they were impressed by what just happened at the Board meeting. They were empathetic. They were concerned that the labour disputes would affect faculty's wellbeing and consequently students' learning experiences. But they did not know what on earth was going on with the labour disputes and how they could possibly help. They were not informed of the labour disputes because there was no such information channel at all. They were also confused by the confrontation between the Board Chair and me at the Board meeting: It seemed to them that the Board Chair was "procedurally right" whereas I was "humanistically right". Besides, they wanted to ask what would be the appropriate forum to discuss labour relations, if the Board meetings were not the forum. When they heard that a hearing was scheduled for January 13-15, their response was: "Gosh, does it mean that labour relations cannot be discussed until then?"

Some Clarifications

After consulting the FA lawyer, I'd like to make some clarifications to dismiss potential confusions and myths:

1. The MSVU Charter (or any Board documents) does not require that FA report must be about "faculty's work, teaching, research, contribution, scholarship". The Board Chair has no authority to dictate the content of the FA report.
2. None of the Board documents stipulates that labour relation is an inappropriate topic and cannot be discussed at the Board meetings. Generally, the Board is responsible for managing labour relation. Hence it is an appropriate topic for the Board meetings to discuss, especially when labour relation becomes a huge concern among the University communities. If some labour relations topics are confidential, they could be discussed in camera. Moreover, depending on the nature of the discussion, it could result in members needing to recuse themselves because of a conflict of interest. However, FA Representatives on the Board must be allowed to give their oral Faculty Report, and answer questions or clarify facts if needed.
3. In preventing me from giving an oral report at the meeting, the Board Chair interfered with my ability to freely act as representative of Faculty Association as well as my ability to act in the best interest of the University. The Board Chair presumably used the rules of the conflicts of interest which reflects a false dichotomy between the best interest of the University and the best interest of internal university communities. The general corporate law conceptualization of fiduciary obligation does not fit the university as an institution subject to collegial governance with a representational board of governors. In the university sector, Board members from the faculty community, amongst other constituents' representatives, must be free to represent the community from which they derive their appointment. For more detailed analysis of university Board members' roles and fiduciary duties, please refer to the attached CAUT Legal Advisory (see document 3).
4. The ongoing Labour Board intervention does not rule out labour relation topics being discussed at the Board meeting or in any other forms of communication. My FA report does not involve any specific information generated from the Labour Board Facilitated Discussion and hence does not contravene the Labour Board Confidentiality Agreement. It only reiterates historical facts that have already been shared to all FA members in the past months which remains completely unknown to many Board members due to the lack of communication by the Board executive team, as complained by a Board member at the Oct 10 Board meeting. Given the dire situation the University is facing with respect to labour relations, my FA report is much needed to be fully discussed by all attendants at the Oct 10 Board meeting.
5. The Board Chair runs the meeting subject to the will of the collective. The Board Chair can rule my comments out of order and stop me. But I, or any other member of the Board, can challenge the decision of the Chair and put the Chair's ruling to a vote, which I did. However, the Board Chair ignored my motion to vote, and did not give other board members any opportunity to respond to my motion. This was clearly a power abuse. It was opposed to the Robert's rules of order and breached the principles of collegial governance in the university sector.
6. In preventing me from giving an oral report at the meeting, the Board Chair also violated other Board members' rights to be informed of critical issues facing the University through regular and accurate update from constituents' representatives on the Board.

I consider the Board Chair's attempts to censor my Faculty Report at the October 10 Board meeting a serious violation of my rights and duties as a faculty representative under the MSVU Charter, under the Collective Agreement, and under the law. It was unethical, unlawful, and contrary to the University's espoused values. As a female Asian minority member severely underrepresented at the Board, it was especially disheartening for me to experience such bullying during my first Board meeting, by a member of the dominant group based on gender, race and other grounds, ironically in a university known as a feminist institution promoting EDIA.

Next Steps

On October 15 I wrote a letter to all the Board members, including those who did not attend the October 10 BoG meeting, to provide clarifications and transparency. I understood that the October 10 BoG "drama" is not a single incident but reflects a historical problem. As testified by the past two FA Presidents, the BoG Executive team for a long time has been using the corporate law concepts such as "fiduciary duties", "conflict of interest", and a narrowly defined notion of the "University" (i.e., excluding the faculty and other community constituents), etc., to silence faculty Representatives (especially the FA Presidents) and to chastise them for their reports. However, none of the past FA Presidents were ever prevented from providing either a written or oral report at the BoG meeting despite adding notations to their Confidentiality Agreement.

The FA Executive has not found a time to collectively discuss the next steps in response to this serious issue. However, it has been suggested that the students' remarks on how "the labour disputes would affect faculty's wellbeing and consequently students' learning experiences" gets at the heart of why this is within the 'fiduciary responsibilities' of the BoG. FA members aren't getting their raise, adding to their financial stress; many are worried about RTPP, taking mental energy away from their work. We are concerned, frustrated, angry, feeling undervalued by the employer. It is indeed affecting people's wellbeing no matter at which stage of their career - even if they are on sabbatical. It has also been suggested that every single one of the FA members could be emailing, calling and writing letters to the Chair of the BoG at Tyrone.Cotie@chorusaviation.com, the President/Administration, and the rest of the BoG members to condemn this censorship against FA members, and tell them how we are feeling and how our work is being affected in different ways by the deteriorating labour relations at the Mount. I look forward to having more discussions and suggestions on next steps on Friday's FA General Meeting.

In solidarity,

Tianyuan

Tianyuan Yu, PhD (she/her)

Associate Professor of Management
Department of Business and Tourism & Hospitality Management

President of the MSVU Faculty Association

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msvufa-discussion mailing list

msvufa-discussion@msvufa.ca

http://msvufa.ca/mailman/listinfo/msvufa-discussion_msvufa.ca