

Universities and Society

Universities in Canada have a privileged position in our society, being the custodians of knowledge, and places where new knowledge is created, and disseminated. All members of a university community are, in effect “students”, whether earning a degree, conducting research or aiding enrolled students in their educational purposes, to earn a degree, thus furthering the needs of our society, and future generations.

Universities are also places where open debate is not only possible, but a requirement of being part of a scholarly community. There is no question that society values the role which universities play, hence the publicly funded financial support which is made available to these institutions. With such privilege comes significant responsibility to society, through the search for new knowledge, and in providing a forum for reasoned debate around what can often be very contentious issues with which modern society must grapple. Thus, universities are accountable to *society* in general, not governments of the day. Governments, as representatives of society, must ensure that vital institutions such as universities are properly supported, and must not use or attempt to use them for narrower purposes.

In Alberta, there exist four “Comprehensive Academic and Research Institutions” (CARI), or CARI universities, which are universities in the traditional sense and meaning of this term, as articulated above. That is, Athabasca University, the University of Alberta, the University of Calgary and the University of Lethbridge. The existence and operation of these CARI universities is governed by the Post-Secondary Learning Act (PSLA) of Alberta. Under Part 4 of this statute, the CARI universities are accountable to the Minister of Enterprise and Advanced Education (EAE) in a very specific way. That is, these CARI universities must operate within their Mandate, and report annually to the Minister, to demonstrate that they have done so.

The PSLA is legislation which gives CARI universities broad powers to pursue the creation and dissemination of knowledge, for the benefit of society. This legislation does not get into significant detail about how these universities execute these functions. However, checks and balances are in place to ensure that society’s needs are met by these CARI universities.

Recently, a strange development has occurred in Alberta. The Minister of EAE has published a set of draft letters:

<http://eae.alberta.ca/post-secondary/letters-of-expectation.aspx>

identical in content in everything except the funding levels of the four CARI universities. These draft letters are characterised as “Letters of Expectation”, or letters of agreement. The agreements are to be between the Minister of EAE, as representative of the Government of Alberta, and the Chairs of the Boards of Governors of each CARI university, these Board Chairs being expected to sign their respective agreements or contracts on behalf of their institutions. This development is problematic for several reasons.

The idea that true universities would bind themselves in an agreement to, essentially, do the bidding of a government Minister is counter to the philosophy as to why we have universities, and is not in the best interests of society. That is, the PSLA, as written, yields for society guarantees that CARI universities will operate as society considers appropriate, so there is no reason for a Minister to interfere in the operation of the legislation, through “additional direction provided by the Minister”, as contemplated in the (draft) Letters of Expectation.

The strangest thing about this approach is that it is presented in the form of “agreements” between the

Minister (as representative of the Government of Alberta) and the Chairs of the CARI universities' Boards of Governors, the latter as "representatives" of the CARI universities. This on its own suggests that the Minister feels he needs such agreements, and that the PSLA is not specific or sufficient enough for the purposes to which he wishes to use CARI universities. Furthermore, since the CARI university Board Chairs are characterised as "representatives" of their respective universities for the purposes of the proposed agreements, this suggests that other parts of "the universities" have or would cede to their Board Chairs their rights and powers (under the PSLA), with the Board Chairs then acting on the universities' behalf, to enter into the various agreements. The most obvious other part of these universities is, of course, their General Faculties Councils (GFCs). That is, in modern universities, as under the PSLA, the CARI universities' Boards manage the *financial* aspects of their respective institutions, whereas their GFCs manage the *academic* aspects of their institutions.

In contract law, basic elements of a contract include: (a) parties to the agreement are of common mind (they have *consensus ad idem*); (b) an offer is being made; (c) an acceptance is being made; (d) consideration is passing in both directions; and (e) the parties have the authority to enter into the agreement, in terms of the elements it includes. The proposed draft agreements from the Minister are long on what is expected from the CARI universities (four pages), in return for what is being offered by the Government of Alberta (half a page). Thus, since these proposed contracts have little in them that CARI universities need for the fulfillment of their functions, as expected by society, there is no purpose for the CARI universities to sign onto these agreements as they are currently drafted. Furthermore, it is not clear that the bodies to the prospective agreement have a meeting of the minds, since the Government of Alberta view of what is "required" of CARI universities (based on glimpses of what they have so far revealed of their purpose) seems to be at variance with the purpose of a modern university's role in society. Finally, of course, since the PSLA partitions the powers endowed to the CARI universities through the statute into two categories: financial, over which the CARI university Boards of Governors have authority; and academic, over which the CARI university GFCs have authority, a "contract" signed by only one of these parties, which contract includes obligations pertaining to both financial and academic matters, such contract is necessarily *ultra vires* – that is, outside the scope of authority of one of the parties, if only one party has signed the "contract". Such a "contract" would not therefore be legally enforceable.

If CARI universities are going to sign any agreement with the Government of Alberta of the kinds being proposed, and with obligations for the CARI universities which are beyond what is legislated in the PSLA, it is eminently clear that such institutions have to be very careful about what such an agreement contains. The CARI universities, however, are not, in fact, bound to sign any such agreement. If they cannot arrive at a prospective agreement with which they are satisfied, the institutions should probably avoid signing the agreements at all.

Another troubling consideration is that the current situation indicates that CARI universities are being coerced into signing agreements which are not in their interests, nor are the agreements in the interests of society. The proposed agreements are, instead, predicated on political whims, and the desire of the Minister to give "additional directions" to the CARI universities, beyond what is envisaged in the PSLA. Coercion arises here because of the financial hardship which the Government of Alberta can impose on the CARI universities, to achieve Government of Alberta objectives. However, as noted earlier, Government of Alberta objectives, or the objectives of any government for that matter, are necessarily much narrower than the needs and objectives of the society in which universities are situated.

Recent behaviour of the Government of Alberta (in its 2013/14 provincial budget) provides ample evidence that the Government of Alberta is prepared to use coercive power for its own political purposes, to the disadvantage of the CARI universities, and to the disadvantage of Canadian society in general. That is, not only did the CARI universities have their operating grants cut by 7.3% in this budget, the

Government of Alberta voided its *written promises* to the CARI universities to provide them with stable funding for three fiscal years (2012/13, 2013/14 and 2014/15), through an *increase* in their operating grants, by 2% per year. This behaviour can only be characterised as punitive, and a signal of what the CARI universities can expect, if they do not agree to be coerced into signing agreements which harness their activities to the Minister's purposes.

The prospective arrangement being proposed by the Government of Alberta is being characterised as an "agreement" or "contract". Thus, the coercive nature of the way in which the Minister is seeking to obtain CARI universities' compliance in signing the proposed agreements renders these contracts, even if they are signed, invalid. Furthermore, since one can readily show that such "contracts" are not in the public interest, neither would they be legally enforceable for that reason, either.

If you value the role of universities in society, what they stand for, and what they have achieved throughout their long history, you should let the Government of Alberta know that what they are attempting through their Minister of EAE is not in your interests as members of society, nor collectively in the interests of Canadian society as a whole.

*Dr. Christopher J. Nicol,
Professor of Economics, University of Lethbridge,
April 4, 2013.*