



John Abbott College Faculty Association

Sexual and Intimate Relationships between Teachers and Students: A Legal Overview

Tanya Rowell-Katzemba

Vice president, external

John Abbott College, along with all other CEGEPs and universities in the province, has been given the task by the Ministère de l'enseignement supérieur to write a new policy on the prevention of sexual violence and sexual harassment. The new policy has to be written by January 2019.

A key component of this policy will be a code of conduct that defines the parameters of intimate and or/ sexual relationships between teachers and students. The College has indicated in a draft policy that its intentions will be to prohibit any such relationship between teachers and students in a teaching relationship or relationship of authority, even if the student is over the age of majority (18 years). This is a position supported by our union federation, FNEEQ, through a resolution at the *Conseil fédéral* (December 7-9, 2016). This article will summarize the legal rationale that informed FNEEQ's position.

The FNEEQ position on sexual and intimate relationships is in large part based on Canadian and Quebecois jurisprudence, in particular several legal decisions since the 1990s involving disciplinary action taken by a school against a teacher or professor. In these cases, the decisions to uphold disciplinary action hinged upon the existence of a relationship of authority, that a teacher has implicit and explicit authority over a student, regardless of whether that student is over the age of 18. Even in cases where there was evidence that the student consented to— or even pursued— the sexual or intimate relationship with the teacher, arbiters and judges have questioned the very notion that a student is capable of giving consent, given the inherent position of authority that a teacher has over the student. Furthermore, this position of authority brings with it the *presumption* that, if a teacher engages romantically or sexually with their student, that teacher is in a conflict of interest and is abusing their power.

In the aforementioned body of jurisprudence, there exist some additional

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noteworthy points surrounding the existence of the authority that a teacher has over a student. For instance, the Supreme Court found that the relationship of authority extends beyond the timespan of the semester or the course. In one instance (*R c Audet*), a 22-year-old teacher had a sexual liaison with his former student after the end of classes in the summer, upon having run into each other in a bar. The judges in this case regarded this liaison as an abuse of power on the part of the teacher (in this particular case, however, the student was under the age of 18 at the time of encounter). While in law, the timespan of a relationship of authority is not specifically defined, it is apparent from his decision that it does not necessarily end at the termination of classes.

FNEEQ research also reveals that most institutions of higher learning are still lacking clear policies and guidelines regarding relationships between teachers and students over the age of 18. Where policies and procedures do exist, they vary across institutions. There are those institutions which *discourage* sexual and intimate relationships between professors and students. There are those that prohibit these relationships when a conflict of interest exists, while not fully prohibiting this kind of relationship in itself. There are institutions that *discourage* relationships with students, while *prohibiting* them when a conflict of interest exists. Finally, some institutions have gone in the direction of prohibiting intimate and sexual relationships be-

tween teachers and students, such as Yale University. The adoption of policies and codes of conduct to combat sexual violence in CEGEPs and universities throughout Quebec will create the conditions for more consistency between institutions.

While there is no law that prohibits intimate or sexual relationships between teachers and students over the age of 18, the jurisprudence presented by FNEEQ reveals that these relationships, given the presumption of the teacher's authority and the resulting conflict of interest, are often legally untenable. On top of the legal argument, FNEEQ also highlighted political considerations in advancing its position, which will not be elaborated here. But in a nutshell, the political analysis acknowledges that due to gendered power inequalities in our society and the institutional cultures that maintain them, women are subjected to much greater degrees of sexual violence and abuse of power than men. The #MeToo movement and its exposure of sexual violence across multiple sectors of society is a stark reminder of this reality.

**JACFA General Assembly
December 19 @ 9:00 a.m.
P-204**

**Faculty Christmas Lunch
December 19 @ 11:30 a.m.
Chateau Vaudreuil**

FNEEQ's Initiatives on Employment Equity Converge with Work at JACFA

Roy Fu– President

With the recent formation of the FNEEQ committee on Inter-culturalism, Systematic Discrimination and Racism in Education and the Workplace*, our union federation is turning its sights to the under-representation of racialized minorities amongst teachers, at Quebec's CEGEPs, universities, and private schools.

The new committee was struck at the FNEEQ triennial Congress last May, and was given a three-year mandate to:

- Provide a portrait of workplace difficulties faced by racialized groups and their representation in unions
- Work with anti-discrimination community, government, and indigenous organizations
- Provide a portrait of hiring practices and policies at FNEEQ schools, and recommend anti-discrimination measures.

The committee has thus far met twice and set out its work plan for the year. Its first main order of business will be to take stock of reports generated by individual schools on the hiring of minorities, mandated by Quebec's employment equity law (please see next article p.4 for background information on the law). While the latter has been in place since 2001, there has been very little substantial follow-up for hiring of racialized minorities (referred to as "visible minorities" in the law) at the union-federation level, or at individual unions, including JACFA.

Locally, in the past year, the JACFA Executive has also been attempting to re-invigorate the work done at John Abbott around employment equity. After some delay, we recently received from the College updated figures on the hiring of minorities. We also have obtained a more comprehensive report from 2014, written by the Quebec Commission on Human Rights and Youth Rights. This report provides a portrait of the employment equity situation at John Abbott, and specific recommendations to redress problem areas. The Executive is currently analyzing the various data in order to provide feedback to the College. An initial survey of figures reveal that racial diversity in hiring will be one of the areas requiring some attention, as the underrepresentation of racialized minorities has worsened in the past 15 years, and remains a



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problem in many disciplines.

Once the analysis is complete, the Executive will be sharing it with all members▪

*Roy Fu is one of four elected members on the FNEEQ Committee on Inter-Culturalism, Systemic Discrimination and Racism in Education and the Workplace.



Protesters at 2018 anti-racist rally in downtown Montreal

An overview of Quebec's Employment Equity Law– Roy Fu

Enacted in 2001, Quebec's law on *Equal Access to Employment in Public Bodies* is designed to “remedy” employment discrimination against certain groups (art.1). It applies to all public provincial employers, including government ministries, municipal workers, public schools at all levels, as well as universities and private schools that receive government subsidies.

The law requires all these organizations to collect and submit hiring data to the Quebec Human and Youth Rights Commission (*Commission des droits de la personne et des droits de la jeunesse* or CDPDJ,) on five different minority groups: women, people with disabilities, “Aboriginal” (Indigenous) people, so-called “visible minorities”, and “ethnic minorities” (people whose mother tongue is neither English or French and who do not belong in “visible minority” or “Aboriginal” category).

Based on the submitted data, the Commission issues a report identifying groups that are under-represented according to specific employment categories, such as various levels of management and eight teaching categories, the latter based on a combination of teaching-discipline groupings and employment status (permanent/non-permanent). The determination of under-representation is based upon the availability of qualified persons in each targeted group within a specific employment category. Statistics Canada population data such as graduation rates is used to calculate the availability figure and is expressed as a percentage (“ *Taux de disponibilité*”).

In job categories where there is under-representation of a particular group, the employer is required to develop an employment equity program that redresses the under-representation , including numeric hiring targets and a timetable for action. The CDPDJ can also make specific recommendations to the employer after reviewing the latter's program. In a 2014 report, for example, the CDPDJ recommended to John Abbott to diversify its recruitment sources and train its managers on the risks of discriminatory tendencies, in order to redress the increasing underrepresentation of “visible minorities”.

The recommendations of CDPDJ are legally binding. It may seek the intervention of the Human Rights Tribunal, a judicial body, to compel an employer to comply with its recommendations (art.18).

Syndical Tool– Kit: Five– Year “Limit” to Workload Reduction Leaves

Stephen Bryce– [Vice president, internal](#)

This summer a teacher who was taking a workload reduction leave (under article 5-14 of our collective agreement) noticed that the following clause had been added to the acceptance letter from Human resources:

“Please note that the leaves are subject to a lifetime limit of 5 years according to the current federal tax legislations. This limit may surpass the five years if you receive approval from Revenue Canada and Retraite Quebec, our pension plan administrators.”

Workload reduction leaves are among the most popular for teachers across the CEGEP system because they include pension credits as if the teacher was teaching full time. Under this, a teacher can reduce their workload (and their salary) to as little as 40% over an academic year, but be credited with a full year of service for pension purposes. The only other leave that includes this benefit is the anticipated or deferred salary leave (article 5-12).

According to our collective agreement and the RREGOP pension rules, there is no limit to the total amount of workload-reduction leave that can be taken over a teacher’s career.

However, since 1990, the federal government has fiscal rules in place that limit how much deduction an individual can claim using pen-

sion contributions that were made while he or she is not working. These contributions include those made by the employer during workload reductions leave (5-14) and deferred or anticipated salary leaves (5-12); they also include contributions made by the employee in a pension buyback. The life-time limit for such deductions is 5 full-time years. For example, if a teacher takes a 50% workload reduction every year, they would reach the five-year limit in ten years. On a case-by-case basis, the Canada Revenue Agency (CRA) can authorize exceptions.

Up to now, it has been rare for a teacher to approach this five-year limit. However, it is now 28 years since 1990, and 18 years since workload reduction leaves were added to our collective agreement in 2000. Therefore, we can expect this to occur more often in the future. If a teacher does reach this limit, the College cannot refuse to grant you a workload reduction leave. But you must be aware of and be prepared to accept the tax consequences.

FNEEQ recommends that, if you are approaching an accumulated total of five credited years, you should meet with a tax consultant and contact the CRA for more information about your options so that you can make an informed choice knowing the full cost of taking a leave.





OPINION:

Quebec Health Care in Crisis,**A Perspective from Nursing****Kristina Swiercz**— *Secretary*

Anyone who has had experience in the health care system knows that the previous Liberal government's reforms put in place by former Health Minister Gaetan Barrette led to a weakened and broken system. One group that has borne the brunt of the cuts? Our nurses.

Since the Liberals' health care reforms and austerity measures have come into place, the working conditions for nurses have gone from bad to worse. Bill 10 and Bill 20 affected the centralization of health centers in an effort to streamline access to health care. This led to a drop in full time positions for nurses as well as a lag in hiring, creating a structural shortage of nursing positions. Instead of developing a long term solution, health care facilities have been relying on "exceptional" measures to fill the holes in their schedules.

For instance, forced overtime, a practice put in place for exceptional circumstances, is being used on a daily basis in many units. This means a nurse who works an eight-hour shift is *forced* to stay for another 8 hours, whether it be day to evenings, evenings to nights and even nights to days. Nurses who refuse for any reason can risk suspension. In Montreal alone, there were 1.1 million

forced overtime hours in 2017, according to Global News.

In health care centers that choose not to employ forced overtime, nurses find themselves forced to work short. Working short means that on-duty nurses absorb the patients assigned to absent nurses, thereby pushing their patient-nurse ratio to unsafe levels such as twice or three times the norms. Through a recent online video, one nurse working in CHLSD on a night shift reported working with a load of 70 patients ([Link to video](#)). The Liberal government had begun a pilot project to "examine" nurse to patient ratios but then stated that they would never have ratios mandated by law; instead they allowed health care centers to do as they please.

Over time, these measures have taken a toll on the workers. The *Montreal Gazette* reported that long-term absenteeism (which is associated with burnout) has been skyrocketing since the reforms were put in place. It is small wonder that after repeated 16 hours shifts or triple patient loads, nurses have reached their breaking point. At a February 2018 press conference, Lucie Tremblay, the then president of the OIIQ (Ordre des infirmières et infirmiers du Québec), declared that "the nursing crisis is out of control". She said that for the first time

in history Quebec nurses began reporting themselves to their union stating that working conditions are such that they cannot provide safe and adequate care. Nurses of course are not the only ones in this predicament, other workers in the health care system, such as professionals and support staff are reporting similar treatment and corresponding effects.

The new CAQ government has pledged

an immediate abolition of forced overtime for nurses, more full time positions for nurses as well as revised nurse to patient ratios. How they plan to implement these changes remains to be seen. It will thus be up to all of us, the electors, to insist that the new government not only promptly deliver on these promises, but also take all other necessary measures to fix our ailing system▪

Meet your New Executive: Kristina Swiercz

Hi, As a new JACFA Executive I wanted members to know a little bit about myself and my background. I was a John Abbott student from 1998-2004; first in Social Science then in Nursing. As clichéd as it may sound, my experience at John Abbott was excellent; and I pledged to one day return as a teacher. After graduation I started at the Jewish General Hospital and worked full time in various Cardiology departments while completing my Bachelors of Science on Nursing at night.



I developed a passion for teaching and family-centered care during my undergrad studies; so in 2011, I switched jobs and started working at the Lakeshore General Hospital in the delivery room and post-partum care unit. At John Abbott, I was hired originally in the Continuing Education stream of Nursing in 2012, but have since been teaching mostly in the day division. I am one of many non-permanent teachers in that department.

I joined the union because during my time as a nurse and as a teacher I saw how important our union was in protecting and advocating for its members. I am fortunate to join the JACFA Executive at a time where the other members of the Executive have a great amount of experience and have been patiently mentoring me in my new role. My duties are varied and include such files as pensions, leaves, non-permanent committee and insurance. I am truly enjoying this new challenge and look forward to meeting more members each and every week.

I am honored to have been elected to represent you all, and look forward to serving in the JACFA Executive for as long as I can▪



Syndical External Briefs

Roy Fu

CSN launches public sector negotiations with consultative assembly

On October 16 and 17, CSN held its first round of consultations on central table demands for the upcoming public sector negotiations, set to begin in late 2019. Unions from the four CSN federations (FNEEQ, FSSS– Fédération de la santé et des services sociaux, FP– Fédération des professionnelles and FEESP– Fédération des employées et employés de service publics) that represent more than 150 000 public– sector workers, gathered in Quebec City to take part in the two-day series of workshops and plenary sessions. The workshops covered themes that addressed both the possible substance of our eventual central table demands and the mobilization and negotiation process. Some key questions that emerged from consultations included the democratization of the decision process during negotiations, and the deterioration of working conditions and morale in the health care sector due to cuts by the previous government (for more details, see article on page 6). Central table negotiations cover all issues related to remuneration, pensions, and parental benefits. CSN will continue its consultations in 2019 with similar assemblies anticipated in February and May.



CSN Public Sector unions gather at Quebec City Congress Center to voice their thoughts on the next round of negotiations

FNEEQ elects its negotiation-mobilization committee

At a gathering concurrent to the CSN assembly, FNEEQ launched its preparations for sectoral-table negotiations (which cover aspects of our collective agreement specific to CEGEP teachers) by electing its negotiation and mobilization committee. The five– member committee will work in concert with the FNEEQ Executive and coordination team to negotiate our sectoral demands. JACFA will be launching its collective agreement consultations in the new year.

Tanya Rowell– Katzemba elected to FNEEQ Bureau fédéral

At the FNEEQ Congress in May 2018, Tanya was elected to FNEEQ's Bureau fédéral for a three– year term. Tanya will serve as the representative on the Bureau for a grouping of CEGEPs that include Lionel Groulx, Montmorency, Rosemont and John Abbott. The Bureau is one of the main governing bodies at FNEEQ. It meets monthly and plays an important role in steering the political direction of the federation between the triennial congresses and biannual– federal council meetings. Congratulations Tanya!

JACFA Social:

World Teachers' Day Soup & Song



Top row (from left): Murray Bronet, Ethan Mombourquette, Roy Fu, Tanya Rowell-Katzemba, Lidia Kruk, Christine Jacobs, Jana Simandl, Jessica Burpee, Ed Hudson, Gordon Brown (AD)

Center: Jason Howell, Heather Short, Bronwen Lloyd-Hughes, Laura Pfeiffer, Richard Masters, Julien Charest, Mohammad Bardestani, Alex Panassenko, Roy Fu

Bottom: Jessica Burpee, Tanya Rowell Katzemba, John Halpin (DG), Céline Homsy, Mark Ewan-chyna, Sergio Fratarcangeli

JACFA Orientation for New Teachers



From left: Roy Fu, Onur Kapdan, Steven Sych, Nicholas Tosaj, Charbel Nassif, Vanessa Harrar



From left: Kristina Swiercz, Tanya Rowell-Katzemba, Roy Fu, Stephan Kolzenburg, Ibrahim Al Balushi, Helen Katalifos, Jamie Wilson Goodyear