

# THE NUFA NEWS

December 2013

NUFA COMMUNICATIONS  
COMMITTEE

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## SUPPLEMENTARY EDITION

### STAYING VIGILANT

As we are all occupied with final exams and looking ahead to holidays spent with family and friends, your NUFA Executive is thinking about the challenges that Nipissing will face in the coming year. The post-secondary landscape is about to undergo a tectonic shift. It is for this reason that the NUFA Communications Committee is releasing this supplementary edition of the NUFA NEWS which seeks to address some of the more serious proposals put forth by the Ontario Ministry of Training, Colleges, and Universities.

**Nipissing University Faculty  
Association (NUFA)  
"Celebrating 20 Years"  
Open House  
Monday, January 13, 2014  
Join us in celebration in our new  
offices in A244.**

**More details in the New Year!**

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## Looking out for the Little Guys: What Does Differentiation and Prioritization Mean for Us?

BY GYLLIAN PHILLIPS

In October, I attended OCUFA's Lobby Day at Queen's Park. The President of the Laurentian Faculty Association, Anis Farah, and I met with four Ontario MPPs who have universities in their ridings. It was a packed thirty minutes with each MPP, but one of the topics we had time to discuss briefly was the, then unofficial, MTCU Policy on Differentiation and Prioritization. Two things became apparent: none of the MPPs (two PC, one Liberal and one NDP) knew much about what the MTCU was up to, and all of them agreed that the maintenance of strong and independent universities in the North is crucial for the region. Our job was to convince them that the latter would be jeopardized by the D&P framework.

Our arguments for the MPPs centred in part around the way in which the very notion of the D&P policy is south-centred. Differentiation is based on the assumption that there is a network of universities, all offering roughly the same programs, within a few hours' drive of one another. As we know, Northern universities serve widely dispersed communities, often of students with economic challenges. The students in our regions do not have the option of going to one of five or six institutions within two hours of "home," so a place like Nipissing must be able to offer a broad range of programs to remain accessible.

Internally, the consequences of prioritization are disturbing. University administrations across the province have taken different approaches to "prioritization"—which let's face it, really just means "cutting programs and budgets." The trend so far at small-to-medium institutions has been to treat it as a slash and burn exercise based largely on enrolment "metrics." If we do not resist this trend, Nipissing is in trouble. Academically, we have no "fat" around the edges—we run every program on a few excellent faculty members, plus a little chewing gum and a paper clip. In order to remain viable, both to serve our current population and to withstand future vicissitudes in program demand, we must retain our broad base of liberal arts programs and research expertise.



The prioritization exercise threatens to curtail significantly the traditional academic freedom and autonomy enshrined in our University Act and to violate Collective Agreement rights. As a small institution we have the advantage that we can mobilize pretty quickly and effectively to block programmatic changes which threaten the decision-making powers of Senate or the integrity of our Collective Agreement. Personally, I am worried about the fact that our Administration has already hired consultants and that these folks are committed to using the Dickeson model. The next months will be important for Members to stay engaged in monitoring this process: what models of “inclusive decision-making” will be proposed to assess the priorities identified by the “data”? How will these work with our perfectly functional existing mechanisms of bi-cameral leadership? Where might program priorities conflict with the Collective Agreement?

All of us, in larger or smaller programs, will need to be attentive to these questions to retain our autonomy, our program quality, and frankly our viability as a small, Northern university.

*The prioritization exercise threatens to curtail significantly the traditional academic freedom and autonomy enshrined in our University Act and to violate Collective Agreement rights.*

# Program Prioritization: Whose Priorities?

By Susan Srigley, VP NUFA

I remember my naïve enthusiasm when our Dean forwarded a request for proposals this summer for the *Productivity and Innovation Fund*, thinking about how I might put together an interesting proposal for innovative course redesign. I can't recall exactly how long it was before I became aware that this was *not* about an academic process involving the development of new pedagogies and course presentation. It was instead a disguised call for program prioritization and other cost-cutting measures. I know that several of my colleagues were equally compelled to create proposals of their own, largely in the area of "course redesign initiatives," and that a number of academic proposals were put forward to administration. After the Government's Differentiation Policy Framework was leaked in September 2013, and NUFA began hearing about other universities in Ontario undergoing the program prioritization process, my initial enthusiasm waned. Three

smaller proposals for course redesign in business and nursing went through (requesting approximately \$75,000 each) but the largest one submitted was for "program prioritization" (\$350,000). I'll come back to Nipissing's proposal later. First some clarity about program prioritization is needed and its relation to differentiation, both of which were discussed at our GMM in November.

NUFA's response to the issues involved in program prioritization has been largely informed by OCUFA (Ontario Confederation of University Faculty Associations). OCUFA has been indispensable in the dissemination of information around the differentiation agenda. This was discussed extensively at our Board of Directors meeting in September and NUFA has followed up with regular conference calls with OCUFA and other Associations as they move through the program prioritization process.

Program Prioritization falls under the Government of Ontario's **Differentiation Agenda**, which has three primary components:

**a) Differentiation Policy Framework**, the final details of which were just released on Friday, November 29<sup>th</sup> from the Ministry of Training, Colleges and Universities (MTCU). This new framework document is more or less the same as the earlier draft, with slightly polished language. OCUFA has responded to the first draft and their initial concerns remain valid with this new release

**b) Strategic Mandate Agreements**-these are the primary vehicles for implementing the Government's differentiation goals

**c) The Productivity and Innovation Fund**-many of these focus on program prioritization

## Whose Priorities?

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So what is Program Prioritization, and why should we be concerned about it? According to OCUFA:

“Program prioritization refers to an administrative process to rank all university programs and services according to a set of criteria, and then to make resource allocation decisions based on those rankings. The intent is to identify high- and low-performing programs and to eliminate or cut funding for under-performers and divert resources to higher ranked areas.”

It is a fairly simple process applied to complex institutions. Programs and services are ranked according to the same set of criteria. Criteria come from a business model created by an American consultant. Money goes to the highest ranked programs and services, and “under-performers” are eliminated or funding is cut so severely they can no longer function. There is no discussion or concern for the value of academic programs and the role of the university. This is straight money talk without room for

discussions about the meaning of education.

Although task forces/working groups within institutions are created in this process, the work is being done by external consultants, and the processes carried out thus far in Canada are informed by the writings of Robert Dickeson, an American consultant whose book *Prioritizing Academic Programs and Services: Reallocating Resources to Achieve Strategic Balance*, has become the primary methodology for program prioritization, although it has been pointed out that the Dickeson model has been ignored by large, research intensive universities.

Worth reading is an analysis of Robert Dickeson by Craig Heron at York University. An interesting point worth knowing about Dickeson is mentioned by both Heron and OCUFA: “Dickeson was president of the University of Northern Colorado from 1981-1991. He gained notoriety for weeding out tenured faculty at the institution (which prompted an investigation and censure by the American Association of

University Professors). Since then, he has had senior roles with several private organizations working in enrolment management and student financial aid.”

Reading about Dickeson’s work, it is apparent that he is highly critical of faculty and Heron identifies faculty as one of the scapegoats in the Dickeson methodology:

“For Dickeson, the main culprits for cost increases are the university and college faculty. He peppers his text with disparaging remarks about professors who are myopically specialized and self-interested, who are overly egalitarian, who are hopelessly mired in tradition, who never reconsider old programs, and who circle the wagons to block any change. He likes to drop into his discussion examples of outrageous faculty behaviour, including scurrying off campus at 1:30 p.m. (107) He never stops to consider that they might perhaps be heading home to write a book chapter, mark essays, or review a manuscript....

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Nor does his claim that faculty are all incapable of and opposed to reconsidering existing programs describe the careful work that Faculty Councils and Senates at many institutions have undertaken over the years to review, revise, and redirect academic programs.”

Further, the model used in the Program Prioritization Process (PPP) is based on 10 common criteria that in many cases are extremely difficult to measure, especially when a number of them are based on data available in America but not in Canada, such as “test scores on nationally standardized instruments that measure attainment.” The final report of the University of Guelph’s PPP noted that, “the information collected was remarkably incomplete and uneven,” owing to some of these inconsistencies between countries as well as the more general problem of using a business model approach for evaluating academic programs.

Nipissing submitted a program prioritization proposal and has

received funding for it. Of the \$350,000 requested by Nipissing, \$150,000 is budgeted for consultants. And on page four of the proposal it adds that, “Nipissing intends to implement a modified version of the existing methodology as proposed by Dickeson to take into account the activities of a small undergraduate university.” You can read the full proposal posted on the VPAR’s webpage under “Development and Implementation of a Formal Program Prioritization and Strategic Enrolment Plan”:

<http://www.nipissingu.ca/academics/VP-Academic-Research/Pages/Information-Sharing-Repository.aspx>

OCUFA identifies the following problems with the Program Prioritization process, and with Nipissing about to begin the process, these are critically important for all faculty to be aware of:

Program prioritization has the potential to severely harm universities where it is

implemented. The major concerns are:

a) It undermines the authority of academic senates, and gives academic decision-making power to central administrators.

b) It is based on a flawed and complicated methodology:

i. The working groups are asked to rank programs according to hundreds of data points, which creates the possibility of serious errors and promotes subjective judgments.

ii. Rankers are asked to evaluate programs they may know nothing about.

iii. The comparisons are absurd. The logic of program prioritization leads to comparisons between bookstores and Physics programs, English departments with postage and mail services. This is apples and oranges at its very worst.

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c) Program prioritization often leads to cutbacks and program eliminations, which in turn may lead to layoffs and loss of permanent faculty positions.

d) In extreme cases, program prioritization can be used to completely change the mission and purpose of an institution.

How can faculty associations respond to Program Prioritization? The best advice from OCUFA on this is through Senate and Collective Agreements. Brock was able to force the re-assignment of the academic program review process to the Senate, away from the President's office.

***The most powerful and important thing required now is faculty awareness about the Differentiation Agenda, combined with a commitment to protect the integrity of our governing bodies and policies and of course our collective agreement.***

**Note:** copies of Craig Heron's review of Robert Dickeson are available in the NUFA office.



# In Response to the Board Policy on Political Activities and Events

By Drs. David Tabachnick and Toivo Koivukoski

We will begin by quoting the Canadian Association of University Teachers statement on Academic Freedom:

Academic freedom is essential for universities to fulfill their public responsibility to promote the unfettered search for knowledge and truth...Academic freedom means the right to freedom of speech and discussion, regardless of prescribed doctrine, political convention, or *administrative convenience*...Academic institutions have an obligation to defend academic freedom and not allow open discussion to be suppressed (*Canadian Association of Teachers Bulletin*. June, 2009. Vol. 56., No. 6).

In its defense of a “nonpartisan” facility, policy **1.1.2013B on Political Activities and Events** may unwittingly suppress the larger mandate of the institution to engage in academic freedom. To be clear, the goal of “nonpartisanship” *is not in and of itself of greater importance* than the goal of academic freedom and, relatedly, freedom of expression.

Throughout the policy document the terms “official”, “official position”, “professional” and “expert” are used to distinguish between individual opinion and opinion that may be perceived as representative of the “nonpartisan” institution. Here is a short list of questions that will help clarify the above concern:

Can a professor use their personal Nipissing University webpage to express political opinions or endorse political views and candidates?

Can a professor express these opinions, views, or endorsements in the classroom?

Can a professor invite a guest speaker to provide opinions, views, or endorsements in the classroom?

Can a professor invite a guest speaker to provide opinions, views, or endorsements in their university office?



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Can a professor express these opinions, views, or endorsements at a conference?

Who decides whether someone is an official, professional or an expert?

The final “note” at the end of the document states: “This list represents only a sampling of the type of uses that are prohibited.” Clearly, this is not satisfactory. There must be an exhaustive list of prohibitive activities or else there is the danger that any other activity will retroactively be deemed prohibited.

## *The Policy, Political Speech and the Charter*

On the face of it, policy **1.1.2013B** begs the question of whether university Boards and Administrations can regulate and/or prohibit political speech on and off campus. While the spirit of the policy is to protect the “nonpartisan” character of the institutions, it remains unclear whether that goal is of a substantial enough and pressing objective to limit the “Fundamental Freedoms” of individuals listed in Section 2 of the *Canadian Charter of Right and Freedoms*, including freedom of conscience and religion; freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication; freedom of peaceful assembly; and freedom of association. Political speech (including public endorsements of political candidates and policies) is protected by the Charter.

Policy **1.1.2013B** also demands a “reverse onus” on the faculty of the university to state that, in their regular duties, they are not representing the view of the institution as a whole. The academic freedom under which the professoriate practices their regular duties already clearly denotes that their speech and activities are independent. Instead, the onus should be on individual faculty members when they are making statements that are representative of the institution as a whole.

Nevertheless, unlike in the public service, it is unclear if the University is a “Charter-Free Zone.” In the 1980s and 90s, it seemed as though the universities were in fact “Charter-Free Zones” (cf. *RWDSA v Dolphin Delivery Ltd*, [1986] 2 SCR 573; *McKinney v University of Guelph*, [1990] 3 SCR 229; *Eldridge v British Columbia*, [1997] 3 SCR 624). However, two recent cases suggest something of a change, especially when it comes to freedom of expression.

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In *Pridgen and Pridgen v University of Calgary* (2012 ABCA 139), Justice Strekaf clearly states that the University is “not a Charter-free zone.” As it is explained, because the provision of post-secondary education is a specific objective of the Alberta legislatures, universities are acting as government agents in the delivery of post-secondary education under the Post-Secondary Learning Act, SA 2003, c P-19.5, which is a specific government policy. In turn, the earlier rulings on the relationship between the university and the government have been clarified. The university is subject to the Charter, at least in Alberta. However, closer to home, *Lobo v Carleton University* (2012 ONSC 254), Justice Toscano Roccamo distinguished Carleton’s University Act from that of the University of Calgary. The decision here suggests that the Charter does apply to some universities in some instances and not others in other instances. Taken from the view of whether the university is “governmental”, it remains unclear whether the university can regulate and prohibit the political speech of students, staff, and/or faculty.

***Even if it is an Occupant to the Property, is the University a Public Institution (and thus subject to the Charter)?*** Policy 1.1.2013B clearly states that “Nipissing University is a publicly-funded institution...” (Section C). In part, the property of the University is regulated under the *University Expropriation Powers Act* which allows the province’s public universities to expropriate land it “considers for the purposes of the university” (cf. R.S.O. 1990, c. U.3, s. 2(1)). Because the university is financed by the government and because its lands are acquired through government legislations, there is then an obligation for the university to use its infrastructure and property for the public interest and benefit.

What then is the character of this obligation? In *Committee for the Commonwealth of Canada v. Canada*, the justices decided that because it was a public institution, the Charter did apply to an airport, where individuals were handing out *political* pamphlets. Justice L’Heureux-Dubé explained that the Charter would apply to protect expressive activities which took place in areas that could be considered “public arenas.” In turn, all public spaces had to be open for public expression, including political speech. Critically, Justice L’Heureux-Dubé also decided that campuses do indeed “bear the earmarks of public arenas” (cf. *Commonwealth*, *supra* note 288 at para. 136.).

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Furthermore, as a public arena, students and faculty members are invited onto the University campus for expressive purposes. In turn, the Board of Governors and the administration cannot then regulate the nature of those expressive purposes. This is not to say that laws that already regulate speech (e.g. Sections 318, 319, and 320 of the Criminal Code of Canada) do not apply on campus, only that policies such as **1.1.2013B** contradict the role of the university as a public arena for free expression. Again, because universities not only invite but encourage free speech and opinion-- to use the facility for those express purposes -- they cannot then regulate or prohibit that right arbitrarily. The university has sacrificed its rights as occupant of private property in this manner.

## *Conclusion and Recommendations*

Looking at Charter challenges and case law, some lawyers might conclude that **1.1.2013B** is valid. While policy **1.1.2013B** may have been designed to protect the nonpartisan character of the university, it seems to violate, both in the spirit and in the letter of law, the mandate of the public institution. Its constitutional and legal validity aside, the unintended consequence of the policy is to put a chill on academic freedom, political speech and political activity on and off campus. Whether or not the Board of Governors or the Administration themselves recognize the legitimacy of “partisan” activities and speech on campus, these expressions are nonetheless a necessary if not sometimes “inconvenient” part of our institution.

Overall, the policy needs to be withdrawn and then recast to limit its scope substantially. With these considerations of this particular policy in mind, we would recommend adopting an approach that seeks to grow a civil discourse at Nipissing University by keying in our institutional values with the most cherished Canadian laws and customs pertaining to how we speak to one another and how we gather together.

We are of the opinion that adequate safeguards and provisions exist in Federal and Provincial legislation to delimit what may constitute unacceptable speech on campus, forbidding speech that is discriminatory or that may be an incitement to violence or hatred. Indeed steps have been taken at Nipissing University to make relevant Provincial Human Rights legislation a matter of University policy, with the Harassment and Discrimination Policy having been included as part of our policy mechanisms.

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Beyond retracting the policy in question, our recommendation is that we address the matter of political discourse, which would include such dimensions as rights to assembly and rights to free speech, in much the same manner, drawing on relevant provisions in the Canadian Charter of Rights and Freedoms to govern civil rights on campus. It is our view that the sorts of rights and freedoms enjoyed in public should be enhanced at our University, with a deepened commitment to the rights to free speech and peaceful assembly considered as central to the mission of the University, namely:

...the pursuit of learning through scholarship, teaching and research within a spirit of free enquiry and expression (*Nipissing University Act*, 1992. I.3.)

These stated values of providing an encouraging institutional culture, of cultivating an inclusive environment, of fostering respect for all members of the Nipissing University community, and of creating the conditions for better communication can be understood as means of more perfectly realizing the Fundamental Freedoms that are described in the Charter of Rights and Freedoms, here in an environment explicitly devoted to free enquiry and expression. With this in mind, we would respectfully advise the ratification of those fundamental freedoms within the University as essential to the pursuit of learning. Thus:

*Given that a free environment for discussion* is a crucial pre-condition for the production of knowledge,

*And given that critical discourses extend beyond the classroom*, and are inflected into the civic discourse of society broadly construed, with possibilities for effecting cultural, political, economic, scientific, and technological changes of benefit both to the University and for the society that sustains our studies,

*And within recognition of the mandate to cultivate free speech* in the Nipissing University Act,

*And given the centrality of academic freedom* within the collective agreement between the Faculty Association and the University, and beyond contractual obligation, towards the advancement of higher knowledge and the building of a more just society,

*And with consideration to the common sense expectations* that Nipissing administrators, staff, faculty, alumni and students have of their University as being a place suited by nature and custom to free speech and free association,

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And whereas **the expression of dissent in the University is expected and should be encouraged** for our democratic society to more fully develop,

And recognizing that **free speech and assembly have their limits** in the Criminal Code of Canada, prohibiting incitements to violence and hatred, in Ontario labour law governing job actions, in the Ontario Human Rights Code, prohibiting discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status, or disability,

And recognizing that **Nipissing University has provided itself with a Harassment and Discrimination Policy**, along with policies to protect the security, rights and freedoms of students, faculty, staff, administrators, alumni/and guests to the University,

We advise that **Nipissing University make it a matter of its own policy that the Fundamental Freedoms of the Canadian Charter of Rights and Freedoms** (cf. [http://laws.justice.gc.ca/en/charter/1.html#anchorbo-ga:l\\_I-gb:s\\_23](http://laws.justice.gc.ca/en/charter/1.html#anchorbo-ga:l_I-gb:s_23)) **apply to members of the University community on campus, including faculty, staff, students, administrators, and alumni, so as to more fully realize their rights both in the University and beyond this commons to peacefully assemble, to effectively exercise free thought and expression, and to enjoy freedoms of association, of religion and of conscience on campus,**

And further, that **existing and future policies designed to protect the security, rights and freedoms of all students, faculty, staff, administrators and guests of the University be enacted with a view to the realization of those fundamental freedoms.**



# Announcements



## Committee Vacancies

There are vacancies on the following NUFA committees: **Scholarship Committee** and **Communications Committee**. If you are willing to serve on one of these committees, please inform Angela Fera at: ([nufaoffice@gmail.com](mailto:nufaoffice@gmail.com)).

## OCUFA Surveys

Angela Fera has sent out an online survey from OCUFA to all NUFA members. The purpose of the survey is to provide insight into your views of current issues in Ontario's higher education sector, including controversial policies that will affect professors and academic librarians directly. The survey will be open for two weeks. There is a chance to win an iPad Mini! Stay tuned.

## NUFA Learning Opportunity Awards

In the first round of applications for the *NUFA Learning Opportunity Awards* for the 2013-2014 academic year, four students received awards. The recipients are: Nathan Mountain (MEd), Kylie Needler (BEd), Kaitlyn Norris (BA-PSYC), and Davy Wong (BEd). Nathan presented a poster at the 2013 *Canadian Geophysical Union's Joint Scientific Congress* in Saskatoon in May. The presentation was entitled "*Source Water Contributions to Stream Flow in the Wasi Watershed Using Stable Isotope and Geochemical Tracers*". Kylie attended the 42<sup>nd</sup> *Annual Canadian Association of*

*Gerontology's* conference "*Aging...From Cells to Society*" held in Halifax in October. Kaitlyn presented a poster as a co-author at the *Society for Neuroscience Conference* in San Diego in November. The presentation was entitled "*Planaria in Behavioural Toxicology: Ethanol and Motor Activity*". Davy attended the *Ontario Music Educators Annual Conference* in Niagara Falls in November.

Congratulations to all of our Learning Opportunity Award winners!

Please be sure to remind your students of the NUFA Learning Opportunity Awards and our Textbook Bursaries. Criteria and applications may be found on the NUFA website at: <http://www.nufa.ca/forms.html>