

FACULTY TIMES

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On Bad Faith and Good Employment Relations

by Albert Katz, UWOPA President

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Faculty Times welcomes contributions and letters to the Editor. We look forward to lively responses and debate on issues related to UWOPA and its membership.

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During the recent brouhaha regarding the so-called "Internal Communication Survey", I was asked whether I thought that the Administration at Western "acted in bad faith" when dealing with the Faculty. In retrospect, the question deserved better than the sarcastic response that I made at that time. This is a question that deserves an answer that, in my mind, distinguishes between what an employer is obligated to do and what a good employer should do. The distinction is important because it defines when, for instance, a grievance can be initiated by a faculty member.

One can find a wide range of definitions for the term "bad faith". They range from Sartre's philosophical use (when we deny our freedom and our responsibility for who we are), to legalistic usages related to an intent to deceive or act in a dishonest and non-trustworthy manner with respect to a given commercial or contractual situation. However used, the term implies a failure of one party to act in a way consistent with what a reasonable second party would expect to occur in their relationship.

With respect to the Faculty at Western, the relationship with Administration is governed by the Collective Agreement (CA) ratified by both parties, and to an increasingly lesser extent by a more nebulous set of expectations that arise from scholarly pursuits, such as a shared vision of the role of the Academy in modern society, or collegiality in decision-making, or the notion that reasonable men and woman can sit down and come to a rational agreement on matters in dispute.

So one can ask: Does our Administration act in bad faith with respect to living up to their obligations as set out in the CA? The test here is somewhat well-defined because the CA provides fairly explicit rights and demands fairly explicit obligations from both Administration and Faculty. There are times, of course, when there is a question regarding whether one or the other Party to the Agreement is living up to their part of the bargain. It is the duty of your Association to protect the rights achieved for us all in the negotiated CA. If you think that a violation of your Rights has occurred, then it is my duty as President and the duty of UWOPA to represent your complaint and, where appropriate, initiate formal Grievance proceedings. In addition, the Association has what are called group and policy 'carriage rights': the Association can initiate grievances on behalf of a group of faculty members similarly affected by actions of the Administration as well as grievances which involve a general policy or application of the CA. There is at least one such ongoing situation that could proceed to a policy grievance, since a satisfactory resolution has not been achieved at the time of writing.

At any given time there are several disputes being investigated. Many of these involve consultation with our Professional Officer (Lauren Tremblay), the Chair of our Rights and Grievance Committee (Paul Handford) or myself. We can provide advice or act as an Academic Colleague in informal attempts at resolution, as described in the Grievance and Arbitration Article in your CA. Other disputes can be found at different steps in the Grievance procedure and, at present, we have one case that is going to Arbitration. There are

two points I wish to emphasize. First, a Grievance necessarily involves a violation of the CA and may not be applicable to some situations in which a Member has been treated poorly but within the bounds allowed by the CA. Second, a dispute in the application or understanding of the CA does not automatically imply 'bad faith' because there can be an honest disagreement on what was meant by a given Article or Clause. I may have felt that some of my interactions with Administration have been infuriating, frustrating and non-collegial but if their actions did not violate the CA then one could not argue that they acted in bad faith, at least from a legalistic perspective. There have been the odd exceptions however. For instance, in the Employment Equity Article of our CA there is Clause 6c dealing with handling incomplete or otherwise problematic information in which it is written that "...the Employer shall develop appropriate methods of collecting and reporting the Information and shall submit a report on these methods to the Association by June 30, 2003." For the six months or so since following that due date Administration failed to give us such a report, despite multiple requests from our Association. Recognizing that the due date (agreed upon and ratified by the Administration) may have been chosen too optimistically, we demonstrated our willingness to accept a later date, if only they would ask for an extension. I can report that in January we finally came to an amicable resolution of this issue but that if we had failed to do so, your Association was ready to go to Grievance or Arbitration. We would have seen taking that route as a waste of time, effort and possibly money on all our parts but one which your Association would have been obligated to pursue, and one that we would not have even contemplated if the issue had been treated with better faith from the onset.

There is the second basis to 'bad faith' that I mentioned earlier, the set of expectations, often tacit until violated, that governs the scholarly life of faculty members and the Administration. Violations here may not have force of law, but do distinguish what makes for good as opposed to not-so-good employment relations. And it is violations of this type that so often leave some faculty members feeling that their work or the extra effort that they are putting in for the Academy is just not appreciated. I have heard the phrase "I don't

know why I bother, it just isn't worth it" too often in my eight months as UWOPA President.

So, does the Administration act in bad faith, that is, as a not-so-good employer? The message is mixed here. I can clearly point to many times in which Administration went the extra mile, beyond what they are obligated to do by the CA. Examples that quickly come to mind include the willingness to raise the cap on medical insurance for out-of-country coverage for Faculty on Sabbatical (and their families), or extension of Transitions Rights to more Part-Time Faculty than a rigid reading of the CA would have allowed or the lead they have taken in engaging a firm of tax lawyers to argue the CCRA audit of the years 2001 and 2002 (in which the CCRA has ruled that our Faculty Dependents' Scholarship Plan should be treated not as a scholarship payable to the student but rather as a taxable benefit in the hands of the employee). In all these cases, the

In short, many of our colleagues were offered contracts that do not recognize their active scholarly pursuits, their years of service to Western and which also amount to a per-course pay cut.

Administration acted as a faculty member might expect their employer to act: with sensitivity, compassion and intelligence.

Unfortunately there is the other side of the ledger in which, to my mind, the Administration has acted without sensitivity, compassion or intelligence. I will give only two examples here. The first is the so-called 'Internal Communication Survey'. I was completely enthusiastic when first I heard that the Administration was planning to initiate this project. Perhaps naively, I saw this initiative as a real attempt to see why some Members felt disconnected with their University, why some felt that their work was not appreciated, their efforts unrewarded, their concerns ignored, why some feel that the Administration's calls for input are a sham, a mere exercise in public relations. And in the two focus groups that I attended these were the points brought up by virtually every participant present, from every employee group on campus. What we saw was something else, something that confirmed the reality of the concerns expressed in those

focus groups. We were introduced to a Survey that came from something called "Accounting1", that did not address even one of the concerns raised in the focus groups which I attended, a survey that gathered personal information on you without your knowledge or consent (including whether or not you were a Member of UWOPA), that intruded upon the legitimate concerns of the actions of your Association. Was there legal bad faith here? Possibly not, arguably yes. Regardless this was not the action of a compassionate, sensitive, and intelligent Employer and, as a violation of the tacit rules that govern our relationships in Academe, not the action of a good employer.

The second and final example is especially troubling to me. In our current CA, some long serving Part-Time Members of UWOPA were to be offered full-time Limited Term Contracts, contracts that were to be accepted by the end of December 2003. The conditions

for employment were generally quite unattractive. For instance, many of these contracts proposed Workloads with 80% Teaching, 20% Service and 0% Research. So in a unit that has a regular teaching load of 2 1/2 courses, such individuals would be asked to teach five full courses, providing little time to pursue their ongoing scholarly activities (and, if they did so, it would remain completely

unrecognised as part of their professional activities). Moreover, the financial rewards would often be less than those which would obtain if they taught the five courses as a Part-Time Member. And, oh yes, the salary was often the same for a person who had been a member here for 7 years as for 20 years. In short, many of our colleagues were offered contracts that do not recognize their active scholarly pursuits, their years of service to Western and which also amount to a per-course pay cut. Hardly the act of a caring employer. These same Faculty Members also are entitled to Renewable Multi-Year Part time Appointments (RMYAs). In fact, the language of the CA is that these members shall be offered RMYAs. The entitlements to RMYAs are based on conditions which were present "as of May 1, 2003" (Transition Provisions Article of the CA). Most of the Members concerned wanted to compare the terms of the two routes open to them. Is it in their or their families' best interest for them to take the Limited Term contract or the RMYA? Because

there was and is no technical difficulty preventing RMYAs from being issued by December, one might have expected that both options would be made available to the concerned Members so that they could make a rational comparison based on the two offers. In fact, this was not done. Moreover, the

Administration rejected my request to have the deadline for accepting or rejecting the Limited term contracts extended until after they received their offers of RMYAs.

Technically, there may well be no violations of the CA in any of the actions of

the Administration with respect to their treatment of our Part-Time Members of long service to Western. But ask yourself this: are actions such as I describe what a reasonable person would expect from a good employer?

Albert Katz is President of UWOPA and Professor in the Department of Psychology.

Then, Now, Tomorrow

by Allan Gedalof

Let me start with an apology and an admission. The apology is for rehashing the history that follows. Those who have lived it don't need the reminder, but our happily growing number of more recent colleagues might better understand our current situation, and the grounds for cautious optimism now, if they know more of the largely sorry past. The admission is this: over most of my 32 years here at Western, my involvement with our faculty association, like that of most of my current colleagues, could be characterized by two images: the long-time fan, committed to our team and its success but cheering or groaning from the sidelines; or the architectural flying buttress, playing a role in holding the structure up, connected, but still standing on the outside.

For many of the years before unionization, my lack of involvement was due to a sorry combination of frustration and disappointment with the relative powerlessness of that association, with its very limited ability to affect for the good our academic life here, and with its failure to achieve reasonable and fair deals at the negotiating table in the face of an increasingly remote, bureaucratized and intransigent administration. In saying this, I most definitely not casting aspersions on

the deeply dedicated and long-suffering leadership of our association during those years, when negotiations most often resulted in an impasse, followed by the utterly predictable outcome of the Board of Governors choosing between the two positions. If there were any good old days at Western, they were before my time. During the long years of collective supplication, what the faculty at Western experienced, through a string of presidents and provosts and their supporting casts (who mostly come and go and do their share of good and damage), is that while the university grew steadily in size and stature, almost entirely due to the good

relative to comparable Ontario universities, remained slow to promote and reluctant to reward its increasingly productive and hard-working faculty. In such a climate, many sat on the sidelines of the association and got on with their heavier and heavier workloads, and increasingly, too many of our very good colleagues despaired of working at Western, took the offers that their research and teaching had earned them, and went elsewhere.

Some of the most far-sighted of our colleagues, refusing to despair, led us to unionization, which while far from heaven still, has done something to redress the power imbalance, to make negotiations a far from empty exercise, and to ameliorate to some degree the working conditions at Western. And while it may prove to be a mixed blessing, the hopes that came with the unionization drive and its success drew me to become actively involved with the association in a way that I hadn't been

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work and the goodwill of long-serving faculty and staff dedicated to their professions, to the highest professional standards, and to the institution in the abstract and the concrete, appropriate recognition and remuneration did not follow. On the contrary, Western's administration,

since my first few years here. Inevitably, such involvement has led to some frustration and even to moments of anxiety stemming from a desire to strongly represent and protect the diverse interests and rights of our membership, but those have been easily outweighed by the rewards of engagement

itself, of having even a small degree of agency, and of working with some of the finest minds and spirits on this campus. I experienced that first-hand during the recent fiasco of the communications survey, when within minutes of the posting of the survey, e-mails began to pour in from members of our executive and our general membership setting out the highly principled objections and profound concerns that resulted in our boycott. Well over a hundred of such e-mails arrived on the first day the survey was released, and many more over the next few days, pointing out a plethora of problems that, when considered, debated, and synthesized, were communicated to you in a series of e-mails and postings to our UWOFA website. In effect, the job of the UWOFA board and executive was made easier by the strength and unanimity of the advice, analyses, and support we received, just as our position during the recent round of collective bargaining was strengthened by the solidarity and the strongly expressed will of our membership.

Such support and involvement, evident

during collective bargaining in the large numbers of people who regularly attended and participated in meetings, means a great deal to our association, not only because they make our desired course of action clear to us, but also because these things are closely monitored by the senior administration, who look for shows of strength or weakness among us. At least some members of that group examine what happens at such meetings, and what we say in communications to our membership, as if poring over entrails in some rite of augury. When we fail to get a quorum at a general meeting, for instance, this is rightly or wrongly perceived as a sign of weakness or lack of interest in the issues of the day.

The lessons here should be clear. I was wrong in the past to remain on the sidelines, and that sorry history related above might have been less sorry if there had been more strong support for the association expressed by the membership in those years, even if we had far less direct power in bargaining. Today, even that somewhat lame excuse is

no longer available to us: if we wish to be full partners with our students, staff, and the administration (all of us who together comprise the institution, none of whom are the institution in themselves) in the evolution of this university, we need to speak not only strongly but in large numbers. Our meetings need to be full, responses to our own surveys of our membership, including the current (at the time of writing) questionnaire on mandatory retirement must be significant, and elections for executive and board positions, where nominations and volunteers are currently being sought, must be keenly contested, if we are to have a strong voice in building a better university and achieving better and happier working conditions. Contritely, I encourage you to get involved, and to share in the many personal, professional and institutional benefits of that involvement.

Allan Gedalof is Professor of English and of Film studies, and Vice-President of UWOFA.

Do you know if your Unit (Department, Centre or School) has a UWFOA representative? If you're not sure, please take a moment to check the list on our website:

www.uwo.ca/uwofa/cttees/replist.htm

If your Unit has no Representative listed, please bring up the matter with your colleagues (for example, by e-mail circular or at a Unit meeting). You might even consider volunteering yourself, or nominating a colleague. Departmental Representatives play a vital role in communications between the UWOFA Board and the membership at large.

Making a Bad Situation Worse—Much Worse

by Tom Murphy

Imagine this. You have been teaching at Western for eleven years. During that time, you have been classified as part-time which strikes you as bizarre since you have been teaching 4 full courses during the fall-winter academic semester, and a fifth course during one of the summer sessions. When you started, you were being paid a stipend per course which was only a few dollars more than TA's were being paid in your department, but as a result of the last two collective agreements, you achieved Tier 1 status, and now take home the princely sum of \$10,660 per course, which amounts to an annual income of \$53,300. Given that you are working on average about 60 hours per week to keep up with all of the course preparation, marking, administration, and so on, it doesn't feel at all like you are being overpaid, but it is a modest income, and keeps you and your family a few steps away from the food bank. Because you have excellent teaching evaluations, and because you teach a variety of core courses with lots of students, you are recognized as being a pretty essential faculty member to have on

board. Your versatility allows full time faculty members to be able to take sabbaticals, and research buy-outs, and your Chair is grateful to have someone he can count on to cover all of the bases, especially someone who costs so little. So it does not come as a surprise that this same chair, through the good offices of his dean, suggests that you qualify for one of these new fangled full time limited term appointments which are renewable, and hence offer you a modicum of security. Not only that, but you get medical benefits covered (you already get employer pension contributions). At last, your hard work has paid off. You will be full time (sort of), and you will appear on the teaching schedule like all of your other colleagues—a benefit for the many students who want to find and take the courses you teach.

You spend the summer dreaming about signing this new contract. New status, new security, even some new money! September rolls around, and there in your mailbox is a letter from the Dean. You frantically open the envelope, and quickly read the contract.

Your heart sinks. Yes, it is a renewable full year limited term contract, but you are being asked to teach five courses, plus provide service, for \$39,000. This must be a mistake. How could you be expected to take a \$14,300 pay cut, and do 20% more work in service. Have they gone mad? Are they playing some kind of head game? Is the object here to humiliate and insult you? You cry. You all but give up. The situation is worse, much worse than you had imagined. Once again, you have been defeated by a callous, uncaring Administration.

But there is a glimmer of hope. Maybe, just maybe, if there is enough support from all of the membership in the 2006 negotiations, you can help end this disgraceful regime of academic apartheid. And that is all you can cling to at the moment. You curse and cry some more. In the still of the night, you hear a dog howl.

Tom Murphy teaches in the Department of Sociology.

Administration Arithmetic or Consultant Calculations?

PROBLEM 1.

On Mon, 1 Dec 2003 21:59:23 -0500, a certain survey research firm said: *Response to date has been excellent. We have already received completed surveys from almost 1,000 Western employees, which represents a response rate of approximately 20 per cent of the total employee population.*

Q: Approximately how many Western employees were there on December 1?

PROBLEM 2.

On Mon, 15 Dec 2003 21:26:24 -0500, the same firm said: *Response to the survey was excellent. We received a total of 1,128 online and hard copy surveys from Western employees, representing a participation rate of approximately 26 per cent of the total employee population.*

Q: Approximately how many Western employees were there on December 15?

PROBLEM 3.

Q: What happened to the other 700 or so employees during those two weeks?

As always, Faculty Times welcomes your contributions. Seen any statements of statistics from SLB which don't quite seem to sum? Flummoxed by PeopleFlaccid figures that just don't figure? Send them to us <uwofa@uwo.ca> and outstanding examples of institutional innumeracy may be published in future issues. The best examples will be eligible for a special prize (an abacus dedicated in your name and donated to the UWO Unit in question).

Notes from Senate (and the Parking Committee)

by Mike Carroll

Once upon a time, in the Golden Age before PeopleSoft, we had a system that checked for course prerequisites. While counseling in August, I learned that a student had enrolled (online) in a core course without having the prerequisite. Given that, I asked three questions at Senate:

How long has PeopleSoft been in place? How much has it cost? Will there ever come a time when it can check for prerequisites? Roma Harris, the Registrar, presented the responses and they were, in order: (1) 5 years, (2) 12 million dollars (so far), and (3) as of last year PS can check for prerequisites taken in earlier years and will soon be able to check for prerequisites taken in the same year. This doesn't explain how the student I counseled slipped through, but still, it's a good thing (with apologies to Martha S).

The Registrar also provided a concise but comprehensive account of everything PS can do, and there's no denying that it's an impressive list. Later in the meeting Albert Katz queried the Admin on the long delay in getting sessionals their retroactive pay. The response was the standard one: it's a more complicated process than in the case for full time faculty, etc. At that point, I asked—only half facetiously—if maybe PeopleSoft, with all the bells and whistles that we'd just learned about, could be programmed to handle this. The president ruled that question inappropriate for Senate and we moved on. Oh well, maybe if we spend another 12 million

Senate aside, I'm also on the Parking Advisory Committee. Parking may not be one of the great issues, but it's something that affects many of us on a daily basis and we've recently received some parking stats that likely deserve a wider audience.

On the matter of availability: the good

news is that the overall number of parking spaces on campus has increased by about 400 over the last 3 years. This increase, however, is due entirely to the construction of the new Althouse lot on the periphery of the campus. Generally, the problem with parking is not overall number of spaces, but a consistent "dispersion from the core" trend over the past several years, which has not affected everyone to the same extent:

First: Senior Administrators can park near Stevenson-Lawson, and off-campus members of the Board of Governors have guaranteed spaces near the core. In other words the "dispersion from the core" policy

Generally, Administrators have been affected less than the rest of us, reserve permit holds less than non-reserved, non-Undergraduates less than Undergraduates. You can decide for yourself—self interest aside—if you think this is fair.

has not affected this group at all.

Secondly: people using the Social Science lot may have noticed that the number of Reserved Spaces seems to have increased. In fact, what happened is that the size of individual Disabled spaces had to be increased. Instead of a proportional reduction in both Reserved and non-reserved spaces, this was done by keeping the number of Reserved Spaces constant and cannibalizing non-Reserved spaces.

Third example: as dispersion from the core has pushed more and more orange permit holders into Springgett, undergrads (who used to be able to park in the rear of Springgett) have now been pushed out of Springgett entirely.

Generally, in other words, Administrators have been affected less than the rest of us, reserve permit holder less than non-reserved, non-Undergraduates less than

Undergraduates. You can decide for yourself—self interest aside—if you think this is fair. Then there is the matter of safety. Certainly, having to walk to a distant lot, like Althouse or the nether regions of Springgett, from the center of campus after a class ending at 10pm, seems problematic. Although safety concerns are eased a bit by the Foot Patrol service and the fact that non-reserved core spaces are opened up to all permits after 4 PM, my own view is that it is still a problem and one likely to get worse. Although the matter of safety was raised at our committee, I don't get the sense that anything concrete is being formulated by those with the authority to get something done. If you are concerned about safety in reaching your car, please use the Foot Patrol service but also alert both the VP Admin (jobrien@uwo.ca) and UWOFA to your concerns.

Another problem with parking, as I've indicated previously, is that one million dollars (28% of all parking revenue) is transferred out of the parking budget to the Admin, to spend on non-parking matters. As outrageous as that is in itself (rates would be much lower if most of this million stayed in parking), things reach absurdity when Parking Services borrows money from the Admin for maintenance/ construction costs. In other words, the Admin sucks a million dollars out of Parking Services revenue and then lends some of it back at 3 or 4% interest. Nice work if you can get it.

Mike Carroll is Professor in the Sociology Department and a member of the UWOFA Executive and Board, as well as a member of the UWO Senate.

Piping up about PIPEDA

by Samuel Trosow

The Personal Information Protection and Electronic Documents Act (PIPEDA) came into general force on January 1, 2004. This federal legislation, passed in 2001, has already been in force for federal works and starting in 2004 it will also govern the information record handling practices of private sector organizations engaged in commercial activities. One of the interesting questions which is not really made very explicit in the legislation is to what extent will the PIPEDA requirements apply to public universities. This article will review the general applicability of PIPEDA to universities and will briefly describe organizations new obligations under the legislation.

As a recent article in *University Affairs* (a publication of the Association of Universities and Colleges of Canada) states:

*January 1 looms large for records managers and privacy officers at many of Canada's universities. That's the day fin al provisions of the federal government's privacy law come into effect. While there is still some uncertainty and confusion about how and where the law will apply, most universities anticipate it will affect at least some of their information-handling activities. (Léo Charbonneau, "Universities not Immune from New Privacy Rules" *University Affairs*, November 2003, 28)*

PIPEDA sets out a number of new requirements for how organizations may collect, access, use, disseminate and dispose of records containing personally identifiable information about individuals. But unless an organization is characterized as a federal work, it only applies to personal information that the organization "collects, uses or discloses in the course of commercial

activities." (PIPEDA, Section 4(1)(a)). Unfortunately, the statute does not give much guidance as to what actually constitutes a commercial activity. While section 2(1) defines commercial activity as meaning "any particular transaction, act or conduct or any regular course of conduct that is of a commercial character, including the selling, bartering or leasing of donor, membership or other fundraising lists," this definition fails to provide an authoritative and clear answer to the question of how the act will apply to universities.

While it seems clear that at least some university records will fall within this definition, there are more questions than clear answers at this point as to exactly where the borderline is between covered and non-covered records. The universities themselves have been obtaining legal advice about the scope of this coverage. The *University Affairs* article reports they have obtained an opinion letter from the law firm of Hicks Morley, but that the document is being treated as privileged. Still, there are clear signals that Canadian universities will try to limit their obligations under PIPEDA by reading the scope of their operations that fall within the meaning of "commercial activities" in a narrow manner. According to the article, Hicks Morley has indicated that:

PIPEDA's application to universities will be limited, but it will affect some activities. Two examples are the collection of customer information at a university bookstore and the use of a former student's record to market goods and services to that individual. Other activities that are partly educational and partly commercial may come under the law if less-obvious activities that may fall under PIPEDA include pensions and insurance, residence and conference services, and research services – especially those provided by technology transfer and industry liaison offices, where commercialization is part of the mandate. (Charbonneau, p. 28)

The core of PIPEDA is contained in 10 principles, which are set forth and expanded on in the Act. In summary, the 10 principles are:

1. Accountability: An organization is responsible for personal information under

its control and shall designate an individual or individuals who are accountable for the organization's compliance with the following principles.

2. Identifying Purposes: The purposes for which personal information is collected shall be identified by the organization at or before the time the information is collected.

3. Consent: The knowledge and consent of the individual are required for the collection, use, or disclosure of personal information, except where inappropriate.

4. Limiting Collection: The collection of personal information shall be limited to that which is necessary for the purposes identified by the organization. Information shall be collected by fair and lawful means.

5. Limiting Use, Disclosure, and Retention: Personal information shall not be used or disclosed for purposes other than those for which it was collected, except with the consent of the individual or as required by law. Personal information shall be retained only as long as necessary for the fulfilment of those purposes.

6. Accuracy: Personal information shall be as accurate, complete, and up-to-date as is necessary for the purposes for which it is to be used.

7. Safeguards: Personal information shall be protected by security safeguards appropriate to the sensitivity of the information.

8. Openness: An organization shall make readily available to individuals specific information about its policies and practices relating to the management of personal information.

9. Individual Access: Upon request, an individual shall be informed of the existence, use, and disclosure of his or her personal information and shall be given access to that information. An individual shall be able to challenge the accuracy and completeness of the information and have it amended as appropriate.

10. Challenging Compliance: An individual shall be able to address a challenge concerning compliance with the above principles to the designated individual or individuals accountable for the organization's compliance.

It is readily apparent that these requirements are substantial and cover every

The manner in which the administration defines the scope of their PIPEDA obligations will be worth watching and will no doubt prove controversial.

aspect of an organization's record keeping activities to the extent the records come within the Act. In addition to these principles, individuals have the right to complain to the federal Privacy Commissioner if an organization does not meet its obligations under the 10 principles. For a university unaccustomed to any level of outside accountability and overview, PIPEDA is an extremely significant piece of legislation. To the extent a university's activities come within the threshold definition of commercial activity, they will not be able to act in an arbitrary or unreasonable manner with respect to these obligations.

The manner in which the administration

defines the scope of their PIPEDA obligations will be worth watching and will no doubt prove controversial. On the one hand, the university can be expected to claim that very few records fall within the meaning of the Act. In this regard, the university will be going out of their way to argue that certain practices and operations do not constitute commercial activities, so that records are not covered (see for example *Western News*, January 15, 2004). On the other hand, a reasonable argument could be made that the university has engaged in such a consistent manner in which the administration defines the scope of their pattern of commercial activities that it would

be difficult to separate out records that are not involved, in some manner, with such activities. It remains to be seen whether the PIPEDA guidelines which the Western Administration has published to date (see January 15 *Western News*) or their plan for implementation will be adequate or not under the Act. Watch the *Faculty Times* for further developments on this unfolding issue.

Samuel Trosow is Assistant Professor in the Faculty of Law and the Faculty of Information & Media Studies, and a member of the UWOFA Board.

Promotion and Tenure: Tips & Traps

by Bernd Frohmann

The tenure process at Western can be harrowing. UWOFA receives reports of missteps by the Employer that evidence creative failures of interpretation of your Collective Agreement, or even just plain failures to read and comply with the Article *Promotion and Tenure*. It's very important that you know your rights under the CA, because you can get into trouble by assuming that the process is well understood by those responsible for ensuring that it unfolds as written. Some of the changes to and new clauses in the Article have improved the procedure, but keen vigilance by candidates is still required. Here are some of the things you should know.

Controlling your file

Clause 6.4.1 has been added to make it clear that your signature on your file's table of contents effectively closes the file. At this point some of you—even some who have been through the process—may be asking: What table of contents? Clause 6.4 (f) specifies that the file shall contain “a table of contents listing all documents in the Promotion and/or Tenure File, signed by the Member and the Dean, or designate.” This clause protects you by allowing you to know what is in the file so

that you can be sure you have reviewed it all. Clause 6.4.1 then says: “Once the Member has signed the table of contents referred to in Clause 6.4 (f) of this Article, no further documentation shall be added to the Promotion and/or Tenure File, except as provided for subsequently in this Article, or by mutual agreement of the Member and the Dean.” The file is now closed, and the process can move to the next step. Make sure that you get to see a table of contents.

The consultation is not a fishing expedition: its purpose is very clear, and very limited...Mere “concerns about the candidate's record of performance” are not sufficient here.

Sometimes letters from external referees arrive after you've signed. What happens then? Clause 6.4.1.1 addresses this question, and lays out a procedure that gives you seventy-two hours to read the letter(s)—assuming your Unit head has read the Article, has decided to comply with it, and has in fact complied with it by informing you the letters have arrived—and make any written submissions you feel those late letters

require.

Suppose that for some reason you wish to withdraw from the process (perhaps the letters don't look so good). The new Clause 16.2 allows you to do that. Your file continues, but you can now decide whether it will either include or exclude all letters from external referees. If you are applying for promotion, you can re-apply after three years.

The new Clauses 17.1 and following are especially important, both to candidates and to Committee members. Clause 17.1 refers to “stenographic or other notes, including originals, taken during meetings of the Committee on Promotion and Tenure

by someone who is not a member of the Committee on Promotion and Tenure.” Our first CA was silent on such notes; they were not mentioned. But when such notes are taken, they are now added to the file, and you can review them. That gives you greater protection in a grievance, and it also imposes obligations, not just on Committee members, to conduct themselves in such a way as not to compromise the process by inappropriate

(and grievable) remarks, but also on Deans and Chairs of the committees to explain your rights to the notes, just as they should explain this and all other aspects of the process in the first meeting, and to enforce the implications of the Article throughout.

When the file goes to the Provost

Once the Committee has made its decision, its recommendations and supporting reasons are sent to the Provost. By providing for separate recommendations from the Dean and from the Committee, the new Clause 17.2 recognizes that Deans are agents of the Employer. In Units with Departments or Schools, Committee recommendations are now written by Chairs or Directors, respectively, while in faculties with neither Departments nor Schools, such recommendations are written by a member elected from the Committee. In other words, Committee recommendations and supporting reasons are written by Members of the Bargaining Unit, not by agents of the Employer.

Clauses 18.1 and 18.2 are also new, and address that part of the process in which the Provost is involved. They strengthen your rights of reply in cases where the Provost determines that the File is incomplete, or if the Provost requires additional information in order to arrive at a decision, or if the Provost has other concerns about the recommendation of the Promotion and Tenure Committee and/or the Dean." If the Provost decides to return the file to the Committee (with a written statement of concerns), the Committee then takes the

Provost's statement into account, and both it and the Chair respond. You can see the statement, and can also respond, within two weeks. But if the Provost "is considering denial of a recommendation from the Promotion and Tenure Committee for the granting of Tenure," then he or she is *required* to return the file to the Committee together with a statement. Once again, the Committee and the Chair respond, and again you have two weeks for your response. All of this is new, and provides for a more open process.

Consultation with the P&T Committee

The promotion and tenure process works only as well as the Deans' commitments to making the process absolutely clear to Committee members. It is up to Deans to

ensure, and to enforce, proper procedure as set out in the CA. Without vigilance by all affected faculty members (including Committee members), things can go wrong, and sometimes do, because even the most iron-clad language is no proof against negligence, undue diligence, or outright misinterpretation. Consider, for example, the new Clause 16.2, one in which only minor changes were made to the language of the original Clause 16.5. It reads:

Should the Committee be considering a negative recommendation or have concerns about the candidate's record of performance, it may request, in writing, additional information from the candidate. The Chair shall forward this request to the candidate, and both the request and any information received, shall be added to the Promotion and/or Tenure File. If, after receiving additional information, the Committee is still considering a negative recommendation, the Committee must request, in writing, a consultation with the candidate.

Most of the language here is unchanged, but some is new, including addition of the phrase "or have concerns about the candidate's record of performance" in the first sentence. That sentence specifies the triggers for a written request to the candidate

You need to know your Collective Agreement, because sometimes, some of your significant others in the tenure and promotion process don't.

for additional information *in writing*. There are two such triggers, and either of them is sufficient: consideration of a negative recommendation, or mere concerns about the record. But the trigger for requesting a consultation with the candidate is *not* equally double-barrelled: the only grounds for requesting a consultation with the candidate is the Committee's continued consideration of a negative recommendation, *even after the candidate has responded in writing*. Mere "concerns about the candidate's record of performance" are *not* sufficient here. In other words, the Committee must have decided to deny Tenure, for specific reasons, and Clause 16.1.1 requires that those reasons be

communicated to the candidate *before* the consultation. The purpose of the consultation is to address those reasons. The consultation is *not* a fishing expedition: its purpose is very clear, and very limited. It is triggered only at a very serious juncture in the process, one where the candidate is facing denial of tenure, and most assuredly some degree of stress. "Considering a negative recommendation" means just what it says: it is not identical to simply not yet having arrived at a decision to grant tenure. Clause 16.1 is intended to protect the candidate by making very clear what is to transpire in the consultation: it gives the candidate the right of reply when his or her written response has been deemed inadequate as an explanation of what the Committee perceives as barriers to tenure.

The consultation is not a shooting gallery, where any and all matters engaging the minds and imaginations of Committee members may be aired at will—and at the candidate's expense. The focus is on the Committee's perceived inadequacy of the candidate's written response, and on his or her right of reply. It is the responsibility of the Dean to ensure that this is understood, and enforced.

The moral of the story

You need to know your CA, because sometimes, some of your significant others in the tenure and promotion process don't. Fortunately, some Deans are reported to be exemplary in this process. Fred Longstaffe, the Dean of the Faculty of Science, is often mentioned in this regard. I've been told that he makes the process crystal clear, and would not permit the kind of fishing expeditions that sometimes occur, to the great anxiety and stress of candidates, in the consultations referred to in Clause 16.1. When it comes to the promotion and tenure process, perhaps the Provost should arrange for Fred to hold compulsory workshops for his decanal colleagues.

Bernd Frohmann is Associate Professor in the Faculty of Information and Media Studies, and a former member of both the UWOFA executive and our Negotiating Team.

Universities Outline Research Commercialization Plan to Province

by Samuel Trosow

In November 2003, the Council of Ontario Universities (COU) and its affiliate the Ontario Council on University Research (OCUR) released a report entitled "*A University Research Strategy for Ontario: A Position Paper Prepared by the Ontario Council on University Research.*" This article will review and critique the OCUR Report, which provides an insight into how the top administration of Ontario universities is approaching the new provincial government.

The Report begins by rehearsing the usual truisms about the importance of university research. Since "the future prosperity and well-being of Ontario's economy and society requires more and better university research," the Report argues that "[t]o be most effective, that research needs a coherent research policy environment, guided by a sound provincial research strategy." OCUR then proceeds to set out its vision of that framework by articulating the general principles of a provincial research strategy, by elaborating on its funding elements, and by proposing a series of "next steps."

Several of the guiding principles are also framed as truisms in terms of what Ontario universities should do ("perform excellent research to international, peer-reviewed standards of competitiveness", "educate an increasing number of undergraduate and graduate students and develop highly qualified personnel needed for industry, business, academe and government", "have a research mission that reflects their institutional mission and their distinctive strengths", and "compete nationally and internationally for research funds and [...] increase Ontario's share of national funding programs.")

But one of the principles is much more direct, pointing to an agenda of increased commercialization:

Ontario universities should actively pursue the

transfer of knowledge from academe to the private and public sectors as well as the commercialization of intellectual property that will have value in the marketplace.

the dispersion of highly qualified personnel to the private sector, licensing, the creation of spin-off companies and the acquisition of venture capital, to ensure that the research has the desired maximum economic and societal impact.

... the federal Advisory Council on Science and Technology (ACST) went so far as to advocate a set of explicit commercialization policies as a condition for the receipt of federal research funding.

Others seem innocuous on first glance, but need to be read very carefully in light of the direct reference to commercialization of intellectual property:

Ontario universities should contribute to local and regional development through such measures as participation in innovation "clusters" and establishing spin-off companies, thereby ensuring job creation, and triggering economic growth within their communities.

and:

Ontario universities should engage in collaborative research partnerships with other universities and with private and public sector organizations (for example, industry, foundations and government agencies), where mutually beneficial.

The Report enumerates the elements of a funding plan to accomplish these objectives. Again, many of these elements are uncontroversial (i.e., increase number of graduate scholarships, enhance the research infrastructure, enhance initial funding opportunities for new faculty). But they also state:

Ongoing support is required to enhance the capability of Ontario universities to engage in knowledge transfer / commercialization, including

The conclusion of the report, framed in terms of "next steps" is very vague and short on specifics. Basically, the report simply urges the government "to consult the Council of Ontario Universities and OCUR on the purpose and design of all research funding programs to ensure their success."

Compared to other reports on the subject, the *OCUR Report* seems rather benign at first glance and not much cause for concern. For example, in the 1999 Report "Public Investments in University Research Reaping the Benefits," the federal Advisory Council on Science and Technology (ACST) went so far as to advocate a set of explicit commercialization policies as a condition for the receipt of federal research funding. The Council sought to add the fourth mission of "innovation" (to teaching, research, and service), looking to the commercialization prevalent under the Bayh-Dole regime in the U.S. as the model Canadian universities should be following. The Council's paper also contained several explicit recommendations, which would have significantly altered the ownership rights in intellectual property resulting from research, tilting the balance away from the creators and in favor of commercial exploitation by the university. While the paper was severely criticized (see "CAUT Opposes Draft Report on Commercialization of Research" http://www.caut.ca/english/publications/nw/19990428_report.asp), it remains an effective blueprint for commercialization against which other documents need to be considered.

While the recent OCUR Report is indeed mild compared to the earlier ACST paper, it

should be viewed as part of the same overall program of commercialization of university research that continues to persist unabated. It should be taken as an early indication of how Ontario university administration

intends to advance this commercialization program with the new provincial government, and Ontario faculty associations must continue to be vigilant in meeting this ongoing challenge.

Samuel Trosow is Assistant Professor in the Faculty of Law and the Faculty of Information & Media Studies.

Communicating with us or at us?

Editorial by David Heap

Last August, when I told some colleagues that I was going to meet with President Davenport and some other Administrators to discuss internal communications, reactions were evenly divided between those who could not stop laughing and those who simply stared in disbelief. Such meetings are however just part of the duties of your elected representatives on the UWOFA Board and Executive. Besides, I was curious to find out what they were up to.

As Albert Katz explains in his report (in this issue), one useful part of that meeting was the discovery that the representatives of other unions and employee associations on campus (collectively known as the 'Unity Group') were at least

as sceptical as we were of our Employers' sudden announcement that they had commissioned a study of internal communications at UWO. This was the first that any of us had heard about this project (a fact which in itself should have raised our suspicions immediately).

Upon questioning, Dr. Davenport revealed that this initiative stemmed from commitments made in UWO's recent strategic plan, *Making Choices*, a surprising revelation to those of us who pressed fruitlessly for the Administration to enshrine some of those 'commitments' (for example, concerning faculty complement) in our Collective Agreement. But apparently not all 'commitments' are created equal. We were told that the cost for this Administration-given initiative was in the range of \$60 000.00 to \$80 000.00 (and probably more,

since they had not initially budgeted for contacting part-time employees and other hard-to-reach groups). That's the cost of our supplementary out-of-country insurance coverage for two years.

As for the survey itself, it was, at best a soporific waste of time. At worst... well, consider for example the questions regarding attitudes towards communications from our Employer or from our Union. One is

Had we been properly involved in the process from the start as partners (rather than merely as subjects), such a survey might have produced interesting, relevant and useful results regarding campus communications.

tempted to conclude that the purpose of such questions was to create or exploit distrust between employees and their Unions. Consider, for instance, Questions 14-16 which are introduced by the disarmingly frank admission: 'The last few questions will help us divide employees into groups'. Not divide our survey responses—divide us.

This UWO 'communications survey' was technically exempted from the Tricouncil Policy Statement (TCPS) on research ethics, based on a determination that this survey was merely a 'quality assurance' study not leading to 'generalisable knowledge', (neither term is defined in the TCPS). Moreover, this survey was exempted from research ethics review *without the actual survey protocol even being scrutinised by anyone* (despite the clear direction from the TCPS that "The opinion of the

REB should be sought whenever there is any doubt about the applicability of this Policy to a particular research project"). Contrast this rubber-stamp approach with the minute probing to which any research protocol proposed by a faculty researcher is subjected: it certainly seems that not all research is held to the same ethical standards.

Ironically, if they really wanted to study internal communications, the place to begin would have been by inviting employees (and other constituencies—like students, perhaps?) to participate in the process from the beginning. Just imagine how things might have turned out if an enlightened Employer had approached us with the idea of improving campus communications, and we had jointly worked out research goals, commissioned a study

together if appropriate, and all had stakes in the results and recommendations for improvement. (OK, stop dreaming now).

Instead, we have an Employer lacking the imagination and will to communicate with us effectively—even to try to reach an agreement to study internal communications together. And this is regrettable, because our membership includes many expert communicators, not to mention statisticians and social scientists skilled at implementing and interpreting surveys. Had we been properly involved in the process from the start as partners (rather than as merely subjects), such a survey might have produced interesting, relevant and useful results regarding campus communications.

Such a collaborative approach might, of course, have been too risky for our Administration: it could have meant for

example possibly having to accept results which do not conform to or support their top-down management worldview. It is much safer, naturally, to 'communicate' at us unilaterally in a process predesigned to produce results guaranteed to be as irrelevant as they are spurious (further information on the unreliability of surveys of this kind can be found at:

www.uwo.ca/uwofa/docs/GPC-review.htm.)

Fortunately, our membership also includes many experts skilled in interpreting non-textual communications. As Albert Katz points out in his President's Report, the full-time limited term contracts being offered to some of our part-time Members certainly do not communicate a message of respect from our Employer for the work that these valued colleague perform (see Tom Murphy's article in this issue for a detailed reaction). Similarly, one of the faculty participants in the 'communications' focus groups pointed out that our non-competitive salaries are an unmistakably clear message from our Employer: "*we don't think you are as valuable as faculty at comparable Ontario universities.*" Not a pleasant message, to be sure, and one which is compounded by our Administration's continued public insistence that our salaries are in fact competitive, an institutional fiction which does not stand up to simple verification (try asking your peers at McMaster or Queen's). This huge gap

between rhetoric and reality often leads to an attitude of cynical mistrust, where employees will assume their employer is lying to them all the time, even when our employer might in fact be communicating truthful information.

So, why this study, and why now? Why not take the time to study the issues properly and involve employee groups in a meaningful process? While it is always tricky attributing motives to actions from SLB, Samuel Trosow's discussion (page 6) of the federal Personal Information Protection and Electronic Documents Act (PIPEDA) and its implications for universities raises an intriguing possibility: was the rush to get the GPC communications survey over and done with in December 2003 by any chance related to the January 1, 2004 deadline when UWO comes under the purview of this legislation? Given the amount of personal information that the initial online survey harvested without participants' consent or knowledge, and without clearly identifying their purpose, it seems more than plausible that the same survey, if conducted a few weeks later, would have been in contravention of a number of PIPEDA principles, as well as research ethics policies. In this light, a couple of gift-certificate prizes might have seemed like a paltry price to pay for avoiding some fairly serious legal responsibilities.

Real, meaningful communication could of course begin at any time and at any level without any costly (and offensive) studies. Bernd Frohmann's article on the Promotion and Tenure process (page 7) clearly shows that certain key sections of our Collective Agreement (CA) are not necessarily well understood by the representatives of our Employer charged with administering the CA (or, indeed, by some of our Members who may be involved in the process). There is obviously a lot to be done educating all concerned about how the CA can and should function. In the last Faculty Times it was suggested that such issues could be addressed in part by joint Employer-Union training sessions for Deans and other CA administrators. Our Faculty Association have yet to hear a response to this collegial invitation.

This last failure to communicate is but one example among many of the real malaise at UWO, as pointed out by one of the focus-group participants: what UWO's Administration really needs is *not* a better 'communications strategy', but rather better messages to communicate.

David Heap is Associate Professor in the French Department as well as a member of the UWOFA Board and Executive.

UWOFA General Meeting

Tuesday, February 17, 2004

11:00 - 1:00 in room K106, Kresge Bldg

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