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# faculty times



Faculty Times is an official publication of the University of Western Ontario Faculty Association

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## President's Column

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# Advocacy about intellectual property at Western

By Stephen G.A. Pitel, UWOFA President

Since the spring of 2017 Western has been preparing a new policy to govern the ownership, control and commercialization of intellectual property. The current plan is for it to be approved by the Board of Governors in April 2018. To protect the interests of our members, UWOFA has been engaged in an advocacy campaign, seeking several changes to the proposed policy. Some of these changes have been made and others remain the subject of debate and discussions.

The initial draft of the policy was unclear as to its application to librarians and archivists. In response to UWOFA's submissions, the policy now addresses these members explicitly. Consistent with the Librarians and Archivists Collective Agreement, it provides that intellectual property created by a librarian or archivist in the course of his or her employment duties shall be owned by the librarian or archivist.

The initial draft of the policy deleted the following long-standing language: "The University recognizes as a fundamental principle that it should maintain complete freedom of research and unrestricted dissemination of information. Research done solely in anticipation of profit is incompatible with the aims of the University." UWOFA considered this principle to be quite important and we requested that it be retained, and it has been restored.

The most important concern for UWOFA is that the policy as proposed requires the "full and complete disclosure to the University" in all cases in which intellectual property will be used for "commercial gain". This includes earning royalties, even when 100 per cent of those royalties are to be retained by the member. The effect of this provision is that members must disclose the creation of every book or article which is contemplated to generate even a minimal amount of royalties.

In response, UWOFA has raised two distinct concerns. The first is that this requirement cannot be imposed in a unilateral university policy. If it is to be imposed, that can only happen through negotiation of such a provision in our Collective Agreements. As they stand now these Collective Agreements contain detailed provisions on the disclosure of intellectual property. They do not require the disclosure

proposed by the policy. In particular, there is no requirement to disclose the creation of intellectual property which, if commercialized by the member, would not result in any revenue sharing with the university (such as the publication of a book or book chapter which will earn royalties). Western should not be permitted, through this policy, to impose conditions that were not negotiated in the Collective Agreements. This is an important point of principle.

UWOFA's second concern is more practical. Whether the requirement is in the Collective Agreement or a university policy, its scope is too broad. We have argued that "commercial gain" should be replaced with "substantial commercial gain" or "commercial gain (beyond a de minimus amount)" so that small amounts of royalties do not trigger this reporting obligation. In our view, actual



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## President's Column



or potential royalties in a small amount are simply not true commercialization of the intellectual property and should not be treated as such.

Another concern is that the proposed language gives significant latitude to the Vice-President (Research) to vary the proposed procedures and to adopt additional procedures. While we understand the efficiencies in this process, as opposed to requiring that the Board of Governors approve all changes, we consider that in light of the importance of these procedures there should be explicit recognition of the importance of consultation. We have suggested that this latitude explicitly require appropriate consultations with those affected.

UWOFA has raised these concerns with the authors of the proposed policy, with all members of the University Senate and with

the Board of Governors. It is important for us to make clear the effects of what is being proposed on our members and to do what we can to improve the policy before it is adopted. This is just one of many technical issues UWOFA engages with over the course of an academic year. While issues of academic freedom and human rights get more of the headlines, these technical issues can have a significant impact on our working conditions and our potential for self-fulfilment. ■



**Stephen Pitel is a professor in the Faculty of Law**

## Jamie Johnston wins Tom Murphy Memorial Award



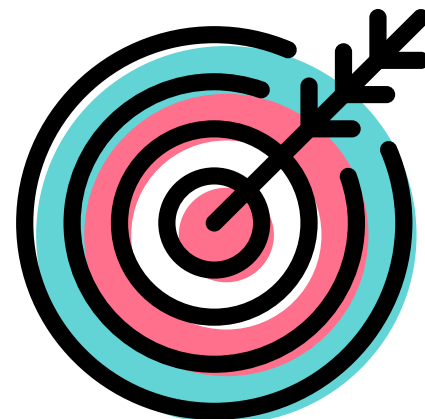
Jamie Johnston, an assistant professor in English Studies, is the 2018 recipient of the Tom Murphy Memorial Award for Outstanding Service to UWOFA. This award recognizes the exemplary hard work and commitment of a contract faculty member to the work of UWOFA.

Johnston has been at the University of Western Ontario since 2007, first as a part-time faculty member and more recently as a limited-term member. He has been actively involved with UWOFA since 2010 as a member of the faculty negotiating team, Executive Committee, Board of Directors and Faculty Representatives Council.

The Tom Murphy Memorial Award for Outstanding Service to UWOFA was established in honour of the late Tom Murphy. Murphy was a long-standing contract faculty member in the Department of Sociology who was involved with UWOFA since certification in 1998, serving on the Board of Directors for four terms, as a member of the Executive Committee, as a member of the Policy and Governance Committee and as a long-standing member and co-chair of the Committee for Contract Faculty.



## Opinion



# Faculty bargaining update on goal development

By Jeff Tennant, UWOFA Chief Negotiator and  
Johanna Weststar, UWOFA Deputy Chief Negotiator

The UWOFA Collective Bargaining Committee (CBC) is currently developing the goals that will form the mandate we take to the negotiating table when we begin bargaining this spring to renew our collective agreement which expires on June 30.

The bargaining goals that will be presented to members of the faculty bargaining unit for approval in late March are the result of an ongoing conversation that began when the current collective agreement was ratified four years ago.

Goal development draws on a number of sources, including experience in administering the current collective agreement, issues that come to our attention at the provincial and national levels, and reports from our members through surveys, emails, and face-to-face conversations.

A number of themes are emerging in the ongoing conversation on bargaining issues that could potentially constitute categories of goals to take to the table.

There is broad recognition among faculty at Western that we need to build on gains made in the last round to address the precarious employment of our contract faculty colleagues.

Western currently has a “teaching stream” in the form of renewable limited-term teaching contracts, but those contracts lack the job security to which faculty in teaching-focussed positions at other universities have access.

Fair compensation will no doubt also be a priority in this round of bargaining, as it was in the last round, considering that full-time faculty salaries at Western continue to lag behind those at comparator institutions.

In addition, we expect to bargain for improved benefits for full-time faculty, for example in the area of vision care and mental health care, and at the same time, to make benefits accessible to part-time faculty, who currently receive a level of pay in lieu of benefits that is inadequate to purchase a benefit plan.

Recent changes in Employment Insurance have introduced coverage for certain kinds of leave (e.g. family caregiver leave for children and adults) that need to be recognized in our collective agreement and for which we think it is appropriate that our employer provide top-up coverage, as is currently the case for pregnancy, parental and adoption leave.



Goal development draws on a number of sources, including experience in administering the current collective agreement, issues that come to our attention at the provincial and national levels, and reports from our members through surveys, emails, and face-to-face conversations.

We are also hearing from our members that we need to address concerns about the way teaching is evaluated at Western, for example as regards the misuse of responses to Student Questionnaires on Courses and Teaching.

Fortunately, only a small number of our members find themselves in the stressful situation of facing allegations of misconduct. In the handful of cases (confidential of course) that have arisen, UWOFA has noted that improvements are needed so that the processes (e.g. for investigating academic fraud and misconduct, and discrimination and harassment) can be made fairer for all involved.

Another area where collective agreement provisions could be improved is retirement. For example, expanded eligibility for phased retirement could allow more faculty members to choose that option, and increased employer contributions to our defined contribution pension plan could help address the real concerns many of us have about our ability to receive an adequate income after we retire.

The bargaining goals, once approved by UWOFA's Board of Directors, will be presented to members of the faculty bargaining unit at a meeting on March 28, 9:00 to 11:00 a.m., North Campus

Building Room 117. After this meeting there will be an online vote to ratify the goals. Please feel free to communicate any thoughts you may have on bargaining issues, those mentioned above or others, to the UWOFA faculty representative in your unit or to us directly: Johanna Weststar (weststar@uwo.ca), Jeff Tennant (jtennant@uwo.ca). ■



Jeff Tennant is an associate professor in the Department of French Studies



Johanna Weststar is an associate professor in the DAN Department of Management and Organizational Studies

## UWOFA's 20<sup>th</sup> anniversary celebration

This spring marks 20 years since faculty at the University of Western Ontario certified as a union. Please join UWOFA members in celebrating this milestone on

**Thursday, April 12 • 2pm–5pm • The Wave restaurant, 340 UCC Building**

There will be appetizers, drinks, music and a trivia competition. We hope to see you there!



## News

# UWOFA celebrates 20 years since certification

By Vanessa Brown

During UWOFA's certification drive, Marjorie Ratcliffe collected her colleagues' signed union cards and took them home with her to keep them safe.

Every night that spring in 1998, she added to the pile – some days it was only a few, other days she dropped a bundle on the growing stack. It soon became clear to Ratcliffe, now a retired Hispanic Studies professor who led the union's certification drive, that she had more than enough signed cards to take to the Ontario Labour Board and file an application for certification.

"It symbolized solidarity," Ratcliffe explained in a recent interview. "All of these people from all of these different departments – different interests and different disciplines – came together on this one issue. It was basically like organizing an election campaign. That's how we ran it, and it worked."

This spring marks 20 years since UWOFA certified as a union through the Ontario Labour Relations Board (librarians and archivists certified in 2004). Certification is a significant event for a union; it legally formalizes the collective bargaining relationship between the employer and employees, shifting and democratizing power relations in a workplace. UWOFA's certification is one of the most significant events in its 63-year history.

It is unquestionably a milestone to be celebrated, said Alison Hearn, UWOFA president from 2014-2015.

"We represent a lot of different types of employees, a lot of different types of faculty and librarians and archivists with a wide variety of political views," she said. "It's a very diverse membership, and that can be a challenging thing to keep

everybody altogether over that long period of time. I definitely think it's something worth celebrating."

Hearn's comments raise a good question: How do you keep a diverse membership of 1,500 faculty, librarians and archivists together during significant changes to the administration of post-secondary education?





**“We represent a lot of different types of employees, a lot of different types of faculty and librarians and archivists with a wide variety of political views,” Alison Hearn said. “It’s a very diverse membership, and that can be a challenging thing to keep everybody altogether over that long period of time. I definitely think it’s something worth celebrating.”**

There has been a concerted effort to diversify UWOFA’s Board of Directors and invigorate the Faculty Representatives Council, a group of faculty stewards who help the union address any workplace issues their colleagues are facing. Also, in the past three years alone UWOFA has seen its first librarian president (Kristin Hoffmann, 2015-2016) and its first contract faculty president (Ann Bigelow, 2016-2017).

UWOFA has also positioned itself as a comprehensive community of scholars that includes contract faculty. Conversations about UWOFA’s history with those who have been actively involved in the union throughout the years always seem to veer toward contract faculty issues. In fact, getting part-time and full-time faculty members into the same bargaining unit was a priority for Ratcliffe and other union organizers. Those leaders believed that the union would ultimately be stronger if everyone worked together to advance the same causes. Improved working conditions for part-time members was a priority since the very first collective agreement was negotiated in 2000. UWOFA’s negotiating team, led by now retired math professor Mike Dawes, was able to secure fairer course scheduling provisions and a salary increase for contract faculty.

UWOFA is a leader among Canadian faculty associations on progressive collective agreement language, Dawes said.

“When you look through the provisions of the collective agreement, there’s a lot of social justice provisions such as anti-harassment procedures and so on,” Dawes said. “A lot of effort went into that right from the beginning, but in the subsequent negotiations it was enormously overhauled. If you compare the provisions that were achieved in the first collective agreement to subsequent revisions, there’s considerable improvement. So things like that have given Western something of a leadership position in faculty unions.”

Although everyone interviewed for this story spoke with great pride of UWOFA’s achievements throughout the years, all touched on the fact that there have been many bumps along the way. This milestone would not have occurred without a significant amount of hard work, they added.

While he enjoyed the negotiating process, Dawes spoke of the steep learning curve involved in familiarizing himself with the various regulations and precedents tied to the Labour Relations Act. Then came the process of learning to write contract language, which utilizes a different approach than most academics are used to. There were also heated discussions about contract proposals, Dawes said.

As UWOFA enters its third decade since certification, unions are as crucial as ever in every aspect of the workplace. The five-week Ontario college faculty strike last fall saw instructors walk the line primarily over contract faculty issues. Hearn is convinced that unions, especially in the higher-education sector, are “the mechanism in and through which real challenges to administrative decisions and government decisions even can be mounted.”

“Unions are crucial because there are no other mechanisms, really, for people to come together and talk about what it is that’s shaping their working environment, and what their issues are and how they’d like to see those problems resolved or improved. The union form is really the only way that that is happening, meaningfully, on campuses.” ■



**Vanessa Brown is UWOFA’s communications officer**



## Opinion



# Protecting our fair dealing rights

By Samuel E. Trosow

The federal government is currently conducting a five year review of the Copyright Act. While there are several important policies that will be discussed, the most significant for the educational community is fair dealing. It is also likely to be the most contentious. Fair dealing is the limited right to make copies (present performances) without payment or permission and is intended to add an element of balance to our copyright laws between the rights of owners and users of works.

Prior to 2004, fair dealing rights were very limited, but this changed with the Supreme Court's decision in *CCH v Law*

*Society of Upper Canada*. In that case the unanimous court held that while fair dealing is considered a defense to an action for infringement, it is better thought of as a users' right which is an integral and underlying part of the Copyright Act. The court also emphasized that the fair dealing categories should be given a broad and flexible interpretation so that users' rights not be unduly restricted. More recently the court has clarified and expanded on fair dealing and the 2012 amendments to the Copyright Act added "education" as one of the fair dealing categories.

Unlike in the United States (where fair dealing categories are open-ended),

Canadian fair dealing has been limited to specific categories of uses; research, private study, criticism, review and news reporting. The 2012 amendments added the categories of education, parody and satire. In addition to first coming within one of these categories, fair dealing also requires an analysis of the six fairness factors developed by the CCH court. They are (1) the purpose of the dealing; (2) the character of the dealing; (3) the amount of the dealing; (4) alternatives to the dealing; (5) the nature of the work; and (6) the effect of the dealing on the work. In adopting a flexible approach to fair dealing, it is important to recognize that these factors are considered in a



**As both users of existing works and creators of new ones, we understand the importance of maintaining an appropriate balance in the Copyright Act. It is important for all members of the educational community to recognize the important role that fair dealing has played in the promotion of teaching, learning, scholarship and research.**

holistic manner and from the point of view of the end user. This is not a list that must be checked off, no one factor takes precedent over the others, and it is always important to consider the context of the use and all of the surrounding circumstances.

A more detailed set of copyright guidelines that further explain these fair dealing factors and other copyright issues has been developed for the campus community and is online at [www.uwo.ca/copyright](http://www.uwo.ca/copyright).

Parliament and the courts have created a balanced system that gives educators, researchers and students some needed protections against the threat of infringement liability for typical day to day teaching and learning activities. But these gains are now being threatened. The publishing industry and other owners' rights groups had lobbied against adding education as a fair dealing category and they are currently engaged in a campaign to have it removed as part of the review. In trying to undo some of the important reforms of the last decade, the industry wants to return to the days when educational copying was limited to situations where costly licenses were first obtained.

As both users of existing works and creators of new ones, we understand the importance of maintaining an

appropriate balance in the Copyright Act. It is important for all members of the educational community to recognize the important role that fair dealing has played in the promotion of teaching, learning, scholarship and research. Our voices need to be heard in the current legislative review of the Copyright Act. Groups like the Canadian Association of University Teachers, the Canadian Association of Research Libraries, the Canadian Federation of Students and other groups have remained active on this issue and they deserve our support in preserving these important rights. Watch for more details about how you can become involved in these efforts. ■



**Samuel Trosow is an associate professor jointly appointed in the Faculty of Law and the Faculty of Information and Media Studies**

**UWOFA  
WORKS**



[uwofa.ca](http://uwofa.ca)

**To Defend Academic Freedom**

## UWOFA Works

UWOFA has developed a poster series that highlights academic freedom, contract faculty, community mobilization and student scholarships. Members who would like copies are encouraged to contact Vanessa Brown, UWOFA communications officer, at [vbrown5@uwo.ca](mailto:vbrown5@uwo.ca)



## Opinion



# Election uncertainty and post-secondary education

By James Compton

Election time will soon be upon us. The 42nd Ontario general election is scheduled to be held on or before June 7, 2018. For political junkies like me this is a lot of fun. I'm drawn to the uncertainty of it all and the raw politics of competition for popular support. But beyond the spectacle of the political horse race lies the much more sober and serious consideration of public policy. Dropping the writ is a constitutional convention that opens a liminal space full of possibility and potential for social and economic change. Change, of course, is in the eye of the beholder. The cry of "It's time for change" is a perennial favourite of all opposition parties, while governing parties usually settle into some form of its narrative opposite.

Perspectives on the social good vary depending on one's political persuasion. But what about post-secondary education (PSE)? What are the issues confronting educators across the province, and what have the three political parties said about them? There are many, but I'll focus on three: funding; faculty renewal; and fairness for contract academic staff (CAS).

Public funding for higher education has been in decline across the country and in Ontario since the 1980s. In 1987 close to 80 per cent of operating revenues came from the government; today it is below 50 per cent. In Ontario this problem is particularly acute. Considered on a per-student basis, Ontario is in last place among all provinces.

In 2008/09 the Ontario government contributed \$8,486 per student in current dollars. Today that number stands at \$7,692. The Canadian average is \$12,562, with Newfoundland claiming the top spot, spending \$24,252 per student. To make up for this decline tuition fees have been allowed to rise, with Ontario now holding the ignominious position of having the highest payments in the country. Fees for international students have also risen, creating barriers to entry for students.

The decrease in public funding for PSE has also negatively affected faculty renewal. If you've noticed that your classes have become larger over the years, you're not alone. Ontario has the worst student-to-

faculty ratio in the country. In 2016/17 the national average was 22 students for every full-time faculty member at a university. In Ontario it was 31 students, according to figures provided by the Ontario Confederation of University Faculty Associations (OCUFA). This has serious impacts on the quality of teaching.

The over-reliance on poorly paid CAS at universities and colleges has gained significant attention in the last few years, and for good reason. OCUFA estimates that the number of courses taught by CAS in Ontario nearly doubled since 2000. The fight against this trend has spread in the past few years, and UWOFA can claim to have played a role in the growing public awareness of the problem having made gains for CAS a key bargaining goal in our 2014 negotiation round.

So what have the parties said about all this? Well, for the most part we have no clue. As I write this short column, the Ontario Progressive Conservative Party is mired in scandal and internal party intrigue as they begin the process of choosing a new leader. They did have a party platform. The “People’s Guarantee” was released to quite a bit of fanfare at the party’s policy convention in Toronto last November. But it has since been scrubbed from the party’s official website, while some of the leadership candidates have disowned it. What about the NDP? A visit to the party’s official website at the time of writing found four key issues: Ontario Hydro rates; seniors care; universal

Pharmacare; and mental health services. All important issues, but nothing on PSE.

for enrolment growth beyond that target. However, if enrolment falls more than 3 per cent (the lower end of the corridor) provincial operating grants will fall, but the school won’t lose all of that per-student funding.

Critics have suggested this new model will help smaller northern universities, such as Laurentian, where enrolment is expected to slide, but that it will hurt larger southern schools, like Western, where enrolment growth is expected to continue. One thing appears certain, though: it won’t move Ontario up the provincial rankings for PSE funding.

What to do? My only suggestion is to press your local candidate for further information on their PSE policies. As I’ve said, elections are full of uncertainty, and on this score, the 2018 race won’t disappoint. ■

**The Liberal government has made fundamental changes to the funding model. In the past, universities and colleges received money tied to their enrolment. That is changing. Under the new plan – dubbed Corridor Funding – universities will have to keep enrolment within 3 percentage points of a target that has been negotiated...**

That leaves the governing Liberals, who unlike the opposition, can be judged on their legislative record. Are they going to improve public funding for PSE? Here we have a concrete policy to examine. The Liberal government has made fundamental changes to the funding model. In the past, universities and colleges received money tied to their enrolment. That is changing. Under the new plan – dubbed Corridor Funding – universities will have to keep enrolment within 3 percentage points of a target that has been negotiated between each institution and the provincial government. Funding will not be available



**James Compton is an associate professor in the Faculty of Information and Media Studies. He is CAUT president and a former president of UWOFA**