

FA Executive July 1, 2011 – June 30, 2013

President:	Jacqueline Holler
Vice-President:	Erik Jensen
Past President:	Lee Keener
Secretary & Member-at-Large	
SLI representative:	Julie Orlando
Treasurer:	Raymond Cox
Members-at-Large:	
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Librarian representative	Gail Curry
Term representative	Wendy Fellers
Grievance Officer:	Kerry Reimer
Executive Director:	Donna Plourde
Administrative Assistant:	Helen Sideen

Upcoming Faculty Association Events:

Luncheon for New Members
Date/Time: Friday, September 7th
12:00 noon – 1:00 pm
Place: Faculty Association Office
Rm. 3085 Administration Bldg.

Fall Annual General Meeting
Date/Time: Friday, October 26th
12:00 noon – 1:30 pm

Upcoming UNBC Events for Members:

2012 Faculty Orientation*
Date: Tuesday, August 28th
(*Sponsored by the Centre for Teaching, Learning and Technology)

UNBC and CNC 10th Annual Teaching and Learning Conference*:
“Reflections: A Celebration of Teaching and Learning”
Date: August 29th – 30th
(*Sponsored by the Centre for Teaching, Learning and Technology)

For more information on these CTLT events, visit:
<http://www.unbc.ca/ctl/>

A MESSAGE FROM THE PRESIDENT

Jacqueline Holler, President

It is upon us. If the sun has been an unreliable indicator, there have been others: the carpet of caterpillars on the roads west of the city, the full-scale irruption of paving crews, and even—yes—the Kings’ winning the Stanley Cup. Some might take at least two of these as signs of doom, but I of course refer to the belated arrival of spring. And with the official arrival of summer just around the corner, I hope you have a good start on your summer research and, perhaps, just a little bit of time for relaxation.

The Association office continues to be a busy place, most notably because of negotiations. As Chief Negotiator Darwyn Coxson explains in this newsletter, this round has progressed much more slowly than we might have wished, in large part because of our provincial government and the increasingly onerous burdens PSEC places on public-sector employers. But there’s a more local part to what we’re seeing at the table, too, as Darwyn discusses. And while the BC government delays bargaining and issues gloom-and-doom statements about cuts to post-secondary education budgets, our salaries at UNBC continue to slip lazily toward the very bottom of the pond. Slow may be good in food and dancing, but certainly *not* in negotiations or salary progression, as we will remind the administration when we reconvene in the fall. I would like to thank our team for their dedication and hard work through this first phase of negotiations, and wish them all the best for the autumn reprise.

As FA President, I chaired one of the University Achievement Awards committees this spring. I would like to thank all of the many members who submitted nominations, who accepted nominations and prepared applications, and who took on the job of adjudicating. As you know, the awards replaced the previous merit awards, which in turn were a replacement for our old broad-based merit system. After the process was concluded, the Joint Committee sponsored a feedback session to solicit your input; in addition, many of you took the opportunity to talk to or email me and other members of the FA team to share your opinions of these awards. Your thoughtful feedback and your concerns are greatly appreciated, and rest assured that your voices have been heard. One of the things that struck me most about the comments I received was that the philosophy of such awards, and of merit systems in general, remains a matter of discussion and debate. What do we hope to achieve when we offer awards? How do we know when we’re doing a good job? These—along with the more technical questions, of course—are serious matters with which we’ll grapple as we review the feedback at the JC level. In the meantime, one thing that *is* certain is that we had a fine group of nominees and award recipients, and we offer congratulations to all of them.

Another issue that continues to develop is that of copyright. We have had a bit of a honeymoon lately, but we are still under pressure to adopt Access Copyright’s new model licence, which brings with it not only a fee but acceptance of a number of dubious propositions on the nature of copyright and fair dealing. As you know, Access Copyright has announced a deal whereby universities can “buy in early” on the model licensing agreement signed by AUCC. This one-shot deal required institutions to register their intent to join by 15 May 2012. If that sounds a little like a Ponzi scheme rather than academic policy-making, well, it should be remembered that we’re talking about Access Copyright. Some institutions jumped the gun (Western and Toronto), while others reluctantly signed on (Queen’s, Calgary, Victoria). Still others have refused. With deadlines for formal acceptance looming, UNBC appears to be still weighing its options. In this newsletter, we have reproduced a very substantial discussion of why we should opt out, produced by Dr. Michael Geist and available on his blog. Letters from some of the institutions that have opted out are also interesting reading, and appear at the URLs listed below. I urge all members to review these materials, and to make your voices heard on this very important issue.

Windsor: <http://web4.uwindsor.ca/units/leddy/leddy.nsf/CopyrightUpdateMay2012!OpenForm>

Athabasca: <http://president.athabascau.ca/messages/index.php?id=109>

UBC: <http://www.broadcastemail.ubc.ca/2012/05/15/ubc-is-not-signing-a-license-agreement-with-access-copyright/>

Winnipeg: <http://www.winnipegfreepress.com/local/u-of-w-rejects--copyright-deal-as-money-grab-152135325.html>

Finally, while not all of our members received awards at May's convocation, I certainly feel that surviving another winter in the boreal forest, and coming through another academic year, are in many ways their own reward. Thank you to all of our members for your good work in serving students, in pursuing research, in professional practice, and in the challenging and rewarding service work of running a collegial university. That so many of you are also engaged in service to your disciplines and communities is further testament to your integrity and commitment to the complicated business of being an academic. I wish you a happy, peaceful, and productive summer.

CONGRATULATIONS TO OUR 2012 UNIVERSITY ACHIEVEMENT AWARD RECIPIENTS!

In the inaugural year of the University Achievement Awards (UAA), Members of the Association were recognized for their outstanding achievements and contributions in the areas of research, teaching, service, and professional practice/mentorship/-stewardship. A call for nominations for these awards was sent out in March 2012, and award recipients were acknowledged at the Convocation Ceremonies on May 25, 2012. The strengths and achievements demonstrated by all of the nominees for these awards are truly outstanding, and certainly posed a challenge for the Award Committees to select recipients. The Faculty Association congratulates all nominees for these awards, and especially the recipients:

Achievement Award for Professional Practice, Stewardship & Mentorship

Ron Thring (Environmental Engineering)

Achievement Award for Research

Sungchul Choi (Business)

Darwyn Coxson (Ecosystem Science & Management)

Roy Rea (Ecosystem Science & Management)

Youmin Tang (Environmental Science)

Achievement Award for Service

Michael Gillingham (Ecosystem Science & Management)

Peter Jackson (Environmental Science)

Kathy Lewis (Ecosystem Science & Management)

Blanca Schorcht (English)

Achievement Award for Teaching

Alex Aravind (Computer Science)

Scott Green (Ecosystem Science & Management)

Jason Lacharite (Political Science)

Loraine Lavallee (Psychology)

Feedback from Members on the UAA (awards criteria, terms of reference, and administrative processes) was solicited shortly after the conclusion of the inaugural awards process and we wish to thank all of our Members who took the time to provide us with their valuable comments. Your comments and suggestions will be forwarded to the Joint Committee for review prior to the next call for nominations in the Fall 2012 semester.

WHY RESTRICT MANAGEMENT RIGHTS?

Darwyn Coxson, Chief Negotiator

The University and Faculty Association have been conducting negotiations on renewal of the Faculty Agreement for almost two months now. No discussions have been held on monetary issues and the University has postponed discussions on articles tabled by the Faculty Association that may have a monetary impact. In fact, last week, despite having recently received PSEC approval in principle, the University indicated they would not be able to table any proposal on compensation to the Faculty Association until late Summer or early Fall, as further clarification was needed from PSEC on details of the University's proposal (public sector proposals must first be vetted by PSEC, the provincial government body charged with overseeing of public sector wage settlements).

So what has been agreed upon at the bargaining table to date? Agreement in principle has been reached on a majority of the non-monetary articles that were opened for negotiations. Many of these agreed-upon changes deal with housekeeping issues, removing references to one-time outdated events or fixing cross-references. Bargaining on several major articles, such as tenure & promotion and workload, is continuing. Unfortunately, on several issues the University has refused to enter into discussions, stating they will not agree with any changes to the Faculty Agreement that would restrict management rights. While this has been a part of the B.C. provincial government's mandate to public sector employers for several years now, it is being interpreted in a much more literal manner by UNBC in this current bargaining round.

The instruction not to agree to any language that would restrict management rights is almost an oxymoron in the context of collective bargaining. In essence, the whole of the Faculty Agreement is a restriction on management rights. So why were these restrictions on management rights agreed to in the first place? One of the major restrictions on management rights in the Faculty Agreement is that recommendations on many career decisions come from committees of peers. Other restrictions include the right of Members to appeal decisions to internal review committees, which uphold or overturn senior management decisions. Certainly, these provisions are a restriction on management rights. However, in practice, having these procedural safeguards built into the Agreement means that courts and arbitrators have been very reluctant to interfere or overturn properly constituted University decisions that have reached the end of the internal appeal process.

These restrictions on management rights thus ultimately strengthen the validity and credibility of decisions on career progression made within the University. The Faculty Association's negotiating team was surprised in this bargaining round by University proposals to remove decision-making authority from peer-review committees, and instead have these decisions made solely by senior administrators. This seems like a strategy for short-term gain (quick management decisions) in exchange for long-term pain (decisions that will end up being appealed by Members to the courts or external arbitrators). The Association and University are still discussing these proposals.

The Association remains concerned by the declining status of Member salaries at UNBC. Faculty salaries at UNBC are now among the lowest in the country,

especially when presented as career earnings. Recent settlements highlight this growing disparity. The annual salary increment for an Associate Professor at Brandon University is now \$2,598; at UNBC the annual salary increment (CDI) for an Associate Professor during the first three years in rank is \$2,222, and subsequently drops to \$1,111 annually. For a Full Professor at Brandon University, the annual salary increment is now \$3,155; at UNBC it remains at \$1,111 annually commencing at the fourth year in rank. The effect of our very low CDI values is that the longer one remains in rank at UNBC, the lower career salaries will be in comparison to almost any other Canadian University.

Faculty Negotiations with the Administration commenced April 25th. Throughout the negotiations, your Negotiations Committee will be posting regular updates on the Association website:

www.unbcfa.ca

Stay in touch with our website and keep informed!



BARGAINING FROM INSIDE A SHRINKING BOX

*Robert F. Clift, Executive Director,
Confederation of University Faculty Associations of BC (CUFA-BC)*

I recently attended a meeting of the Ontario Confederation of University Faculty Associations (OCUFA) where I reported on a number of things going on in BC’s post-secondary education sector, including the progress in bargaining between faculty associations and university administrations.

Trying to explain the BC Public Sector Employers’ Council (PSEC) to our Ontario colleagues and the effect it has on public sector bargaining in BC was like trying to explain to a duck how to put on a pair of pants--the concept was completely alien to them.

The basic principle of contract law is the exchange of a consideration, often money, for goods or services. Bargaining is the process by which the parties to a contract agree to a fair exchange. There are many factors that influence the process of bargaining and what the parties believe to be a fair exchange. But fundamentally, the parties are free to decide what kind of arrangement works best for them. This is not the case in the BC public sector.

In this round of bargaining, the provincial government, through PSEC, has once again claimed the right to predetermine: the maximum length of contract (2 years); the maximum across the board salary increase (currently a secret, but apparently no more than 1.5%); that there will be no substantive changes in salary structures; that market forces are irrelevant in retaining faculty members; that quantity of instruction is more important than quality of instruction; and that merit pay is more important than a fair salary progression.

So, what does that leave to bargain? Not much. We can play cat and mouse with the university administrations

trying to figure out how large is the secret across-the-board salary increase. We can tinker with the benefits so long as we can find savings in our existing agreements. We can continue to try to limit the arbitrary power of senior administrators to meddle in the professional lives of our colleagues.

Don’t get me wrong--these are important matters that should and must be bargained.

But the absence of free collective bargaining has sucked the vitality and creativity out of the bargaining relationship. When we should be using all the tools available to us to maintain high quality teaching and research in a tight fiscal environment, the provincial government instead constrains our bargaining into ever shrinking boxes.

Collective bargaining is not the solution to every problem facing the universities, but boxing it in certainly isn’t solving anything.

A lengthy but insightful analysis of access copyright.....

WHY UNIVERSITIES SHOULD NOT SIGN THE ACCESS COPYRIGHT – AUCC MODEL LICENCE

A blog by Dr. Michael Geist, law professor at the University of Ottawa and Canada Research Chair in Internet and E-commerce Law.

Copyright has emerged as a hot issue on Canadian university campuses in recent weeks as schools consider whether to sign the Access Copyright model licence negotiated with the AUCC. Several schools, including UBC, Athabasca, Windsor, and Winnipeg have already indicated that they will not sign the licence, while others (such as Queen’s, Victoria and Calgary) have reluctantly signed the letter of intent. Many groups have voiced their strong objection to the licence, including the CAUT, APLA, BCLA, MLA, CFS, and CASA. These groups represent faculty, students, and librarians - the three groups within education most affected by the model licence.

Last week, I was asked by the Association of Professors Ottawa, the University of Ottawa faculty union, for my views. I opened my remarks by emphasizing a key misconception often fueled by Access Copyright and its supporters. The question being faced by the universities is not whether to pay for copyright works. Universities, faculty and students currently spend millions of dollars every year on copyright materials and will continue to do so. The only question is whether - in addition to existing expenditures on books, licences, and in support of open access - they should also pay the \$26 per student fee to Access Copyright.

I believe the answer is no for the following six key reasons:

1. The Licence is Unnecessary

As many have pointed out, the universities already pay for access to a wide range of materials that likely cover the majority of copyrighted materials used on campus. Campus wide electronic database licences offer access to thousands of journals and electronic books that can be incorporated directly into electronic coursepacks. Universities pay millions of dollars for these licences with the money flowing to database companies, publishers, and authors. For example, last year the Canadian Research Knowledge Network alone spent over \$96 million in content licences that offer access to millions of

articles to 900,000 students and researchers at 75 universities across the country.

Moreover, open access licensing, where research publications are freely available online, constitutes a growing percentage of published research (some estimate it at 30 percent of all scholarly research), with thousands of open access journals and hundreds of thousands of articles posted directly by the researchers themselves. As Cory Doctorow might say, there will never be less work available under open access than there is today.

Add public domain works, fair dealing, hundreds of millions spent on textbooks, and pay-per-use licences for the remaining works and an Access Copyright licence simply becomes unnecessary.

2. The Licence Does Not Adequately Account for Bill C-11

One of the primary concerns with the Access Copyright model licence is the failure to account for forthcoming changes to Canadian copyright law under Bill C-11. The bill seems likely to become law by the summer and it includes several important provisions for Canadian education institutions.

First, the expansion of fair dealing to include a new category of education expands the scope of permitted copying without the need for permission or compensation. While the new education category will not mean that all copying on university campuses is covered by fair dealing (as some in the publishing community have misleadingly claimed), it will obviously include some educational copying that may not have been covered by research or private study.

Second, the inclusion of an exception for publicly available materials on the Internet covers the content found on millions of websites that can now be communicated and reproduced by educational institutions without the need for permission or compensation. The provision states:

30.04 (1) Subject to subsections (2) to (5), it is not an infringement of copyright for an educational institution, or a person acting under the authority of one, to do any of the following acts for educational or training purposes in respect of a work or other subject-matter that is available through the Internet:

- (a) reproduce it;*
- (b) communicate it to the public by telecommunication, if that public primarily consists of students of the educational institution or other persons acting under its authority;*
- (c) perform it in public, if that public primarily consists of students of the educational institution or other persons acting under its authority; or*
- (d) do any other act that is necessary for the purpose of the acts referred to in paragraphs (a) to (c).*

The subsections that follow create several conditions, including attribution, the absence of a digital lock, and the absence of a clear opt-out notification (that is more than just a copyright notice). As I noted in an earlier post, this provision is certainly applicable to linking to online content and will also cover many other online materials used in the classroom.

Third, the non-commercial user generated content provision may also prove relevant for some electronic casebooks that incorporate materials to create a new work for non-commercial purposes. The UGC provision (Section 29.21) includes four conditions including an analysis of "substantial adverse effect", but the provision

may allow for the development of new materials where the evidence suggests that the new works do not substantially adversely affect the original works.

Fourth, the bill establishes a technology-neutral approach for the reproduction of materials for display purposes. The current law is limited to manual reproduction or on an overhead projector. With Bill C-11, the provision applies to any display technology:

It is not an infringement of copyright for an educational institution or a person acting under its authority for the purposes of education or training on its premises to reproduce a work, or do any other necessary act, in order to display it.

There are limits to this exception (it applies where the work is not commercially available in a medium that is appropriate for the purpose referred to in the exception), but it still may cover uses that Access Copyright would prefer to licence. For example, concerns about the inclusion of copyright-materials in powerpoint presentations may be covered by the new display provision.

Fifth, the digital inter-library loans provision, while restrictive, will open the door to digital transmission of materials on an inter-library basis, increasing access to materials that have been acquired by university libraries.

Sixth, the bill features changes to the statutory damages provision that decrease the risk of significant liability for educational institutions. Those changes are discussed further below.

All of these provisions represent significant changes in the law that provide new rights for education, yet the model licence seemingly acts as if they do not exist.

3. The Legal Risk of Not Signing is Limited

The University of Victoria notes in its announcement that it is reluctantly signing the model licence stating "the decision to opt into the license was taken reluctantly as a strategy to mitigate the risk of litigation by Access Copyright in the immediate future." Yet the legal risk is already very limited. First, the Supreme Court of Canada's CCH decision, still the leading decision on fair dealing, speaks of the need for a "large and liberal" interpretation to fair dealing categories such as research "to ensure that users' rights are not unduly constrained." Fair dealing certainly provides considerable latitude for copying at Canadian universities and would be the first line of defence against a claim of infringement. Indeed, the recent Georgia State University fair use case in the United States demonstrates how user rights/copyright exceptions can be used as an effective defense against many claims of infringement (Ariel Katz argues that Canadian defences would be even stronger than those in the U.S.).

Second, there remain considerable doubts about the Access Copyright repertoire, both with respect to its scope and the need for evidence of copyright ownership or rights in specific works. Access Copyright is viewed by many as vulnerable on both of these fronts, creating significant legal risk for the collective should it choose to pursue litigation against a university operating outside the model licence.

Third, Bill C-11's statutory damages reforms limit the potential liability for non-commercial infringement. The bill will establish a cap of \$5,000 maximum for all infringements involved "if the infringements are for non-commercial purposes." Given the non-commercial status of educational institutions and the absence of any profit

motive in these cases, the new statutory damages cap may be applicable. While Access Copyright could seek actual damages, the Georgia State University case demonstrates that actual damages may be even lower in many cases.

Fourth, concerns that universities will offload copyright liability onto faculty are unfounded. Universities rightly advise faculty to follow appropriate copyright guidelines to ensure that their policies are consistent with the law. However, should a faculty member overreach with their copying practices, it is incredibly unlikely that they will face a lawsuit (and even if they did, litigation insurance would cover the costs). The copying involved would be so small that there simply are insufficient damages to justify a lawsuit. Consider a faculty member that makes 50 or 100 copies of an article for their students. Leaving aside all the available exceptions, the damages from the copying would be tiny (capped at \$5000 but likely to be much, much less). Given the legal costs and risks associated with losing such a suit (imagine a court ruling that education under fair dealing covered those classroom copies), these are lawsuits that will not happen.

While none of this suggests that universities can simply copy what they like without addressing the issue of permissions (they clearly cannot), assuming a university has developed an appropriate copyright policy as well as invested in site licences and the necessary copyright clearances, the risk of liability should Access Copyright sue is limited.

4. The Licence is Inequitable

The Access Copyright decision to blend two separate fees into one creates significant inequalities among students. At the moment, all students pay \$3.38 annually to cover general copying on campus (the interim tariff) and an additional 10 cents per page for course packs. The new licence establishes a single fee of \$26 per student. This creates a huge jump in costs for the majority of students. The majority of faculties - sciences, law, health, medicine, dentistry, and engineering - make very little use of the Access Copyright licence for course packs since their materials are typically either texts, available under open access, or can be accessed through alternative licensed databases (as is the case in law).

For those students, the only fee they currently pay is the \$3.38 per year. If their university signs the model licence, they will be paying \$26 next year for next to nothing. The incidental or general copying is almost certainly covered by fair dealing and these students don't use course packs with materials necessitating an Access Copyright licence. It is inequitable to compel these students to pay additional fees with no value in return, particularly as some of these students already pay the highest student fees on campus.

5. The Licence is Harmful

Some institutions may believe signing the agreement is the best way to limit their legal risk, yet the reality is that the licence is not neutral in the sense that it simply results in higher fees for students (or costs for the institution) in return for reduced legal liability. The model licence is harmful in two important respects. First, as CAUT has pointed out, the licence contains very problematic language that raises the prospect of surveillance as well as restraints on scholarly communication, use of scholarly materials, and use of modern technologies.

Second, providing Access Copyright with millions in additional funds that may not be necessary will serve to

undermine educational concerns in current and future copyright reform. During the Bill C-32/C-11 debate, Access Copyright was the leading opponent of educational interests, opposing virtually all educational exceptions in the bill. In fact, Access Copyright spent millions last year (over 30% of its licensing revenues) on Copyright Board applications and professional fees, including lobbying on Bill C-11. When universities provide a windfall of millions to Access Copyright, much of that money is funneled toward advocacy opposing education concerns.

6. The Licence Hurts Long Term Education

As I discussed in a column last week, the emerging education model flips the current approach of expensive textbooks, closed research, and limited access to classroom-based learning on its head, instead featuring open course materials, open access to scholarly research, and Internet-based courses that can simultaneously accommodate thousands of students. Over the past year, dozens of universities have spent thousands of dollars in shifting toward a more open approach by investing in open access and open educational resources.

The University of Victoria claims that it will continue that effort so that it can adopt an open access approach in 2015. Yet many universities signing the Access Copyright model licence will simply write-off the recent investments, particularly given the huge increase in costs they will face. The long-term impact on those schools will be significant. Rather than focusing on open materials and greater flexibility for faculty and students, they will lock into the Access Copyright model of high fees and limited rights to use course materials. As a model for the future, the model licence is a major step backward.



UNIVERSITIES AND COLLEGES WAIT TO SEE WHERE AXE WILL FALL IN BC
Justine Hunter
(The Globe and Mail, published Thursday, June 7, 2012)

This summer, the woman whose audits exposed high spending at BC Ferries, BC Hydro and the Vancouver School Board is turning her sights on British Columbia's post-secondary institutions.

Advanced education is the one sector that has been singled out for budget cuts in Premier Christy Clark's fiscal plan. And it is the one part of the public sector that her chief rival, Adrian Dix, has promised would get a cash injection should the New Democrats win the next provincial election.

Cheryl Wenezenki-Yolland is the deputy minister for advanced education. On July 11, she will sit down with university presidents in a Vancouver hotel to help them see the wisdom of finding ways to reduce costs.

As the former comptroller general of B.C., Ms. Wenezenki-Yolland is the government's go-to watchdog on spending reform. The B.C. Liberals' objective is to bend the cost curve down on post-secondary spending, as they did with mixed success by cajoling the province's health authorities to pool resources.

But cutting advanced education right now is counter-intuitive, given that B.C. business leaders are raising the alarm about a skills shortage.

And the problem will only grow in the coming decade.....

Read the full Globe and Mail article at:
<http://www.theglobeandmail.com/news/british-columbia/universities-and-colleges-wait-to-see-where-axe-will-fall/article4240856/>

The Faculty Association Office now has a drop-off basket for personal amenities (i.e. shampoo, soap, lotions) that are provided to travelers in most hotels and resorts, and are included in the rate charged per room per day. Please collect and bring any unopened personal amenities to the Faculty Association Office and these will be donated to the Elizabeth Fry Society and other shelters in our community.

Check out these publications available on loan to Members through the FA Office:

The Art of University Teaching

“Despite increasingly market conceptions of universities, students are not just ‘consumers’ of information, they are ‘producers’ of insight.”

George Melnyk & Christine Mason Sutherland



Multiversities, Ideas, and Democracy

“...in the contemporary world, multiversities need to be conceptualized in a new way, that is, not just as places of teaching and research, but as fundamental institutions of democracy.”

George Fallis



Faculty Association Office: The Faculty Association Office is located in Rm. 3085 Administration Building.

Office hours: Monday–Friday, 8:30am – 4:30pm
Drop-in hours: Monday–Friday, 8:30am – 12:00pm
By appointment: Monday–Friday, 1:00pm – 4:30pm

Please note that during Faculty Negotiations, office hours will be limited; we appreciate your patience and understanding.

Contact Donna Plourde at 250-960-5816 or email at dplourde@unbc.ca to schedule an appointment. Information on the UNBC Faculty Association is also available on our website at: www.unbcfa.ca