

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 Howard
Treasurer:	Raymond Cox
Members-at-Large:	
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Librarian representative	
Term representative	
Grievance Officer:	
Executive Director:	

Upcoming Faculty Association Events:

Spring General Meeting
March 2013

Upcoming UNBC Events for Members:

2012-2013 Presidents' Roundtable Series

1. Academic Freedom (February 2013)
2. Future of Humanities (April 2013)



A MESSAGE FROM THE PRESIDENT

Jacqueline Holler, President

As the snow settles over campus once again and mounds at the east end of the parking lots, it's clear that the holidays are almost upon us. I hope that your exams have concluded and that the work of grading is winding down too—and that you'll find time between the 21st and the New Year for at least a day or two of rest and relaxation.

Like Santa Claus, your association has been very busy over the past months; unlike Santa Claus, however, we're unable to put a new collective agreement under your tree. Despite being very diligent elves indeed, our bargaining team was, as you know, unable to conclude a fair and satisfactory agreement with the administration. The update I sent out early this week details some of the reasons, which were discussed more fully in our recent membership meeting. Many thanks to all of you who attended that meeting; thanks too to those many members who attended President Iwama's open house earlier this week and shared their concern about our

compensation scheme and the apparently eroding place of faculty in the university's vision. The support you have shown to the work of the association—both at those meetings and in countless emails and conversations—is invaluable. The UNBC-FA remains committed to defending and advancing your interests and the principles of fairness and equity.

Given recent comments in the *Prince George Citizen* about the relative youth of our membership, talking about Santa in this newsletter might not seem inappropriate. But for most of us, excitement about presents and stockings is a lot farther in our past than retirement is in our future. In this newsletter, Chief Negotiator Darwyn Coxson takes on the UNBC demographic. Prince George's healthy lifestyle and UNBC's strangely demanding stairs may keep us looking remarkably fit—but we *aren't* the whippersnappers we may seem to some to be. Read Darwyn's report for a discussion of this issue and other salary-related concerns.

As we've discussed before, the Supreme Court of Canada and Parliament gave us an early Christmas present with their decisions and legal reforms relative to copyright and fair dealing. We may have breathed a collective sigh of relief, but Access Copyright keeps insisting that it really *didn't* get a lump of coal, and AC has been putting pressure on non-signatory institutions. In this new context, the university has drafted new fair dealing guidelines. While the reformed guidelines are considerably more liberal than the old ones, some are concerned that universities are being too timid in their interpretation of fair dealing. See Gail Curry's article below for an update on this critical issue.

Finally, though bargaining has been much on our minds, academic freedom is an omnipresent issue in academic life—not a gift but a right, and one that we should be vigilant about defending. In his contribution to this issue of the newsletter, CUFA-BC President Rick Kool provides a summary of a recent public event related to academic freedom at U of A, and muses on the fragility of the principle. This is particularly timely for us at UNBC, given that we too have had issues related to academic freedom—and that we'll be convening a Presidents' Round Table in February to ponder the issue further. The upcoming Harry Crowe Foundation Conference on the Limits of Academic Freedom (which I will be attending) is yet further evidence of the timeliness of these discussions, and I'll look forward to sharing what I've learned and hearing your own perspectives on academic freedom at UNBC.

But that's for the New Year. For now, may you enjoy a peaceful holiday season, whatever and however you celebrate. And may Santa be good to you.

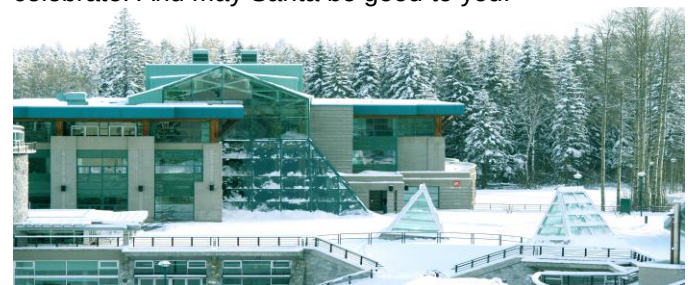


Photo courtesy of UNBC



AN UPDATE ON FACULTY ASSOCIATION
BARGAINING

Darwyn Coxson, Chief Negotiator

The discussions with the University about faculty salaries at UNBC took an unusual twist this past week, with a statement from the Vice-President External Relations in the *Prince George Citizen* (Tuesday 11 December): *“The average age of UNBC faculty staff is younger than the national average and Van [sic] Adrichem says that that also drives down the average salaries.”* This commentary suggests that the administrators at UNBC believe that concerns over salaries at UNBC are unwarranted. It seems to rely on the following assumptions: 1) that we are a young faculty, so naturally we have low (early in career) salaries; 2) that our salaries will rise significantly as our careers progress, so that we will eventually reach national averages; and therefore 3) that our poor rankings will disappear over time without substantive action by UNBC.

It would be nice if any of these assumptions were true. Sadly, the data do not support these assumptions. For example, Figure 1 (reprinted from our Spring Newsletter) demonstrates that we are currently at or near the bottom of national salary rankings.

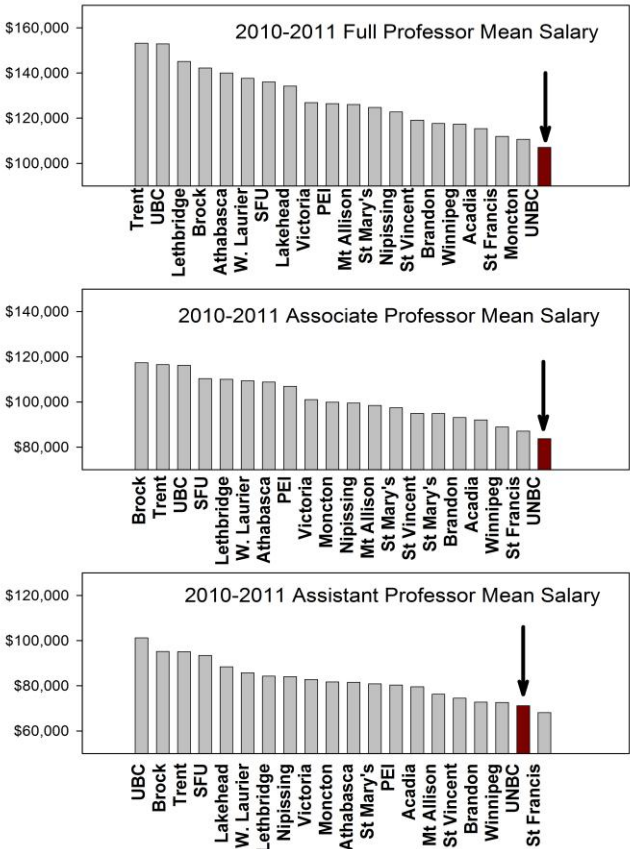


Figure 1. National Salary Rankings.

The Administration does not contest this data from Statistics Canada, but implies that these results are an artifact of our youth (*PG Citizen* Article). Figure 2 shows the current faculty age structure at UNBC versus the national average (again from Statistics Canada data). These data do not support the University's statement that we are a younger faculty; indeed the opposite seems to be true. We have had relatively few new appointments in the past decade, while other Canadian universities have seen significant faculty renewal during that time.

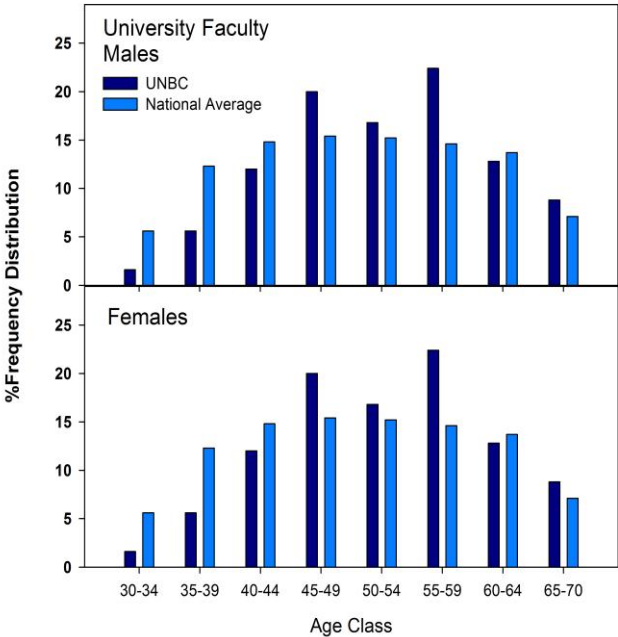


Figure 2. UNBC Faculty Age Structure vs National Average.

Finally, Figure 3 (also reprinted from our Spring Newsletter) shows that under our current Faculty Agreement the longer that you work at UNBC the lower your salary is relative to that of your colleagues at other Canadian universities.

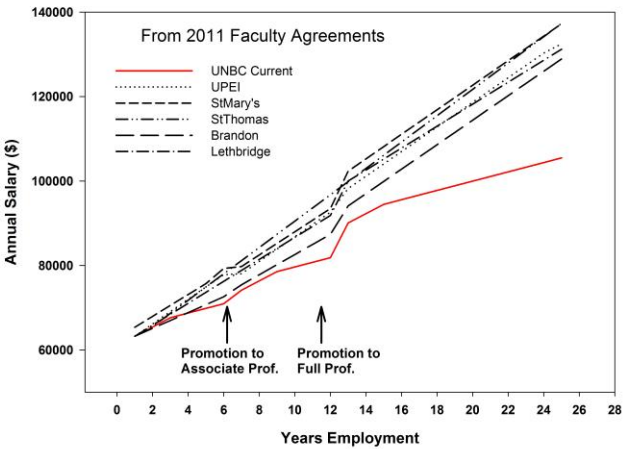


Figure 3. UNBC salary comparison with other Canadian Universities.

The survey of faculty completed earlier this year showed the UNBC Faculty Association, and the FA bargaining team, that our inequitable salary structure was the top issue for you, our members. In response to your strong mandate to address this situation, the UNBC Faculty Association and the FA bargaining team have committed themselves to bringing our salaries to the industry standard in Canada. We do believe that by working together, we can find creative solutions to address these challenges in the face of provincial restraints. However, in the absence of any acknowledgment of these inequities it is going to be hard to work together with management at UNBC to find solutions.



PERFORMANCE EVALUATION REPORTS AND PROCESS: 2013

Commencing in 2013, **all** tenured, tenure-track, probationary, continuing and full-time term members (Faculty, Librarian Members and Senior Lab Instructors) are required to submit the Performance Evaluation Report to their immediate supervisor by the second Friday in February, which is **February 8, 2013**, for the evaluation period of the previous two calendar years.



FAIR DEALING GUIDELINES

Gail Curry
Data, Map & Government Information Librarian

Last month, the University developed a document entitled *University of Northern British Columbia Fair Dealing Guidelines Reproduction and Communication of Copyrighted Works by Faculty and Staff for Students* (<https://library.unbc.ca/files/2012/09/UNBC-Fair-Dealing-Guidelines.pdf>). In considering these guidelines, Members should note that s. 29 (fair dealing) of the *Copyright Act* (<http://laws-lois.justice.gc.ca/eng/acts/C-42/index.html>) only comes into play if the intended copying is "substantial." Furthermore, "substantial" is not defined in the *Copyright Act*. Consider the following

comments by intellectual property lawyer Howard Knopf in his March 5, 2012 blog:

- "...anyone can copy anything protected by copyright as long as the copying does not constitute a "substantial part" of the work..."
- "There is no categorical quantitative rule as to what is a 'substantial part'."
- "Depending on the context and circumstances, copying a few or even several sentences, paragraphs, pages or even more than one section or chapter may not be a 'substantial part'"

Members should turn to s. 29 of the *Copyright Act* only if they are considering copying a "substantial" section of a work and if their intended use is not already allowed by an existing agreement (for information on this, click on "short video tutorial" at <http://libguides.unbc.ca/copyright>). When considering fair dealing and the University's fair dealing guidelines, Members should keep the following in mind:

- Based on the advice of their legal counsel and on the advice of the Association of Universities and Colleges of Canada (AUCC), many Canadian universities have taken a risk-adverse approach in writing their guidelines, inserting quantitative measures where no such measures exist in the *Copyright Act*. This risk-adverse approach is interesting, considering that s.38.1 of the *Copyright Act* sets the maximum liability for non-commercial infringement at \$5,000.
- In their 2004 *CCH v. LSUC* decision (<http://canlii.ca/en/ca/scc/doc/2004/2004scc13/2004scc13.html>), the Supreme Court stated that, under s. 29 of the *Copyright Act*, "Research" must be given a large and liberal interpretation in order to ensure that users' rights are not unduly constrained..." (para 51). Furthermore, the Act, as amended in November 2012, now includes education as a fair dealing category.
- The *CCH v. LSUC* decision provides a list of six criteria to guide in the "determination of fairness": the purpose of the dealing, the character of the dealing, the amount of the dealing, the nature of the work, available alternatives to the dealing, and the effect of the dealing on the work (paras 53-60). These criteria are succinctly summarized on pages 3-4 of the *CAUT Guidelines for the Use of Copyright Material* (http://www.caut.ca/uploads/Copyright_guidelines.pdf).
- Recent court decisions have reinforced and expanded upon the 2004 Supreme Court decision. For a good discussion of this, see Sam Trosow's July 14, 2012 entry at <http://samtrosow.wordpress.com/2012/07/14/sc-c-decisions-provide-clear-guidance-on-fair-dealing-policies/>. (Note, in particular, the concluding points: "Some clear take-aways for institutional policymakers.")

Members would do well to note the following statement

in the *CCH v. LSUC* decision (para 55): "It may be relevant to consider the custom or practice in a particular trade or industry to determine whether or not the character of the dealing is fair." The Canadian post-secondary community is doing itself a disservice by taking a risk-averse approach in its fair-dealing guidelines rather than embracing legal decisions that have supported users' rights and the rights of educators. A recent comment on the abccopyright discussion group: "...if universities continue to use the 10% rule then that could become the definition of fair dealing and this would be contrary to the Supreme Court's decision that fair dealing should be interpreted broadly."



**ACADEMIC FREEDOM:
A THREAT TO ONE IS A THREAT TO ALL**

Richard Kool, President, CUFA BC

One of the privileges of being CUFA BC President is attending the meetings of our sister organizations, the Confederation of Alberta Faculty Associations (CAFA) and the Ontario Confederation of University Faculty Associations (OCUFA). CAFA recently held their fall Council meeting in Edmonton, and joined with the Association of Academic Staff of the University of Alberta to host a presentation, *The Relevance of Academic Freedom*.

Academic freedom seems to be a bit like motherhood: rarely (at least inside the academy) would someone (publicly) speak against it. But how one conceptualizes and then actualizes academic freedom can vary quite widely. For example, the President of uAlberta, Dr. Indira Samarasekera, spoke at the presentation about the great public good that academic freedom provides, and quoted approvingly from the faculty handbook about the academic freedoms enjoyed at her university. However, the organization representing the university presidents in Canada, the Association of Universities and Colleges of Canada (AUCC) recently promulgated a "new" definition of academic freedom that is seen by many faculty members, associations and the Canadian Association of University Teachers as retreating from, rather than advancing, this vital freedom. And while our university presidents all espouse the principles of academic freedom, neither Dr. Samarasekera nor our BC university presidents have challenged the AUCC definition.

The major speaker at the presentation was Dr. Jocelyn Downie, a Professor of Ethics in both the Faculties of Law and Medicine at Dalhousie University. Dr. Downie presented a highly nuanced analysis of academic freedom around the questions of what is academic freedom, why does it matter, and why should we talk about it.

In her lecture, Dr. Downie related the Olivieri case¹ (a sordid tale of an academic clinical researcher, Dr. Nancy Olivieri, who was abused by the University of Toronto, the Hospital for Sick Children (HSC) and the drug manufacturer Apotex) to her analysis of academic freedom. Beyond the details of this case, I was reminded of the writings of Raul Hilberg, who spoke, in the context of the Holocaust, of the roles of victims, rescuers, bystanders and perpetrators. All of these roles were played out in the Olivieri case, and all are related to academic freedom in our institutions.

Olivieri was clearly the victim here, and her life and career were seriously impacted by the attempt to limit her ability to carry out research in an ethical and responsible manner congruent with the standards and norms of her discipline. The perpetrators are clear too. She was threatened by a drug company seemingly more interested in profits than in the health of the research participants or in the people who might ultimately be taking a flawed medication. Perpetrators also included the institutions involved; the Hospital for Sick Children and the University of Toronto, who, at the same time as Olivieri was being threatened, sued and barred from carrying out her research, was negotiating with Apotex for a donation of funds reaching into the tens of millions of dollars.

But for me, the real concern is with the rescuers and the bystanders. Four of Olivieri's colleagues came to her defence, standing up for her academic rights and, based on their principles, put themselves in harm's way.² Outside of her institutional colleagues, the CAUT was and continues to be a strong advocate for Olivieri and for academic freedom. But four colleagues is not a very large number: most of the academic clinical staff at HSC and uToronto were bystanders and while their motivations have never been studied, it is easy to understand what they might be: fear of retribution, worry about their own research funding, and no desire to be branded a troublemaker. It is not hard to imagine why one would not get involved in a fight against both your direct employer and a large drug company.

So why does academic freedom matter? Because, as Dr. Downie says, "society needs people willing to speak truth to power." Power rarely appreciate hearing truth, whether power be in the form of pharmaceutical companies that do not want to hear from the Therapeutics Initiative at UBC or from researchers like Dr. Olivieri, or in governments that would rather not hear from its scientists about the state of the environment.

If and when we become aware of pressure being put on colleagues to "toe the party line", or when our colleagues are threatened with loss of funding based on their research and thoughts, or when the threat of tenure decisions is used to try and silence controversial voices, we are, at that point, all threatened. And while there may be a single victim initially, unless we all become involved in efforts to ensure academic freedom, bystanders too end can end up as victims.

Notes

1 - Thompson, J., Baird, P., & Downie, J. (2001). The Olivieri Report. Toronto: James Lorimer and Company.

2 - Baylis, F. (2004). The Olivieri debacle: where were the heroes of bioethics? Journal of Medical Ethics, 30, 44-49. doi: 10.1136/jme.2003.005330

We are in the final stages of revamping the Faculty Association's new website, which is scheduled to be launched in January 2013....watch for an announcement early in the new year!



Photo courtesy UNBC



Faculty Association Office

The Faculty Association now has a new Boardroom located in Rm. 3085 Administration Building.

The Faculty Association Office **has moved** to Rm. 3089 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 donna.plourde@unbc.ca to schedule an appointment. Information on the UNBC Faculty Association is also available on our website at: www.unbcfa.ca

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.

Do you know what our new logo symbolizes?



Our physical environment (fish, fowl/feather and forest/plants).

Our scholarship (open book and plume).

The cyclical nature of our teaching semesters, and the cyclical nature of negotiating new Agreements with the administration.