

# CUASA COMMUNIQUÉ

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## President's Report

by Angelo Mingarelli

The new academic year is off to a busy start! Carleton has a new Provost and Vice-President (Academic) - Peter Ricketts. On your behalf, we met with Dr. Ricketts and raised a number of issues - including the Administrative & Academic Restructuring Committee (AARC) and the employer's plans to reduce this year and eliminate in 2010-11 the budget for Exam Proctors.

Let me start with the AARC. The timetable for their work is very short, with a report due by October 30. On August 28, the CUASA Steering Committee made the following recommendation to AARC:

"CUASA urges the committee to be guided by the principles of universality and collegiality which are fundamental to the nature of the university. We anticipate that any recommendations will strengthen the stability of the university and enjoy widespread support among its faculty."

The proctoring issue was first discussed with CUASA at the Joint Committee on the Administration of the Agreement (JCAA) meeting on August 26. CUASA raised a number of concerns about consequences of the proposed cuts to the proctoring budget. We asked the Provost to postpone any announcement pending discussions on alternatives. We pointed out that utilizing TA's for this purpose will reduce the number of contact hours with students, and create other logistical problems. The Provost is faced with budgetary decisions made prior to his arrival and our discussion, while of interest, will not reverse existing budgetary constraints.

Proctors are highly-regarded members of the community, many are seniors and have served Carleton for many years. They know how to conduct examinations, deal with student needs, etc. Our responsibility as faculty is clear. Article 15.2 (j) of the CUASA agreement provides:

**Faculty employees are responsible for generally assisting in the supervision of their examinations, as follows:**

- (i) faculty employees are responsible for the supervision of their examinations;**
- (ii) if the faculty employee cannot comply with this requirement, a suitable substitute shall be appointed, with the approval of the appropriate departmental chairperson or equivalent.**

Our role as faculty during exams isn't to replace the Proctors. Departments will be expected to have suitable proctors to supervise the exams. Issues that remain to be addressed include how exams conducted over several classrooms will be invigilated as no one can be in more than one place at a time; if only the faculty member is present, how will illness, escorting students to the bathroom, and other incidents be handled? What will be put in place for invigilator breaks and faculty with disabilities? If TA's are to replace Proctors, they will need to be trained, and this will be an ongoing responsibility. It's also not clear how this change might affect student appeals.

It is also unclear that all the issues attendant on eliminating the current Exam Proctoring System have been addressed and CUASA will continue to raise these concerns at JCAA later this month especially as such a change could have a negative impact on student experience, retention and the reputation of the institution.

## **MacOdrum Library Periodical Acquisitions**

Another major issue discussed at JCAA concerns the reductions in library acquisitions of print periodicals and journals. The reductions are substantial, in the amount of \$500,000 or more, and are primarily due to the increased subscription costs and the value of the Canadian dollar. It has been suggested that the journals are available on line, but access can be limited to on-campus only, in some cases no off-campus access is possible at all.

The Librarian, Margaret Haines, encouraged CUASA members to provide feedback on the proposed list which is available at: [http://www.library.carleton.ca/documents/journals\\_cancelled\\_2009.pdf](http://www.library.carleton.ca/documents/journals_cancelled_2009.pdf)

Please forward your input to Anita Hui in the library ([Anita.Hui@carleton.ca](mailto:Anita.Hui@carleton.ca)), or to your subject matter specialists and send Margaret Haines a copy of your concerns ([Margaret.Haines@carleton.ca](mailto:Margaret.Haines@carleton.ca)).

## **Carleton University Official Plan**

Another consultation to update the official plan for Carleton is underway this fall. As green space, parking, public transit, cycling and access issues affect us all, CUASA's Steering Committee encourages you to submit your input to the committee at: <http://carleton.ca/campusplan/introduction/index.html>

## **Grievance Update** \_\_\_\_\_ *by Gerald de Montigny*

The start of the academic year has also raised some new issues. Our Grievance Chair, Gerald de Montigny is addressing an issue which came forward in the Faculty of Arts & Social Sciences (FASS) concerning teaching blocks. The Dean has determined that all 1<sup>st</sup> and 2<sup>nd</sup> year undergraduate courses must be taught with at least two contact periods per week. Effectively, this means no three-hour teaching blocks, unless the unit Chair is prepared to recommend a pedagogical exception. CUASA is concerned about the impact of this policy for a variety of reasons. A grievance is underway, and we encourage members who have been affected by this policy to notify CUASA..

## **Tenure & Promotion Workshop**

*by Patrizia Gentile*

CUASA is holding a Tenure, Confirmation & Promotion Workshop on Tuesday, September 22 from 9 a.m. - 1 pm in Room 102 MacOdrum Library. To register, please contact [Deborah.Jackson@carleton.ca](mailto:Deborah.Jackson@carleton.ca)

## **Vision Care Benefits**

Effective September 1, 2009, the maximum reimbursement for prescription eye glasses, contact lenses and laser surgery increased to \$400 per 24 months as a result of CUASA bargaining. The vision care plan covers 80 % of the cost, with no deductible. For example, a vision care claim for \$500 incurred on or after September 1 will be reimbursed in the amount of (500 times .8) = \$400.

## Guidance for CUASA Members

There is little Canadian case law with respect to consensual instructor-student relationships in a university setting. The absence of a university policy on relations with students may not be sufficient to protect employees from discipline in all situations. As a result, it is prudent to be aware of current case law in this regard. CUASA has pulled together some information on this topic for your information and use.

In *Okanagan University College Faculty Association v. Okanagan University College* (1997), 64 L.A.C. (4<sup>th</sup>) 416 (Lanyon), Arbitrator Stan Lanyon held that "sexual intimacy removes all professional boundaries between teacher and student" and therefore "there is a presumption of a breach of trust for any such involvement."

Generally, an employer is only concerned with an employee's due and faithful observance of his/her on the job duties and, in most cases, off-duty conduct is not an issue. However, off-duty misconduct that goes to the root of the employment contract may be cause for discipline. Based on arbitral rulings, there are several tests to determine whether disciplinary action taken by the employer is appropriate.

- (1) Was the employee's conduct sufficiently injurious to the interests of the employer?
- (2) Did the employee act in a manner incompatible with the due and faithful discharge of his duty?
- (3) Did the employee do anything prejudicial or likely to be prejudicial to the reputation of the employer?

In the case of *Emergency Health Services Commission and Ambulance Paramedics of British Columbia, C.U.P.E., Loc. 873* (1987), 28 L.A.C. (3d) 77 (McColl) at 85, the arbitrator ruled that:

"If one or more of the above questions must be answered in the affirmative on all the evidence, then the company is properly concerned with the employee's conduct regardless of whether it occurred on or off the company property or in or out of the working hours, and depending on the gravity of that conduct, the company will be justified in taking appropriate disciplinary action."

In order to sustain discharge of the employee, the employer must show that one or more of the following consequences has resulted from the misconduct:

- (1) the conduct of the grievor harms the Company's reputation or product;
- (2) the grievor's behaviour renders the employee unable to perform his duties satisfactorily;
- (3) the grievor's behaviour leads to refusal, reluctance or inability of the other employees to work with him;
- (4) the grievor has been guilty of a serious breach of the Criminal Code and thus rendering his conduct injurious to the general reputation of the Company and its employees
- (5) places difficulty in the way of the Company properly carrying out its function of efficiently managing its Works and efficiently directing its working forces."

*Re Millhaven Fibres Ltd., Millhaven Works, and Oil, Chemical & Atomic Workers Int'l Union, Local 9-670* (1967) (quoted in *Re Air Canada and Int'l Assoc. of Machinists, Lodge 148* (1973), 5 L.A.C. (2d) 7 (Andrews) at p. 8)

The level of discipline imposed (dismissal or some lesser form of discipline) is based on the conduct at issue and arbitrators look at the impact the conduct had on the employer (such as, is the employer's public reputation at stake).

There are several cases dealing with undisclosed dual relationships with students that deal with cases that did not constitute sexual harassment under an exiting policy but were found to constitute a breach of trust. The 2008 case at Lethbridge College is a case in point. While the professor in question had consensual sexual relations with three undergraduate students that began shortly after the students had taken his course when the third relationship ended unhappily, a complaint was filed. The employer searched the professor's email account and found the other two relationships and even though those two students were close in age to the professor and had not complained, the employer dismissed the professor. The arbitrator ordered reinstatement as "employees should not lose their jobs for breaking unwritten rules in areas where the line between right and wrong can be ambiguous" (cited in 2008 ABQB 316 at para. 13). However, the reinstatement was made two years later and was made without any back pay, thereby resulting in a 2 year suspension without pay. The reinstatement was made conditional on the grievor not dating or having sexual relations with any student of the college; making disclosure to his immediate supervisor if he dated any former student of the college within a year of the student's departure; and like wise making disclosure if any student in his class or under his supervision was someone with whom he has a close personal relationship in the past. No doubt, the negative publicity generated from this case had a deleterious impact on both his career and institution.

Article 16.12 of the CUASA collective agreement providing privacy in employee files and emails is not absolute and the following comment from the University of Calgary Faculty Association is worth noting:

“... behaviour that once might have been seen as acceptable (dating students) can lead to trouble. ... learn what rules exist about faculty-student relationships and adhere to them. If there are disclosure requirements, professor should be sure to disclose. ... what professors write in emails, if they use the university email system or a university computer, can be searched and used as a basis for discipline. While professors may strongly believe that they have a right to privacy, courts and arbitrators have tended to allow searches of employer provided email systems and computers, especially when probable cause for the search exists, such as a serious student complaint. If professors want to keep their emails beyond the reach of university administrators, they should use their own computers and their own non-university email providers.”

Further reading:

<http://www2.albertacourts.ab.ca/jdb%5C2003-%5Cqb%5Ccivil%5C2008%5C2008abqb0316.cor1.pdf>

<http://www.queensu.ca/humanrights/hreb/sexualharassment/mainpages/Memorial.htm>

<http://ablawg.ca/2008/09/28/important-lessons-from-lethbridge-college/>

[http://www2.carleton.ca/hr/ccms/wp-content/ccms-files/hr\\_policies.pdf](http://www2.carleton.ca/hr/ccms/wp-content/ccms-files/hr_policies.pdf) Carleton University Human Resources Policy on Conflict of Interest (see p. 12 and 104-107)

### **CUASA Council Update**

Thanks to all of you who attended our 1<sup>st</sup> CUASA Council meeting on September 3! Our 2009-2010 steering committee is now in place, and we wish to thank our outgoing Treasurer Susan Jackson, outgoing Chair of External Relations Mark Langer and our outgoing Chair of Internal Affairs Diane Huberman Arnold for their service to CUASA.

The next scheduled meeting of the CUASA Council will be in October.

[Please refer to the CUASA website for precise dates.](#)