



# University of Prince Edward Island FACULTY ASSOCIATION

## 2007-08 Officers & Staff

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## Memo

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**To:** All Members of the UPEI Faculty Association  
**Date:** December 31, 2007  
**Subject:** Unfair Labour Practice Complaint Filed

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The UPEI Faculty Association filed an unfair labour practice complaint with the PEI Labour Relations Board under the *PEI Labour Act*. The complaint alleges that the University has violated Sections 10(1)(a) and 10(1)(b) of the *Act*<sup>1</sup> in regards to intellectual property issues arising out of an earlier grievance resolution reached with the Association<sup>2,3</sup>.

The complaint is that the Employer has repeatedly communicated and negotiated directly with Faculty Association Members in an ongoing manner concerning the implementation of a grievance resolution on intellectual property matters, despite written objections from the Association. This behaviour undermines the Association's role as the sole and exclusive bargaining agent for its Members and critically impedes its ability to properly represent its Members and to protect their rights. It denies Members the legal right to be represented by the Association on matters covered by the *Collective Agreement*, such as intellectual property.

The Association alleges that, in breaching these particular sections of the *Act*, the Employer has interfered with and/or coerced employees in the exercise of employees' rights to be represented by a union, and has interfered with the administration of a union and the representation of employees by a union, all contrary to the *Labour Act*.

As for the underlying intellectual property dispute<sup>2,3</sup>, the Association maintains that the Employer has failed to implement the terms of the grievance settlement which was negotiated by the Parties in April 2007. The Association has an agreement with the Employer which clearly describes a process to deal with external third-party research funding agreements and which properly recognizes the Association's role in this process. In the Association's opinion, the Employer has not honoured this agreement and its behaviour continues to be along the lines of that which led to the original grievance in 2005. Given the circumstances, the Association is now taking this intellectual property issue back to an Arbitration Board for a hearing scheduled for February 1-2, 2008. In an effort to resolve matters, however, the Association suggested to the Employer in mid-November that an external mediator be retained by the Parties. To date, the Employer has not responded to this written communication.

<sup>1</sup> Attachment #1: Section 10 extracted from the *PEI Labour Act*.

<sup>2</sup> Attachment #2: April 23, 2007 memo to Association Membership regarding grievance resolution.

<sup>3</sup> Attachment #3: Update on IP Grievance, *Grievances: At-A-Glance Bulletin, No.3, September 2007*.

the same terms and conditions generally applicable to other members.  
R.S.P.E.I. 1974, Cap. L-1, s.8; 1987, c.39, s.1; 1994, c.32, s.5.

#### UNFAIR LABOUR PRACTICES

**10.** (1) No employer, employers' organization or an agent or any other person acting on behalf of an employer or employers' organization shall Employer unfair labour practices

- (a) interfere with, restrain or coerce an employee in the exercise of any right conferred by this Act;
- (b) participate or interfere with the formation, selection or administration of a trade union or other labour organization or the representation of employees by a trade union or other labour organization; or contribute financial or other support to such trade union or labour organization;
- (c) suspend, transfer, refuse to transfer, lay-off, discharge, or change the status of an employee or alter any term or condition of employment, or use coercion, intimidation, threats or undue influence, or otherwise discriminate against any employee in regard to employment or any term or condition of employment, because the employee is a member or officer of a trade union or has applied for membership in a trade union;
- (d) refuse to employ any person because such person is a member or officer of a trade union or has applied for membership in a trade union or require as a condition of employment that any person shall abstain from joining or assisting or being active in any trade union or from exercising any right provided by this Part;
- (e) fail or refuse to bargain collectively in accordance with this Act;
- (f) call, authorize, counsel, procure, support, encourage or engage in a lockout except as permitted by section 41.

(2) No employee, trade union or person acting on behalf of a trade union shall Prohibitions re employees, trade unions etc.

- (a) interfere with the formation, selection or administration of an employers' organization or the representation of employers by an employers' organization, or by intimidation or any other kind of threat or action, seek to compel an employer to refrain from becoming or to cease to be a member, or officer or representative of an employers' organization;
- (b) except with the consent of the employer, attempt at the employers' place of employment during working hours to persuade an employee of the employer to join a trade union;
- (c) fail or refuse to bargain collectively in accordance with this Act;
- (d) call, authorize, counsel, procure, support, encourage or engage in a strike except as permitted by section 41;

(e) use coercion or intimidation of any kind with a view to encouraging or discouraging membership in or activity in or for a trade union or labour organization. R.S.P.E.I. 1974, Cap. L-1, s.9; 1990, c.27, s.1; 1994, c.32, s.18.

Unfair labour  
practices complaint

**11.** (1) Where a complaint in writing is made to the board that an employer, employers' organization, trade union or other person is committing or has committed an act prohibited section 10 or otherwise prohibited under this Act, the chief executive officer or an officer of the Department of Community and Cultural Affairs, appointed by him shall inquire into the complaint and endeavour to effect a settlement of the matter complained of.

Report of chief  
executive officer

(2) The chief executive officer or the officer appointed by him shall report the results of his inquiry and endeavours to the board.

Inquiry by board;  
jurisdiction to make  
certain orders

(3) If the chief executive officer or other officer appointed by him, as the case may be, is unable to effect a settlement of the matter complained of, the board shall conduct a hearing on the complaint, and, if the board is satisfied that an employer, employers' organization, trade union or other person is committing or has committed an act prohibited by this Act, the board, shall, by order, make such award, give such direction, or take such other action as the board considers just and necessary in the circumstances and, without restricting the generality of the foregoing, may, by such order or subsequent order,

(a) direct the employer, employers' organization, trade union or other person to cease doing the act and to rectify in such manner as the board considers just any violation of this Act;

(b) direct an employer to pay to an employee a sum equal to the wages, salary or other remuneration lost by the employee by reason of the employer's violation of this Act;

(c) direct an employer to reinstate an employee in his employ at such date as in the opinion of the board is just and proper in the circumstances in the position that the employee would have held but for a suspension, transfer, refusal to transfer, lay off, discharge or change of status of the employee done or made by the employer contrary to this Act;

(d) direct an employer to employ a person at such date as in the opinion of the board is just and proper in the circumstances in the position that the person would have held but for the refusal of such employer to employ such person contrary to this Act.

Method of service  
of order

(4) The board may in any order made under subsection (3) declare the manner of service of such order upon any employer, employers' organization, trade union or other person to whom such order is directed.



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***Memo*** to all Members of the Faculty Association April 23, 2007

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**Negotiated settlement reached in Intellectual Property grievance.**

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A settlement was recently reached with the Employer regarding our Intellectual Property grievance. At the request of the parties, the start of the April 9-10 arbitration hearing was delayed to allow discussions to occur between the parties which led to a negotiated settlement late in the day on April 9. The arbitration hearing was convened at that point but only to register the *Minutes of Grievance Resolution* with the Arbitration Board and to ask that it retain jurisdiction over the matter for 60 days.

While it is the Association's position that the Collective Agreement provides for Members' ownership of all intellectual property which arises from their scholarly work, this grievance was not directly about the *ownership* of intellectual property. It was primarily about two issues:

1. The Employer's failure to recognize the Association as the *sole and exclusive* bargaining agent for its Members when it attempted to negotiate directly with Members to alter their intellectual property ownership rights, and
2. The Employer's actions to enter into a contract with a third party (ACOA) which named the University as the sole owner of intellectual property to the exclusion of Members; and to subsequently require those Members to enter into *sub-agreements* with the University for the purpose of assigning the ownership of their intellectual property to the University.

To address these points, the parties agreed to the following:

1. That a template agreement will be used for all Members who are currently involved in ACOA AIF contracts signed since March 12, 2004 and who have not signed any *sub-agreement* which assigns their ownership of intellectual property to the University. Among other items, this template agreement, which is to be signed by the University, the Member(s) and the Association, identifies the Association as the *sole and exclusive* bargaining agent for its Members and confirms that the title to any intellectual property developed in the project is to be vested in the Member and UPEI in accordance with their respective interests under the Collective Agreement. This same template agreement is to be used for all future ACOA AIF contracts. A copy of this agreement is included with this memo.
2. That all future (as of April 9, 2007) third-party research contracts and grants, excluding ACOA AIF contracts, which involve intellectual property will use a template agreement similar to that developed for the ACOA AIF contracts and will be signed by the University, the Member(s) and the Association.



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3. That the Employer provide the Association with a list of all third-party research contracts and grants, including all Members involved on each, for the time since the first Collective Agreement (March, 2004), where intellectual property was assigned by the University either entirely or partially to one or more third parties with any remaining portion held only by the University. The Association will then contact each identified Member to determine whether or not they agree with the continuation of the current intellectual property ownership arrangement. If not, the Employer must seek the consent of all third parties involved to amend the third-party agreements to recognize the intellectual property ownership interests of the Member. If a third party refuses to provide the necessary consent, the Association reserves the right to seek appropriate recourse under the Collective Agreement.

The Association is very pleased with the outcome of this settlement. First, it is an important acknowledgement that the Union is the *sole and exclusive* bargaining agent for its Members in all areas of the Collective Agreement, not just for intellectual property matters. Second, it allows the Union to address, on behalf of **all** Members, the concerns arising from the assignment of intellectual property ownership, both on a go-forward and retroactive basis. The Association can now ensure that Members' rights are protected in future situations and can exercise its *duty to fair representation* to all Members affected by intellectual property assignment agreements executed in the past.

The Association will be contacting those affected Members as soon as the Employer provides it with the necessary information. However, should you not be contacted by the Association within the next three weeks and you believe that you are affected by the terms of this settlement, please contact the Association immediately.

attachment: ACOA AIF intellectual property template agreement

# AT A GLANCE

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It has been some time since the last issue of our "Grievances *At-a-Glance*" Bulletin in January 2007. Since then, there has been considerable grievance activity. This edition will provide you with a summary of that activity. In each case, it will be indicated whether the summary represents an update to an earlier grievance or details of a new one. It will also be indicated whether the grievance has been resolved or is active.

It is vital that Members of both bargaining units know their individual and collective rights provided by their Collective Agreement and that each of us takes responsibility to ensure that they are respected by the Employer. The *Grievance* procedures can be found in Article F-2 of the Agreements for both BU # 1 and BU # 2; the *Discipline* procedures are in Article F-6.

Our Collective Agreements can be found on the Association's website. Each Member should have been provided with a copy as well. If you do not have a copy, contact the Association office.

Should you have any questions regarding any of the grievance procedures, or should you be concerned that your Collective Agreement rights might have been violated, you should contact the Chief Grievance Officer immediately.

- **Application of the *Integrity in Research and Scholarly Work* policy (Update/Resolved)**

This Association grievance was filed in response to the Employer's failure to apply the procedures outlined in the *Integrity in Research and Scholarly Work* policy when Members brought forward allegations of fraud and misconduct. This is a Senate policy but is part of the Collective Agreement and subject to grievance.

Of course, the credibility and reputation of the University, including its academic and other staff members and students, in relation to scholarly activities is critically important. Any procedures to

protect these must be seen as rigorous and scrupulously honest. The Employer's failure to apply this Policy when necessary undermines and jeopardizes the integrity of the University and that of every Association Member.

An arbitration hearing for this grievance was scheduled for May, 2007. However, prior to the arbitration, the Parties negotiated a settlement to the grievance which required that the Employer implement the Policy as it should have done at the time the original allegations of academic fraud were brought forward by Members. The Employer agreed to implement the Policy at Section 4.6.6 which requires that a Preliminary Assessment Committee be appointed to review the Complaint which was agreed by the Employer to have been accepted.

It was also agreed that the Dean of the Faculty in which the allegations were based would not be responsible for the implementation of the Policy as would normally be the case. Instead, a senior university administrator external to that Faculty and acceptable to the Association was appointed under Section 4.6.3B to implement the Policy. As a result of this grievance, the process as stipulated by the Policy is now underway.

The Association's assertion was that the Collective Agreement must be followed. The question as to whether or not the allegations have merit was not an issue for the Association. Our goal was to ensure that the proper process is being followed which has been realized as a direct result of this grievance.

- **Intellectual property rights (Update/Resolved)**

It has been previously reported to you that this Association grievance was settled by the Parties immediately prior to a scheduled arbitration hearing in April 2007. A memo detailing the terms of this settlement can be found in the *Grievances* section of the Association's website.

**DID YOU KNOW?**

- There are two types of grievances - a *Member grievance* filed on behalf of an individual Member or a group of Members and an *Association grievance* filed on behalf of the Association.
- All grievances must be filed by the Association; Members cannot file grievances directly.
- Grievances must be filed within 20 working days of the date of the events giving rise to the grievance or within 20 working days of the date when the events giving rise to the grievance ought reasonably to have been known, whichever is later; **act quickly and don't delay.**
- If the Association is not satisfied with the Employer's response to a grievance, it has the right to refer it to a hearing in front of an independent arbitration board.
- **Contact the Chief Grievance Officer if you are concerned that your rights have been violated.**
- For more info, see Article F-2 of your Agreement.

The Association filed the grievance in 2005 when the Employer attempted to assume ownership of intellectual property that was to be generated by a group of UPEI researchers through an ACOA AIF project. The Employer insisted that the ownership rights had to be assigned to it through the use of a *sub-agreement* with the Members, claiming its ownership was necessary for the University to honour its obligations under a commercialization agreement which it had previously signed with the third party funder, ACOA.

While it is the Association's position that the Collective Agreement provides for Members' ownership of all intellectual property which arises from their scholarly work, this grievance was not directly about the *ownership* of intellectual property. It was primarily about two issues. The first involves the Employer's failure to recognize the Association as the *sole and exclusive* bargaining agent for its Members when it attempted to negotiate directly with Members to alter their intellectual property ownership rights. The second involves the Employer's actions to enter into a contract with a third party which named the University as the sole owner of intellectual property to the exclusion of Members and to subsequently require those Members to enter into *sub-agreements* with the University for the purpose of assigning the ownership of their intellectual property to the University.

In addition to providing for resolution of the issues which arose from the ACOA AIF project, the settlement also contains mechanisms to deal with all future third-party sponsored research contracts/grants

to be executed and past such contracts/grants that have been executed. A standard template agreement was developed to be used for ACOA AIF projects which must be signed by the University, the Member(s) and the Association. It identifies the Association as the *sole and exclusive* bargaining agent for its Members and confirms that the title to any intellectual property developed in the project is to be vested in the Member and UPEI in accordance with their respective interests under the Collective Agreement. A similar standard template agreement is also to be used for all other future third-party sponsored research contracts/grants.

In regards to past instances, the Employer was required to provide the Association with a list of all third-party sponsored research contracts/grants for the time since the first Collective Agreement was signed in 2004, where intellectual property was assigned by the University either entirely or partially to one or more third parties and with any remaining portion held only by the University. The Association then had an opportunity to contact each identified Member to determine whether or not they agree with the continuation of the declared intellectual property ownership arrangement. If not, the Employer was required to seek the consent of all third parties involved to amend the third-party agreements to recognize the intellectual property ownership interests of the Member(s).

The Association is very pleased with the outcome of this settlement. Intellectual property policy is properly a subject of labour-management negotiations. The outcome of the settlement is a very strong recognition that the union is the sole and

exclusive bargaining agent for its Members in all areas addressed by the Collective Agreement. Additionally, we can now ensure our Members' rights are protected in future situations and that we can exercise our duty to fair representation to all Members affected by intellectual property assignment agreements executed in the past.

While the Parties agreed to this settlement in April 2007, the Association is not yet satisfied that the Employer has fulfilled its obligations in regards to any aspect of the agreement. The terms of the settlement agreement remain under the jurisdiction of the arbitration board until September 30, 2007. The Association is now considering options to follow should it not be satisfied with the Employer's actions by then.

- **Eligibility for promotion of Members on term appointments**  
(Update/Resolved)

This Association grievance was in response to a determination made by the Chair of the University Review Committee, the Vice-President Academic Development, that a Faculty Member on a term appointment is not eligible to apply for a promotion under the processes of the Collective Agreement. It was filed, then, with respect to the Employer's failure to ensure that the University Review Committee operates within the authority provided to it by the Collective Agreement. The Association maintained that the promotion process applies to all Faculty Members, which by definition includes those Members on term appointments, and alleged that the Chair exceeded the Committee's authority by enforcing its position.

While this grievance was scheduled to proceed to an arbitration hearing, the Parties recently reached a negotiated settlement which acknowledges that all Faculty Members and Librarians on term appointments are eligible to apply for promotion at any time during the term of their appointment as per the process and timelines established in the Collective Agreement. However, it was further agreed that any promotion that might be approved will not take effect until the beginning of any subsequent term appointment or July 1, whichever is later.

Members on term appointments are cautioned to carefully consider the timing of any promotion application with respect to the timing of their appointment and the schedule for the promotion

process. While files are submitted in the fall, decisions are not reached until late spring of the following calendar year with the promotion being effective on July 1 of that year.

- **Terminal degree requirements for tenure**  
(Update/Resolved)

This Association grievance was filed in response to the Association's assertion that the Chair of the University Review Committee, the Vice-President Academic Development, inappropriately established and subsequently applied incorrect criteria for terminal degree requirements in considering tenure applications. It was filed, then, with respect to the Employer's failure to ensure that the University Review Committee operates within the authority provided to it by the Collective Agreement.

The Parties reached a negotiated settlement with respect to this issue. It provides for the Employer's agreement and acknowledgement that the responsibility of the University Review Committee is to assess a candidate's competence for tenure as indicated by the criteria in Article E2.2 of the Collective Agreement, and not to define criteria, as the Association alleged had happened regarding the appropriate terminal degree requirements.

- **Health and Safety Policy and discipline**  
(Update/Active)

This Association grievance was filed in response to the Employer's adoption of a campus *Health and Safety Policy* which contains a disciplinary process that can be applied to Association Members outside of the disciplinary process contained in the Collective Agreement. The Association maintains that its Members can only be disciplined in accordance with the procedures in Article F-6 of its Agreement and that this parallel and conflicting process would seriously hinder the Association's ability to protect its Members' rights to a fair disciplinary process.

In response to the Association's concerns, the University's Health and Safety Steering Committee has revised the language which now appears to be acceptable to the Association. Once this revised policy is adopted, it is expected that the grievance will be resolved to the satisfaction of the Association.

**Remainder of Bulletin not included here.**