

**QUFA's
Task Force Report on Discriminatory Practices
In the Implementation of the Collective Agreement**

In January of 2004, the Executive Committee approved the formation of a Task Force to investigate possible discriminatory practices in the day-to-day administration of the Collective Agreement. This Task Force was established to address the concerns of the Grievance Committee, who have observed some disturbing patterns in the kinds of difficulties that our members face on an individual level.

Women, visible minorities and those who suffer from a disability are over represented as individual grievors, and the substantive nature of their problems often suggests that they are struggling against covert and diffuse forms of discrimination. The Task Force was thereby intended to pull together some general observations about these recurrent problems, and to formulate some general recommendations in anticipation of the next Collective Agreement.

The Task Force began by identifying five general areas of concern:

- 1) the problematic reliance on USAT opinion surveys in the assessment of 'very good teaching';
- 2) the apparent inability and unwillingness to provide adequate accommodation for members suffering from a disability in a wide range of circumstances;
- 3) lack of due process and university support for our members in response to student complaints;
- 4) the 'chilly climate' - bullying and exclusionary practices that create a negative working environment; and
- 5) hiring and funding issues - hiring practices may give rise to discrimination where the focus is on profit, marketing and obtaining research funds, while smaller units may have to fight for survival, as their funding and resources become more limited. This may result in the creation of departmental 'ghettos' within the university, with a resultant disparity in workload and resources.

In reviewing these five topics, we were able to formulate some positive recommendations regarding both the USAT and funding issues, and have formulated a protocol for informal complaints. We did not address the problem of bullying and chilly climate because the task force could not agree on an effective way to proceed. We recognize that it is a serious problem, and will continue to deal with it on a case-by-case basis in the grievance committee.

I. USAT

As indicated in the 2003-2004 Grievance Committee Report, the requirement of 'very good teaching' in the last Collective Agreement is proving to be problematic, as this higher standard is being used in a dubious manner as a basis for negative recommendations. One central problem is the excessive reliance placed on a student opinion survey - USAT - as the primary indicator of teaching competency. Such surveys replicate inherent discriminatory bias and consequently place those individuals who already face discrimination at a further disadvantage in their applications for promotion, tenure, and renewal. This discrimination may operate at a simplistic level, for example, where students consistently criticize a professor because he or she speaks with an accent. The USAT may also give rise to more subtle forms of discrimination by privileging traditional teaching methodologies. Those teachers who depart from the norm, perhaps by taking more care to incorporate diversity into their curriculum, or by using more progressive or integrative teaching methods, may face much greater student opposition and their teaching reviews will suffer as a result. In its most crass form, the USAT functions as a popularity contest which tends to reinforce accepted norms and the dominant culture. Meanwhile, those who do not fit traditional conceptions of professor as authority figure find it much more difficult to meet student expectations and are placed at a distinct disadvantage as a result.

The Collective Agreement currently tries to guard against such discrimination in Article 29.4.2, which requires that the USAT questions conform to Article 9 requirements for non-discrimination. Article 9 broadly forbids discrimination on many enumerated grounds which could affect any term of condition of employment. Theoretically, then, a positive obligation exists to ensure that the USAT does not operate to disadvantage anyone on the basis of any of the grounds enumerated in Article 9. The problem, of course, is that in most cases it is impossible to demonstrate the operation of such bias in a concrete manner. Anecdotally, we do see the consistent over-representation of women, visible minorities, and those with a disability in individual grievance cases. On a broader level, the July 2004 CAUT Education Review observes a continuing trend of discrimination in the ranks of academia: "An analysis of detailed data from the 2001 Census reveals that women, Aboriginal peoples, and visible minorities continue to be under-represented amongst academic staff and earn less." ("Closing the Equity Gap: A Portrait of Canada's University teachers, 1996-2001", CAUT Education Review, Vol. 6, No. 2 at p.1.)

The problems associated with the USAT may to some extent be ameliorated by the use of other methods of assessing teaching competence, such as the teaching dossier, as permitted by Article 29.7 of the Collective Agreement. The availability of other methods of evaluation does not really cure the problem of inherent bias, however; instead, it simply shifts the responsibility for countering such bias to the applicants themselves. In effect, those who might anticipate discrimination in their USAT scores must overcome an additional hurdle in the application process. The onus is then placed on the candidate to maintain and present a less biased source of teaching evaluation. Candidates who do not face such discrimination are consequently privileged in the appointments process and throughout their career, as they need not take the additional time to create and maintain

a thorough teaching dossier - they can instead rely solely upon a university-administered evaluation that operates in their favour.

In summary, continuing reliance on the USAT as a measure of 'very good' teaching is extremely problematic from an equity perspective. In accordance with Article 24.1.3, the University must maintain its commitment to eliminating or modifying those policies and practices which are shown to have an unfavourable effect on the hiring, retention, and promotion of members from designated groups. **In order to adequately meet this commitment, this Task Force has reached the conclusion that reliance on USAT alone is an unacceptable evaluative mechanism. We instead put forward the following two recommendations:**

- 1) **ALL candidates for promotion, tenure and renewal shall submit a teaching dossier which will form the basis for teaching evaluation;**
- 2) **As part of that teaching dossier, candidates may submit their USAT results on NO MORE THAN five USAT measures or questions. Candidates who wish to include USAT results are permitted to select and include ONLY those measures which they feel provide the best appraisal of their teaching abilities and methodology.**

II. Accommodating Disability

When we talk about disability, we are referring to a wide range of conditions, from depression or addiction, to cancer, stroke, serious injury, or any other transient or permanent health problem that negatively impacts on one's work life. In academia, it appears that energy levels are most commonly negatively affected by disability, which in turn may harm an individual's productivity, especially in the face of increasing workloads and higher job stress. Finding the time to work while coping with disability becomes a major problem. Those who have a disability may face some opposition in their requests for leaves or reduced workload, and they may have to fight for special accommodations upon return to work. They may face more student complaints as a result of limitations flowing from the disability. Perhaps most importantly, they may face denial of promotion, tenure or renewal where PTR committees fail to properly assess the candidate in light of their disability. Finally, some university infrastructures may pose additional hurdles outside of the decision-making context, for example, in room bookings or time tabling practices that are not sufficiently flexible to allow for accommodation where necessary.

One commentator observes that academics are more prone to 'hidden' disabilities which may not involve a visible impairment, but nonetheless seriously deplete energies and prevent optimal performance in all aspects of work. A person who suffers from such disability is in a catch-22 situation in terms of disclosure of their illness or condition:

Revealing the challenges of a medical condition risks seeming unable to do the job. Downplaying the challenges risks a poor performance review that focuses solely on decreased productivity. Someone with a hidden disability can only measure

unfavourably against colleagues who did not suffer comparable difficulties within the period under review.

(Elaine M. Beretz, "Hidden Disability and an Academic Career, Academe, <http://www.aaup.org/publications/Academe/2003/03ja/O3jabere.htm>)

Such problems certainly seem evident at Queen's, and potential grievors often tread a fine line in trying to communicate the nature or extent of their disability without provoking doubts about their competence. One common theme that has been observed in individual grievance cases is the apparent inability or unwillingness of some decision-makers to adequately accommodate those suffering from a disability. This becomes especially problematic with certain kinds of disabilities that are viewed with a greater amount of skepticism or approbation, such as addictions or depression. Bordieri and Drehmer observe that those with depression or obesity are much less likely to be promoted than those with other types of disabilities, and that "perceived personal blame for the disability /health problem correlated negatively with promotion recommendations." (Bordieri, James E. and Drehmer, David E "Work life for employees with disabilities: Recommendations for promotion " Rehabilitation Counseling Bulletin; March 97, vol. 40, Issue 3 p. 181). It seems likely that those with addictions would meet the same fate, while those who suffer from a mental illness or 'hidden' disabilities might face skepticism, stigma and blame.

All of these problems are likely to become more pressing as workloads increase, giving rise to more stress-related illness. Certain groups are more likely to be over-represented here, for example those with heavy family responsibilities, caring for children or elderly parents, or those in marginalized fields and smaller units who face higher workloads and depleted resources. Accommodating disability becomes even more critical for more vulnerable sessional adjuncts, who may actually lose their position if they are unable to work due to illness. For this group, disability may mean a leave without benefits and no possibility of a return to work. The discriminatory impact of a failure to accommodate disability is therefore multiplied where those who are already marginalized in a university setting may then be at greater risk for stress-related illness as a kind of 'occupational hazard.'

III. Student Complaints - A Draft Protocol

Preamble

The primary purpose of a protocol would be to provide guidance to department heads and Deans in responding to informal student complaints about members. In all potentially adversarial situations between a student and a member, the administration and those acting on its behalf must act in accordance with the university's good faith obligation to support its employees' rights and interests. This means that heads and Deans must ensure procedural and substantive fairness, providing adequate notice of such complaints and properly investigating any complaint before requiring a response from a member. Heads and Deans should also protect the member from ill-founded accusations, slander or discriminatory statements or acts. While the need for confidentiality is recognized, students

who bring forward a complaint about a member to Deans, heads, or any other member in a position of authority, should be held accountable for their statements.

Scope

This protocol is intended to cover a wide range of student complaints and concerns that are communicated to a person in authority. A complaint or concern may include a wide variety of matters, from concerns about assigned readings, teaching methodologies or grading schemes, to statements about a member's dress, accent, attitude, approachability, availability or appearance. Throughout this discussion, a 'person in authority' is understood as referring to Deans, heads, and associate Deans.

Some suggestions for a Student Complaints Protocol

- 1) Any person in authority who hears a student complaint should first require that the student identify themselves, and should keep a record of the student's name, the date, and the substantive allegations and concerns expressed by the student. (While assurances may be given regarding confidentiality, students might also need to be advised that such confidentiality may be breached in some circumstances, for example, where someone's physical safety is at risk.)**
- 2) Having heard a student complaint, a person in authority should first determine the nature of the complaint and the proper forum for its disposition. Students complaining about a grade for example, should be advised to follow the existing appeals procedure. Students who complain of discrimination should be referred to the Human Rights Office. Departments may choose to clearly identify the proper channels for student complaints, i.e. directing complaints about a course workload or grading scheme to the curriculum committee, rather than the individual professor.**
- 3) Immediately after receiving and recording a student complaint, the member who is the subject of the complaint shall be notified about the existence of the complaint and the decision(s) made, if any, regarding the merits of the complaint and the proper forum for its consideration. The member should also be referred to QUFA's Grievance Officer for assistance and representation, if necessary. Student confidentiality should be protected at this point.**
- 4) In addressing apparently meritorious student complaints within their jurisdiction, the person receiving the complaint should carefully consider the equity implications and be alive to the presence of improper motives. This step is extremely important and may require some thought. The substantive nature and implications of a complaint are not always immediately apparent. For example, complaints about 'alternative' methods of instruction may often reflect gender-based stereotypes, giving rise to concerns about discrimination against a member. A member's availability outside of class might be**

negatively affected by disability, higher workload for those in more, junior positions, or family obligations.

- 5) Unless and until a person in authority determines that a student complaint is sufficiently meritorious to require some response from a member, the member will be under no obligation to investigate or respond in any way. No resolution or action other than a complete dismissal of the complaint shall be effected without notice to the Member and a fair opportunity to respond.**

Conclusion

While a more structured response to student complaints will require a bit more formality, our hope is that it will ultimately prevent grievances by ensuring that members are treated fairly from the outset. It may also assist those who receive complaints by providing some guidelines and information about the proper disposition of various complaints. Currently, those in authority are often inclined to seek an informal resolution of a problem by taking a student complaint directly to a member, usually for laudable reasons, attempting to diffuse the situation and assist in finding a satisfactory solution. This practice is problematic on a number of levels, however. Members may feel that they are obliged to respond to the requests of those in authority, without full information or investigation, and without representation where necessary. Their academic freedom and sense of employment security could easily be jeopardized by the most genial request to respond to or consider a student's complaint. Finally, a more formal process of recording and documenting such complaints may encourage students to be more responsible and thoughtful in voicing their concerns.

IV. Hurdles to Promotion, Tenure and Renewal: Small Units and Professional Programs

Like all units in the university, faculty members in small units and professional programs are required to meet the same criteria for promotion, tenure and renewal as those in large units and non-professional programs. In addition, members in small units and professional programs wish to compete for merit, awards and grant funding on an equal footing with their colleagues in other units and programs. However, there are unique conditions in small units and professional programs that can place members at a disadvantage.

First, small units may be disadvantaged because they face disproportionately large administrative burdens, as administrative tasks must be shared among fewer faculty. Small units often recognize their limited number of faculty member by controlling the number of students who are allowed to enter their programs and limiting course offerings by reducing the number of courses offered or alternating course offerings between years. However, in order to run units in an effective manner, units draw on organizational structures that are often in keeping with larger units. Although the university does provide leadership (deans, directors) and personnel support (e.g. secretarial, administrative assistant), such organizational structures require the support of faculty. The end result is that in small

units, greater demands for organizational support are placed on faculty members, which in turn, may place them at a disadvantage when it comes to promotion, tenure and renewal.

Faculty in professional programs are similarly faced with a higher and more inelastic demand on their time and energies. Professional programs must not only meet the education standards of Ontario Council of Graduate Studies and the University but also the standards established by their professions. In order to ensure that programs meet these standards, curricula are reviewed frequently, and changes are made regularly to ensure that graduating students are competent to function effectively within the current professional marketplace. Regardless of the number of faculty within a program, courses required to meet these standards must be taught. Curricula must be reviewed regularly, usually yearly, and must be changed if standards, whether old or new, are not being met. These ongoing and continuous teaching demands may place faculty members in professional programs at a disadvantage.

For faculty members in professional programs and small units, meeting the organizational and curricula needs along with teaching, scholarship and service criteria for tenure, renewal or promotion can be a challenge, particularly in years when new curricula are being introduced. In addition, these demands can place some members at a disadvantage, not only for personnel processes (tenure, promotion and renewal), but also for merit and obtaining grants and awards.

The Collective Agreement has tried to address these disadvantages by having units define the criteria for tenure decisions, etc., drawing on the uniqueness of their units/professional programs; however, these units are part of the university and community of scholars who do not necessarily value these definitions.

Recommendation

In smaller units and professional programs, more value should be given to administrative service, where necessary, within the criteria for tenure, promotion and renewal. It might also help to educate and broaden understanding within the academic community regarding the particular challenges faced by those in small units and professional programs.

Task Force Members*

Lynne Hanson, Chair, Grievance Committee, (Faculty of Law)

Margaret Jamieson, Member, Grievance Committee, (School of Rehabilitation Therapy)

Madga Lewis, past Chair, Grievance Committee, (Faculty of Education)

Roberta Lamb, (School of Music)

Joy Mighty, Director, (Instructional Development Centre)

Caroline Baillie, (Department of Engineering Education)

Jill Smith, Member, Grievance Committee, (Women's Studies)

Genevieve Dumas, Equity Representative on Executive and Council, (Mechanical Engineering)

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