

17 March 2014

Dr. David Farrar
Provost and Vice President Academic
Walter C. Koerner Library
1958 Main Mall, Room 640,
Vancouver, BC V6T 1Z2

Dear Dr. ~~Farrar~~ *Dave*,

Re: Policy Grievance - Policy 81: Use of Teaching Materials in UBC Credit Courses

The Association herewith initiates a grievance with respect to the above referenced matter. The Association alleges that the University has contravened Part 1: Articles 13, 14, 16, and 17 and Part 4 and all other applicable and/or relevant parts and articles of the Collective Agreement and applicable law, including the *Copyright Act*, RSC 1985, c C-42.

Specifically, the Association alleges that:

1. The University has breached Part 1 – Preamble and Article 16 of the Collective Agreement by passing a policy that infringes the academic freedom of the Association’s members;
2. The University’s Policy 81 is inconsistent with Part 1: Article 14 of the Collective Agreement because it imposes conditions on members of the bargaining unit that restrain members from fully exercising their rights under existing copyright law. These rights are grounded in an implied agreement between the University and the Association’s members, and the unique nature of the academic employment context;
3. The University has breached Part 1: Articles 16 and 17 of the Collective Agreement by failing to engage in appropriate consultation and discussion before changing rights and practices relating to members of the bargaining unit prior to the passage of Policy 81;
4. The University’s Policy 81 is unreasonable, unclear, equivocal and inconsistent with the Collective Agreement because it conflicts with longstanding past practice, academic freedom, the unique nature of the academic employment context, other University policies, and members’ rights under copyright law;
5. In addition, Policy 81 is unreasonable because it does not reasonably or appropriately balance the University’s interest in “flexible learning initiatives” with the preservation and protection of members’ academic freedom and rights under copyright law; and, it arbitrarily makes a member’s failure or inadvertence to opt-out, or a member’s choice not to opt-out, of Policy 81 irrevocable;
6. The unclear and equivocal nature of Policy 81 may result in disciplinary consequences and/or civil liability for the Association’s members under other University policies and copyright law;

7. Policy 81 may also alter or significantly impact the evaluation of criteria for appointment, reappointment, tenure and promotion under Part 4 of the Collective Agreement, notwithstanding the absence of any negotiations between the University and the Association on this issue;
8. In addition, Policy 81 may alter or significantly impact the effect of receiving teaching relief as part of a normal workload under Part 1: Article 13 of the Collective Agreement, notwithstanding the absence of any negotiations between the University and the Association on this issue; and,
9. The University's policy infringes on members' right to freedom of expression by mandating a form of forced speech in order for members to retain their full rights under copyright law.

The Association seeks redress in full including, but not limited to, the following:

- a) a declaration that the University has acted improperly under the Collective Agreement and applicable legislation in unilaterally implementing Policy 81;
- b) a declaration that Policy 81 is invalid or *void ab initio*;
- c) a cease and desist order enjoining the University from acting on Policy 81 in any way; and,
- d) a direction and order that the University rescind Policy 81.

The Association also seeks to have the Association and any person adversely affected by the University's impropriety be made whole under the Collective Agreement including, but not limited to, payment in accordance with any resulting infringements of members' rights under copyright law. The Faculty Association also seeks such other remedies including, but not limited to, aggravated, punitive and exemplary damages as may be appropriate under the circumstances.

For the purposes of processing this case, the Association requires full and timely disclosure by the University of all documents, information and other evidence upon which the University intends to rely to support the University's position, including specifically any and all copies of documents, submissions, minutes and agendas provided to or reviewed by members of committees, members of the Board of Governors and the University in relation to Policy 81.

Without limiting the scope of said request, the Association requires the University to provide the full particulars that University might or will use to support its position in this case.

The Association also requires that the University convene the grievance meeting as contemplated in Part 1: Article 20.07 within the next week.

Sincerely,



Dr. Nancy Langton
President

C Dr. Cynthia Mathieson, Provost and Vice-Principal Academic, Okanagan Campus
Allison Matacheskie, Director, Faculty Relations
Pauline Brandes, Director, Human Resources, Okanagan Campus