

# Post-Retirement Appointments

Richard Anstee, President

On October 7, 2003 Vice President Academic & Provost, Barry McBride handed over draft re-visions to Policy #52 (this is the policy on mandatory retirement see page 10) which maintains mandatory retirement at age 65 while allowing for two types of post-retirement appointments: so called 'Special Purpose Post-Retirement Appointments' (akin to the current situation of hiring at a course by course basis for modest remuneration) and so called 'Exceptional Post-Retirement Appointments' for those continuing in their faculty roles of teaching and research after age 65 at (presumably) sensible salaries.

As I have reported to you, I thought that this issue was currently on hold. The January 2003 Faculty Focus Newsletter (see: <http://www.facultyassociation.ubc.ca/newslett/jan2003.pdf>) gives some of the history leading up to that meeting. Faculty Association Executive Director Rosanne Hood and I had a luncheon meeting with Barry McBride and Faculty Relations Director, Fran Watters in March and had a frank and collegial discussion. We offered a pragmatic test of fairness of any proposal to be ratified by the membership.

In March we discussed the need for detailed procedures. This new draft is wholly unacceptable to us in that it does not address any

of the issues we had raised in that meeting.

We look forward to further discussions with the Administration on this issue. Given that it now appears to be a live issue, we welcome your feedback on the general issue of Mandatory Retirement and post 65 employment. Face-to-Face meetings are one possible venue but do feel free to

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**"The draft reasserts Mandatory Retirement while allowing Post-Retirement Appointments. It makes no mention of whether these are our members. We assert that they are our members."**

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e-mail us with your comments: [faculty@interchange.ubc.ca](mailto:faculty@interchange.ubc.ca)

We are including the new draft policy in this newsletter. The draft reasserts Mandatory Retirement while allowing 'Post-Retirement' Appointments. It makes no mention of whether these people continue to be our members. We assert that they are our members. The 'Special Purpose' appointments draft has similar language to that of current Policy #27 while eliminating the provision that the appointment would not displace current Faculty Association members.

The 'Exceptional' appointments (perhaps better named as Deferred Retirement Appointments) have policies and a few

procedures. I would imagine people could apply for such a position but it is not stated that way. We had asked for but did not receive a definition of the word 'limited' as used in Policy 3 (a). Should the numbers of such appointments be very limited (e.g. maximum of 10 a year) then this indicates that the criteria of "outstanding" in Procedure 3 (e) is actually higher than that used in promotions.

Our members need to have realistic expectations of their chance of success in obtaining such an 'exceptional' appointment. The decision is to be made by the Provost (policy 3(c)) who will consult with the Head and Dean (procedure 3(d)). Again, it would

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See "Policy # 52"

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## Inside Focus

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# Dramatic Drop in UBC's Ranking

Brenda Peterson  
Reference Librarian,  
Humanities and Social Science

UBC has plunged to 111<sup>th</sup> place out of 114 major research libraries in North America in the most recent *Association of Research Libraries Annual Salary Survey* of starting salaries for librarians, a precipitous drop of 105 places from our rank of 6th in 1991.

While the fluctuating Canadian dollar has played a part in this decline, the stagnation of starting salaries for librarians at UBC has been a matter of choice by the University.

Just as significant as the ARL survey results, starting salaries at UBC have seriously lagged behind other institutions in the Province, the labour market in which we compete to recruit librarians. Salaries for beginning librarians at Simon Fraser University are \$43,386 compared to \$37,593 at UBC. The gap between starting salaries for librarians at community colleges in BC and UBC is even more startling. The difference is more than \$11,000 per year—\$48,666 versus \$37,593.

The strategic plans of both the University and the Library identify staff recruitment and retention as critical issues in our future growth and development as we experience unprecedented turnover in positions. As numerous studies have shown, competitive salaries are key to attracting and retaining people of the highest

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**"The deterioration of librarians' starting salaries relative to local institutions and the North American community are cause for concern."**

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calibre. With the cost of living in Vancouver among the most expensive in Canada, UBC must offer competitive salaries.

Starting salaries were a key issue in the last round of collective bargaining three years ago. The deterioration of librarians' starting salaries relative to local institutions and the North American community are cause for concern. In the

recent program of early retirements, the Library lost more people than any other unit on campus. With current salaries, UBC will not be able attract the best candidates with the specialized subject expertise and technological skills that are essential to a major research library in the twenty-first century.

In the Face-to-Face meeting with representatives from the Faculty Association last March, the librarians identified improved starting salaries as the most important priority for the upcoming salary negotiations.

The librarians also expressed concern about several other issues related to conditions of employment and the working environment in the Library. These issues were addressed in the Report of the External Review of the University Library released in July of 2003. Generous in its praise of library operations, the External

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See "Librarians' Concerns"*

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## Officers

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Charles Menzies  
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Stephen Petrina  
Curriculum Studies, 5325

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Germanic Studies, 5457  
**Personnel Services**

Richard Sullivan  
Social Work & Family Studies,  
4278

**Salaries & Economic Benefits**

To be appointed  
**Sessional Faculty Committee**

Allison Tom  
Educational Studies, 5361  
**Status of Women**

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Michelle Bogdan  
**Membership Services  
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Nancy Lovelace  
**Office Manager**

Jack Bramhill  
**Communications Assistant**

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**“Librarians’ Concerns”**

...continued from page 2

Review Committee nevertheless saw fit to comment thus on matters of concern to librarians:

**4.2 Staffing:**

Several serious staff issues were identified by individuals and employee groups. Some of the issues highlighted were role conflict, changing skill sets, beginning salaries, classification systems, hiring and placement procedures, effect of early termination agreements, and career paths. These issues or problems need to be addressed in a systematic manner.

**4.3 Culture:**

Perhaps the strongest common concern at all levels of this organization is that communication within the Library is problematic and that misunderstandings abound. This was true even for people who were best at enumerating the channels of written communication, task forces at work, and meetings held. It seemed to many staff with whom we met that there was a step missing in the communication process (though there was no agreement on what that step was). We are puzzled by this, because the outsiders we heard from did not find the Library to be confusing or the communications unclear. The organizational culture study suggested below should bring this problem into better focus.

The Committee made several recommendations regarding these issues:

**6.1 Human Resources Audit:**

We recommend that the Library engage an external team, preferably a professional consulting firm, to conduct an HR audit and propose a strategic human resources management plan that reflects Trek 2000 and the Library’s strategic plan. Areas of investigation should include policies and procedures, compliance, accountability, role clarification, competency (skill sets), recruitment, selection, placement, classification systems, compensation, orientation and training, rewards and recognition, career paths, and succession management.

**6.2 Organizational Culture Study:**

Many people at UBC came forward to tell us their stories. We think, however, that the entire Library staff deserves the ears of experts on organizational development, especially because this would provide a more comfortable way to reflect on careers in the Library. It is also very important to have a benchmark against which changes in the workplace can be evaluated. For this reason we strongly urge that an outside consultant be commissioned to

study the organization’s culture, including job satisfaction.

**6.7 Plan and Implement Broad-Based Participation In Professional Associations:**

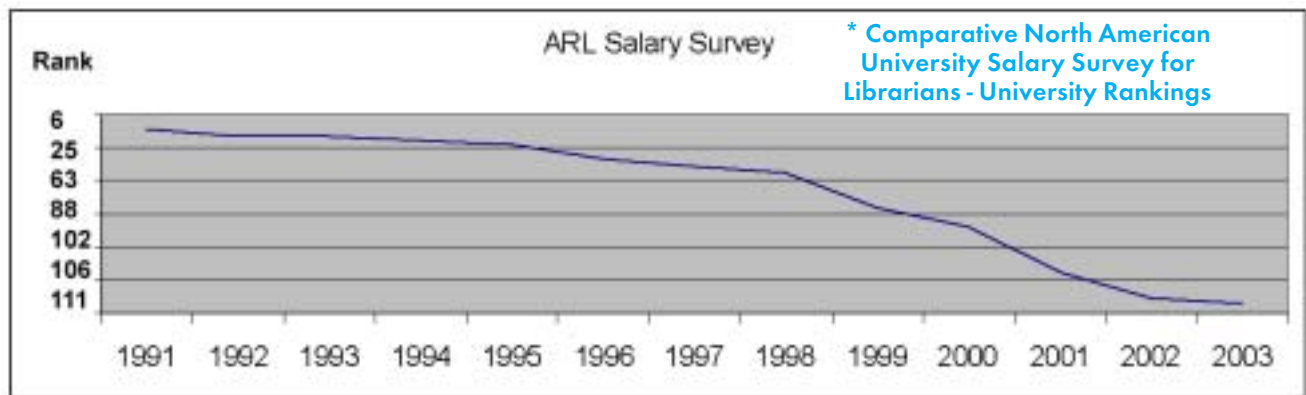
Given the expressed desire and the current opportunity to play a leadership role in the library community, the UBC Library should invest greater resources to enable staff to participate in professional associations. We recommend that the Library develop a comprehensive plan to ensure that appropriate senior representatives attend local, provincial, national and international meetings, and that staff have opportunities to participate in conferences that will keep them current with relevant developments in other institutions.

The librarians are waiting to hear from the University Administration about the next steps in implementing the recommendations of the External Review Committee.

The Librarians are also anticipating positive outcomes in the upcoming round of negotiations.

This is the first in a series pertaining to librarians’ issues. We welcome your comments. E-mail: [faculty@interchange.ubc.ca](mailto:faculty@interchange.ubc.ca) ♦

**NB: Librarians Face-to-Face Meeting - Thurs., Nov. 6th, 1 p.m. to 2 p.m. in the Sherrington Room of the Woodward Library**



# University Town: Out of Reach for Faculty and Staff?

Charles Menzies,  
Executive Member-at-Large

The issue of faculty housing and the appropriate use of the public endowment entrusted to UBC remains an issue that won't go away.

In the October 2, 2003 issue of UBC Reports, "University Town Continues to Grow: The Dream Becomes Reality," a fairly rosy picture is painted of the new suburbanization of campus. Many of us who do live on campus share the excitement of this new development.

We can see first hand the possibilities that exist in building an ecologically sustainable, innovative, and compelling new style of campus residential community.

The picture is not entirely perfect as fellow resident and faculty colleague Raymond Ng pointed out in his UBC Reports interview of the same issue: "Given the expensive housing market around UBC, Ng says affordable housing is vital for faculty retention and recruitment. He sees some irony in the fact that a housing plan originally motivated to keep people who work or study on campus here and reduce traffic is now attracting people who will commute to work downtown and elsewhere".

Placed immediately after Ng's comment are the following remarks by UBC VP, Dennis Pavlich: "What's wrong with including people from other parts of the community? Why shouldn't students mix with people who live on campus but work elsewhere? We're not creating a monastery here. People are coming here to learn about life, about science, about the cultural and social aspects that make up life. They need a variety of people and experiences."

It would seem to me that Dr. Pavlich misunderstood Professor Ng's comments, or perhaps the way in which they were transmitted by the reporter in order to elicit a response. I don't think that any of us living in the faculty/staff corner of Hawthorn Place (near the

intersection of Thunderbird and West Mall) are opposed to "including people from other parts of the community." If Dr. Pavlich really believes this, then he is very mistaken. If, however, he is engaged in his own form of political rhetoric, he is doing a disservice to faculty who have made a commitment to live on campus and reduce the environmental impact of this university. Let's explore Ng's comment, as quoted in the UBC Report of Oct. 2nd. Essentially he is raising two points:

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**"He sees some irony in the fact that a housing plan originally motivated to keep people who work or study on campus here and reduce traffic is now attracting people who will commute to work downtown and elsewhere."**

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- (1) the implications of Vancouver's real estate market for faculty recruitment and retention
- (2) the evident irony for anyone who lives here of replacing one form of commuting - university traffic - with another - resident traffic to work off campus.

In terms of the first point I would suspect that there are few who would really challenge the difficulties of accessing the local housing market for incoming faculty. For example, the least expensive family size housing unit being provided in Hawthorn Lane that is targeted at faculty and staff would require a household income of at least \$110,000 per year. That is far above the starting salary for most faculty in Arts and reasonably higher than starting salaries in most other faculties. Based on 2002 salary data, only 31 of the 426 assistant professors at UBC made more than \$100,000 per year. The vast majority (311) made less than \$80,000 per annum. Of course, whether or not an employer should be concerned about the housing needs of its employees is a separate question altogether.

The second point raises issues of unintended consequences. One of the stated reasons (both publicly and in

published documents) of creating a 'university town,' is to reduce the impact of commuter traffic on the near UBC areas.

The GVRD has been insistent that UBC take responsibility for the massive volume of single occupant cars commuting out to UBC every morning and returning home every evening. However, with housing priced out of the reach of most faculty and staff the people who are able to purchase housing here are far more likely to be single car commuting off campus, not just to work but also for shopping etc.

One might also add that under the current conditions the near campus commuting will likely increase as children are ferried to and from school, and short trips out for shopping or entertainment in the evening are organized by the growing on campus community. And finally, Dr. Pavlich says, with what one might imagine as some exasperation "we're not creating a monastery here."

How true. Dr. Pavlich and his compatriots are creating another modernist suburb designed in a way that will make it hard to tell whether one is standing in a development on Point Grey, Steveston, Maple Ridge, North Vancouver or anywhere else that developers are in charge. What might actually contribute to a richer learning, academic, and research environment - in terms of innovative and environmentally friendly building design and grounds maintenance - has been ignored in the race to fit things into the bottom line.

We need designs that, as Ng says, generate vibrant centres of attraction like the town squares found throughout Italy. Let's be creative. Let's not let ourselves be locked into one particular vision of development that sees parking lots, old farms, weed strewn margins, or patches of trees as empty land waiting for the developers backhoe.

Maybe there is a better vision, one that can support the type of environment in which people can, as Dr. Pavlich says, "learn about life, about science, about the cultural and social aspects that make up life." ♦

# Personnel Services Committee: We are here to serve and support you!

Norma Wieland, Chair  
Personnel Services Committee

The Personnel Services Committee is the committee of the Faculty Association which deals with complaints regarding our members' employment relationship with the university.

These range from problems around salary and benefits calculations, imposition of discipline and unfair treatment to the conduct of appeals and grievances regarding such matters as promotion and tenure denials.

Currently, our committee is dealing with 28 cases. These files include 4 denial of promotion cases, 5 denial of tenure and promotion. Other cases include sexual harassment, pay and benefits issues, scholarly integrity, discipline, seniority, and performance issues.

The Committee consists of a Chair (myself), faculty members drawn from across campus and across ranks and staff members. Executive Director, Rosanne Hood, Membership Services Officers Susan Palmer and Brian Green. We have recently also acquired the services of Michelle Bogdan as an Assistant Membership Services Officer to help manage the large number of files. Our work is carried out in the strictest confidence and we provide help, advice, and support to faculty members who are experiencing difficulties in their work situation while we work with them to resolve their complaint informally – or, if necessary – through a formal grievance process.

The last 6 months have been particularly busy for us and we are happy to report that we have achieved successful settlement of several cases as well as winning 2 significant arbitration decisions – one, a tenure and promotion denial and the other involving the clawback of wages from sessional faculty.

An important arbitration regarding the role of the Faculty Association as sole bargaining agent for conditions of

appointment for faculty within our bargaining unit is underway and will continue in October. An arbitration on the interpretation of the Collective Agreement regarding appeals of negative tenure decisions and what material can be included in a re assessment of a case was recently decided by an arbitrator and will be reported in a future article.

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**“The last six months have been particularly busy for us and we are happy to report that we have achieved successful settlement of several cases...”**

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At the time of writing, 2 arbitration cases are still coming up in the fall.

Of all the cases which we dealt with recently, one in particular has set off some alarm bells. It is worth reporting here, since its implications for the workload of all faculty members are enormous. The matter concerned the attempted mid-term change in the appointment of sessional faculty members from receiving 6 credits of teaching (and pay) for a 6 credit course, to only receiving 3 credits of teaching for the same course. Just before the end of the fall term 2002, these faculty members received notice that the university would be deducting pay for their perceived “overpayment”.

The case went to arbitration in June 2003 and the arbitrator ruled that the university had no right to reclaim pay from the faculty members as a result of their “mistake”.

At that hearing, the Administration argued that it had made a simple error in appointing these faculty members to 6 credits of pay for 6 credits of teaching. Their intention had been to pay them only for three credits all along. The troubling rationale for the difference? Although the faculty members

(who hold Board of Governors appointments) retained full responsibility for the 6 credit course, its content, grading and marking as well as for dealing with student concerns, TA supervision and assessment – they had been assigned Teaching Assistants to run the lab portion of the course. The appointment of a student assistant, it was argued, justified awarding only half the credits to the faculty member in charge of the course since they were “team teaching”.

This is blatantly at odds with the Agreement the university has signed with the TA union as well as with the rights of faculty who must hold Board of Governors appointments to teach. At a time when many faculty members have the responsibility for Teaching Assistants working with them in their courses, this is an alarming implication.

For sessional faculty, it is a blatant attempt to get the same amount of work for half the pay and force them to work twice as long before achieving continuing status. For faculty in general it carries the frightening implication that workload could be doubled since every course you teach could be considered halved with your Teaching Assistant.

If you require advice, help or information about your rights and responsibilities as a faculty member at UBC, or if you have an issue that you would like to bring to our attention, please don't hesitate to contact the Faculty Association by E-mail: [faculty@interchange.ubc.ca](mailto:faculty@interchange.ubc.ca) or phone us: 604-822-3883 to arrange an appointment. We are here to serve and support you. ♦

*Our Universities,  
Our Future.*

# Sessional Sentinel

## Fair Employment Week Comes to UBC



Between October 27<sup>th</sup> and 31<sup>st</sup>, Universities and Colleges across North America will celebrate Fair Employment Week, an opportunity to recognize the ongoing contributions of Sessional Lecturers and to raise awareness of the conditions in which they work.

To mark Fair Employment Week, the Faculty Association will use posters and information boards to publicize the significant contribution made by Sessional Faculty.

In addition, the Association will hold a lunch for Sessional Faculty Members at Thea Koerner house (Oct 29<sup>th</sup>, 12:00 Noon to 2:00 p.m.), and will set up an information booth in the Student Union Building on Friday, October 31<sup>st</sup>. The primary focus will be to increase the visibility of Sessional Faculty and their contributions in all areas of the University's work – teaching, scholarship, and service.

Fair Employment Week is an opportunity to remember the many significant ways that Sessional Faculty enhance the University environment. And it is a time, too, to remember that the unequal treatment of Sessional Faculty is not a UBC- or Department-specific problem, but an indication of dramatic changes in the structure of higher education throughout North America. Similarly, the campaign for fairness spans the continent as well. With that in mind, we provide the following sample of how Fair Employment Week will be celebrated on a few campuses in the United States.:

At **CITY UNIVERSITY OF NEW YORK** Contract Faculty intend to hold an information picket on October 27<sup>th</sup>, and dedicate October 31<sup>st</sup> to a series of films on contract academic staff and the changing structure of the academy

At **RUTGERS University**, a teleconference will be held linking three campuses, exploring the relationship between academic freedom and limited-term faculty appointments.

In **CALIFORNIA**, contract faculty from the University of California system, the state universities, and the community colleges will be joining together for special meetings to share information and coordinate their work, with panel discussions involving academic, political and community leaders.

For more information on how Fair Employment Week will be celebrated at campuses across North America, and resources for ongoing fairness and equity campaigns, visit the official FEW/Campus Equity Week website, <http://www.cewaction.org>



## Upcoming Events

- Joint Faculties Meeting – Monday, December 1<sup>st</sup>, 12:30 p.m. to 2:00 p.m.  
*Location to be announced.*
- Face-to-Face Meetings continue – see e-mail announcements for details.
- Fair Employment Week Luncheon for Sessional Faculty Members – Wednesday, October 29<sup>th</sup>, 12:00 Noon to 2:00 p.m. at Thea Koerner House
- Promotion and Tenure Seminar (*for new faculty members only*) – Thursday, November 6<sup>th</sup> at St. John's College, 4:00 p.m. to 6:00 p.m.
- CAUT Council – Thursday, November 20<sup>th</sup> to Sunday, November 23<sup>rd</sup> in Ottawa
- Retirement Myths and Realities – Thursday & Friday, November 27<sup>th</sup> to 28<sup>th</sup>, 9:00 a.m. to 4:00 p.m. at UBC Robson Square



# Unbundling Intellectual Property Rights

Stephen Petrina,  
Executive Member-at-Large

In *Digital Diploma Mills*, David Noble describes two forces underwriting current debates over intellectual property (IP) in higher education.

The first is the commercialization of IP (i.e., research) via corporate contracts and the assignment of patents. The second of these forces is the commodification of IP (i.e., curriculum) via the unbundling of copyrights. However, Noble overlooks the fact that these forces of globalization are matched by a heightened sense of rights (e.g., economic, human, legal, trade related, etc.) to public knowledge and digital property. Neither faculty nor universities have come to terms with new demands on public knowledge or digital property. Copyright law has attempted to accommodate cyberspace by merely calling it a conveyance—another shell or format—for the content of expression. For example, copyright law extends ownership, distribution and reproduction rights for music copied from record to tape to CD to MP3. Extension of copyright is one thing; protection is something entirely different. As John Perry Barlow has asked, if digital property can be “infinitely reproduced and instantaneously distributed all over the planet without cost, without our knowledge, without its even leaving our possession, how can we protect it?” Never mind that it’s 13 year-old kids who can do the reproducing and distributing. It is questionable whether copyright law can hold in cyberspace—the game has changed too much for mere accommodation and extension. Faculty and administrators risk bargaining over a law made for physical, not digital, property. Universities are challenged in this complex era to rethink the ownership of digital property and controls on rights to public knowledge. In this article, I address

these challenges and issues in the case of IP and the unbundling of rights for distance education.

Until the mid 1990s, distance education was a fairly innocuous practice—ownership and rights were not an issue. Things changed when on-line courses became viable, university administrators anticipated new markets and profits, York University faculty went on strike to protect their rights, and Noble put his “Digital Diploma Mills” on-line. Suddenly, mundane things like IP contracts, rights and distance education became explosive, contentious issues.

Distance Education and Technology (DE&T) manages most of the on-line courses at UBC. At the end of the 2002 fiscal year, DE&T had a stable of 108 courses from 30 faculties or departments on campus. During 2001–02, 5,566 students enrolled in DE&T courses, a 58% increase since the mid 1990s. A vast majority of the students enrolled are undergraduates (94%), with the balance made up of graduate (3%) and certificate students (3%). The fastest growing enrollments have been in on-line courses, which now account for 25% of all students. Nevertheless, DE&T is primarily a print-based correspondence unit, an artifact from its history of 54 years here at UBC. This partially explains recent problems in the IP contract for the Masters of Educational Technology (MET) program.

UBC’s Faculty of Education and the Mexican university Tec de Monterrey inaugurated the MET program in the spring of 2002. Faculty members who agreed to teach a MET course were initially confronted with a contract that assigned most IP rights to DE&T and, in effect, the university:

## 7. Intellectual Property

*The University of British Columbia is the owner and holds copyright in perpetuity on all materials developed and produced specifically for the project. Reproduction of any of these project materials, in whole or in part, without written permission of the*

**“Course copyright is the sine qua non of the digital diploma mill.... Intellectual property has become the most explosive campus issue of the day. It is here that the battle line over the future of higher education has been drawn.”**

David Noble, (2001)

**“The impulse to maximize the reward to the institution through pursuing relevant research agendas has caused many academic institutions to flex their muscles as organizations capable of owning and exploiting property, especially intellectual property.”**

Margaret Wilkinson, (2000)

**“In the absence of the old containers, almost everything we think we know about intellectual property is wrong. We’re going to have to unlearn it. We’re going to have to look at information as though we’d never seen the stuff before.”**

John Perry Barlow, (1994)

*Associate Vice-President Academic, or his/her designate, is forbidden. However, the author retains the right to utilize information presented in the materials and to pursue its publication in other forms. The University of British Columbia, in consultation with the author(s), has the right to make any arrangements it deems advisable concerning the use of all project materials for which it holds copyright. Computer software invented for use in this project, and which can be used again as a “shell,” will fall under University Policy #88, Patents and Licensing. (MET IP contract, April 2002)*

Evidently, DE&T instructors were willing to sign off everything, and did. I refused and sent the contract back. This was the spring of 2002 and two courses were scheduled to go on-line in September. With minimal faculty input and time to respond, MET administrators and university lawyers contrived a new IP contract that contained a classic move to unbundle rights by distinguishing “author materials” from “course materials:”

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## “Intellectual Property”

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### 7. Intellectual Property

Original materials used in this course that attract copyright protection in Canada may be:

- \* created solely by an Author (“**Author Materials**”); or
- \* created jointly by an Author and individuals at the academic or service units of the University working to develop and deliver MET (“**Course Materials**”).

For greater clarity, Author Materials include:

- \* works created by an Author before this course was contemplated; and
- \* works created by an Author specifically for this course, but without significant input from individuals at the academic or service units of the University working to develop and deliver MET.

For example, Author Materials include, without limitation, course outlines, case studies and student exercises. Each Author owns copyright in Author Materials. Each Author agrees that Author Materials may be used, in perpetuity:

- \* By the University and/or by Tec de Monterrey in connection with their joint MET; and
- \* By the University in connection with other courses to be offered in either electronic or paper media. If the University uses Author Materials in connection with courses to be offered by a third party outside of the University, then the University will:
  - \* use reasonable efforts to consult with Author of those materials before such use; and
  - \* negotiate in good faith with the Author of those materials to determine that Author’s appropriate entitlement to any resulting revenues received by the University.

The University owns copyright in Course Materials. The University agrees that those elements of Course Materials that comprise “content” (including without limitation the syllabus, but excluding the “look and feel”) may be used, in perpetuity, by an Author who contributed to the creation of those materials, for the purposes of teaching and/or publication.

The University owns copyright in

the MET courses as a collective work. (MET IP contract, September 2002)

Feeling pressured, some signed the new contract while again, others refused. The course I was scheduled to design and teach (ETEC 531) was moved to 2005 so I was under no compulsion to sign.

In September 2002, after another Professor was assigned to design (1.5 FTE) and teach (1.5 FTE) a MET course as part of her regular teaching load, she was confronted with the IP contract. She took issue with MET administrators, noting problems of signing a course contract that: (a) makes a distinction between “author” and “course” materials that is not made in designing non-online courses, (b) assigns copyright and ownership of course materials to UBC, (c) was not normally a prerequisite to either course design or teaching in a regular work load, and (d) was not bargained by the Faculty Association (FA). After bringing the stipulations to the FA’s attention, the FA recommended that faculty members refrain from signing individual, unbargained contracts for courses. Realizing they would not get her signature on the contract, MET administrators removed her from the assignment leaving her to fill her workload with another course. In July 2003 the FA entered into arbitration with UBC over the right to negotiate individual contracts that were not bargained and the individual faculty member’s right to teach without signing a special contract. An arbitrator is hearing the case. The university wants the power to bargain IP with individual faculty members. In question is whether the FA is the exclusive bargaining agent on campus for determining the terms and conditions of IP for individual faculty members. The issue is primarily about IP and the unbundling of copyrights.

Copyrights in Canada and the United States are automatically allocated to the author upon the creation of a work, *unless* a contract was signed to transfer ownership or partial rights or the work was done for hire. The principal legal issue for faculty and the ownership of courses or course content is “*work made for hire*” (US) or done

“*in the course of employment*” (Canada). Under the “in the course of employment” clause of the Copyright Act, universities *may be* in a legal position to challenge ownership if compensation in addition to FTE for teaching was provided for course design. Barring an explicit work made for hire agreement, a signed contract to transfer rights, or a course involving significant use of university resources; faculty members who design a course own the course (a course is defined by course content and materials and not an acronym and number). Although courts have sided with faculty in cases of course ownership, this allocation of course rights to faculty is more a social contract than a binding, legal contract between faculty and universities. This same social contract protects academic freedom for faculty in their courses and use of the courses. The Canadian Association of University Teachers (CAUT) and the American Association of University Professors (AAUP) stand in solidarity for course ownership and control on the principle of academic freedom:

*The faculty member (or an appropriate faculty body) who teaches the course (or adopts a pre-existing course) for use in distance education shall exercise control over the future use, modification and distribution of recorded instructional materials and shall determine whether the material should be revised or withdrawn from use. (AAUP, 2003)*

It can be argued that a moral obligation of universities for the integrity of courses is built into this social contract for academic freedom. But, as Mary Burgan, General Secretary of the AAUP noted, “it is important to recognize that market forces, rather than the needs of higher education, are driving the rapid development” and unbundling of on-line courses.

In this era of digital property, universities are assuming the role of “publisher,” where a divisibility of rights is operative. A copyright is actually a bundle of 5 basic and overlapping rights, typically indivisible unless transferred by the author:

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**“Intellectual Property”**  
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### Copyright — A Bundle of Rights

- ❑ Reproduction—the right to create identical or near identical copies of the work.
- ❑ Adaptation—the right to create derivative works, such as abridgements, translations or versions in a range of media (book to movie to video to CD to on-line game).
- ❑ Distribution—the right to make the first sale of each authorized copy of the work.
- ❑ Performance—the right to present, recite, play, act or publicly perform the work.
- ❑ Display—the right to publicly show the work, by means of film, radio, TV, WWW or other device.

Unbundling simply refers to the assignment of some of these rights to the author and others to the employer, publisher, university or second party of interest. Unbundling course rights can mean, as the MET contract indicates, that faculty retain rights to the reproduction and adaptation of their materials while UBC owns rights to distribution and display. Dividing a course into “author” and “course” materials means that faculty own (more or less) materials they authored (without DE&T help) while UBC owns the course.

When a university assumes the role of “publisher” of on-line courses, faculty members are little more than widget makers in the process. The publishing factory is in fact the model that university lawyers are adopting. Journal publishers hold power in the promotion and tenure process for faculty, but it is unlikely that a course published on-line by a university will carry weight for P&T.

While a traditional journal publisher is unlikely to publish a manuscript without a signed contract, it is questionable whether a university would refuse to offer a course without a signed course contract. Many faculty members, especially those who teach on-line or mixed-mode courses, are already publishers of course materials and will probably not shut down their decentralized presses for centralized control and ownership. There is no legal imperative or incentive, outside of royalties that may accrue, to transfer course rights to universities or commercial ventures.

Yet as the invocation of UBC Policy #88 by the university’s lawyers suggests, UBC is moving to an organized approach to copyrights, as the institution has done with patents. This was Margaret Wilkinson’s observation of IP in most Canadian universities at this time. UBC is extending Policy #88 to include nearly all forms of digital property. Digital property, in the form of courseware, appears economically exploitable to UBC’s administrators and lawyers.

When the Massachusetts Institute of Technology (MIT) administrators wanted to catch the economic wave of on-line courses in the late 1990s, a few faculty members contradicted the idea: why not place MIT courses on-line free of charge? In September 2002, MIT’s OpenCourseWare site was launched and there are currently 500 courses on-line (<http://ocw.mit.edu/index.html>). On the side of open knowledge initiatives in the world, such as John Willinsky’s Public Knowledge Project here at UBC (<http://www.pkp.ubc.ca/>), OpenCourseWare responds to the increasing commercialization of public institutions and commodification of knowledge. While MIT unquestionably exploits their patents, the institution seems to have done the right thing with copyrights. The university still markets on-line courses for tuition, but faculty own the courses they design. Security and surveillance measures built into digital classrooms such as WebCT ought to be used to protect the students and instructors, not the digital knowledge of

courses and commercial exploits of universities. Both universities and faculty will have to face the fact that digital property is nearly impossible to police; public knowledge in cyberspace is valued over commercial exploitation.

We’ve stemmed the tide—now it’s time to turn it!

#### Use These Simple Guidelines to Protect Your IP Rights:

- ❑ Say **no** to compulsions to negotiate individual IP contracts with the university.
- ❑ Say **yes** to the Faculty Association as an exclusive IP bargaining agent for courses.
- ❑ Say **no** to the unbundling of your rights via course contracts.
- ❑ Say **yes** to academic freedom and integrity via course ownership by faculty.
- ❑ Say **no** to work for hire contracts for designing courses.
- ❑ Say **yes** to OpenCourseware and open knowledge initiatives in cyberspace. ♦

seem best for the 'exceptional' appointment to arise from the department and move up for approval rather than in the direction proposed.

A procedure analogous to a promotion needs to be spelled out. What if someone disagrees with the decision reached? The notion of benefit to the faculty (policy 3(b)) needs to have a procedure. Will faculties having little trouble hiring have no possibility of 'Exceptional' Appointments? Or is this more tied to exceptional individuals (who are welcomed by their department)?

We need to negotiate this with the Administration and we are willing to tackle this issue in an expeditious way. We cannot have issues of such importance to our members, affecting their terms and conditions of employment, being imposed through policies. We welcome your comments. E-mail: [faculty@interchange.ubc.ca](mailto:faculty@interchange.ubc.ca).

Schedule "C"

**DRAFT**

**POLICY #52 RETIREMENT AND  
POST-RETIREMENT**

Approved: 1978 Revised: January 2004

**RESPONSIBLE VICE PRESIDENT**

*Vice President Academic & Provost*

**Preamble**

Since 1978 UBC has had mandatory retirement at 65 years of age. There are sound reasons for this mandatory retirement policy. These include:

- ensuring systemic opportunities for faculty renewal through the hiring and promotion of newly qualified faculty members. The lifeblood of universities is dependent on a continuing flow of new ideas and perspectives. It is critical that the University faculty draw upon recently qualified individuals who are committed to developing new areas of knowledge and who advocate change and renewal. To attract and retain those individuals the University must provide an environment that provides opportunities for tenure, promotion and advancement.
- creating an environment in which it is acceptable to have a deferred compensation system that involves lower pay in earlier years and higher pay in later years.
- given the need for the University's tenure system, enabling individuals to retire from the University with dignity. Without mandatory retirement individuals who do not retire voluntarily must ultimately be dismissed for cause. This is undesirable and would necessitate detailed performance appraisals to justify each dismissal decision.
- encouraging and enabling faculty to plan in advance for retirement.
- requiring retirement at the age that corresponds with the commencement of both private and public pension plans and tax concessions.
- enabling the University to plan for change and renewal.

Despite the desirability of mandatory retirement in a university context, UBC requires sufficient flexibility to be able to retain faculty past the age of 65 years when it is in the best interests of the University to do so. Since 1977, the University has utilized post-retirement appointments for academic staff beyond the age of 65 years. These post-retirement appointments are made only under special circumstances to meet an immediate and specific need and are limited to terms of up to one year at a time. The University should also be able to retain, for general academic duties, exceptional faculty who have received the highest acclaim from the academic community and who continue to distinguish themselves as scholars.

Policy # 52

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**Purpose**

1. To continue the mandatory retirement age at 65 years.
2. To continue special purpose contracts with academic staff for term positions of up to one year at a time.
3. To enable UBC to benefit from the continuing contributions of our highest achieving faculty who are beyond the mandatory retirement age 65.

**Policy**

**1. Mandatory Retirement Date:**

Except as may be explicitly set forth in this Policy, the mandatory retirement age is 65 years.

**2. Special-Purpose Post-Retirement Appointments:**

(a) Where there is an immediate and specific need and it is in the best interests of the University to reappoint a retiring or retired faculty member to meet that need, a special-purpose post-retirement appointment may be made for a term of up to one year at a time.

(b) A special-purpose post-retirement appointment requires the approval of the Provost.

**3. Exceptional Post-Retirement Appointments:**

(a) A limited number of exceptional faculty who have received the highest acclaim from the academic community and who continue to distinguish themselves in teaching and as scholars will be eligible for consideration for an exceptional post-retirement appointment.

(b) An exceptional post-retirement appointment will only be made available if it can be demonstrated that the benefits to the Faculty outweigh the advantages of making a new faculty appointment.

(c) An exceptional post-retirement appointment requires the approval of the Provost.

(d) An exceptional post-retirement appointment is not a right or a reward and will be approved in the University's sole discretion only if it is in the best interests of the University.

**4. Review:**

This Policy will be reviewed in 3 years.

**Procedures**

Approved: July 1977 Revised: January 2004

*Pursuant to Policy #1, "Procedures may be amended by the President, provided the new procedures conform to the approved policy. Such amendments are reported at the next meeting of the Board of Governors and are incorporated in the next publication of the UBC Policy and Procedure Handbook. "*

**1. Mandatory Retirement Date:**

(a) A full-time faculty member whose 65th birthday falls between January 1 and June 30 inclusive will continue in his or her rank and salary with applicable benefits until June 30. A faculty member whose 65th birthday falls between July 1 and December 31 inclusive will continue in his or her rank and salary with applicable benefits until December 31.

(b) A sessional lecturer or other part-time faculty member who reaches his or her 65th birthday during the term of his or her appointment may continue in service until the expiry date of the appointment.

**2. Special-Purpose Post-Retirement Appointments:**

(a) There will be no requirement to grant any appointment beyond age 65.

(b) There must be an immediate and specific need within the unit concerned and the special -purpose post-retirement appointment must address this need.

(c) A special-purpose post-retirement appointment must not be in place of renewing the department through the appointment of tenured or tenure track faculty members.

(d) Special-purpose post-retirement appointments are to be made primarily for teaching/collection development duties, and occasionally for service on committees.

...continued on page 12  
See "Policy # 52"

- (e) Remuneration should be commensurate with the services performed (eg. depending on the circumstances, teaching could be on a pro bono basis, or involve a salary ranging from very modest to the scale amount for sessional lecturers).
- (f) The title used by a special-purpose post-retirement appointee should reflect the current status of the appointee (eg. Professor Emeritus).
- (g) No payment will be made for occasional honorific or voluntary duties (eg. chairing doctoral oral examinations, supervising graduate students).
- (h) Special-purpose post-retirement appointments are to be recommended by the head of the unit concerned to the dean/librarian to the Vice-President, Academic & Provost for approval. Agreement-in-principle should be sought by the head before any assurances are given to possible appointees.

**3. Exceptional Post-Retirement Appointments:**

- (a) UBC may make one or more exceptional post-retirement appointments available to a member of faculty from the expiry of his or her appointment pursuant to paragraph 1 above until no later than age 70. UBC may make an initial exceptional post-retirement appointment for up to three years, with the understanding that further exceptional post-retirement appointments may then be made for up to an additional two years. All exceptional post-retirement appointments will be reviewed yearly and may be terminated with notice as required under the *Employment Standards Act*.
- (b) UBC may establish the duties of the faculty member and its expectations of the faculty member during the exceptional post-retirement appointment.
- (c) If UBC decides more than two years before the mandatory retirement age that a faculty member will receive an exceptional post-retirement appointment, UBC's decision will be subject to the faculty member maintaining outstanding success in teaching and in scholarly activity and in securing ongoing financial support for research where appropriate. If, in UBC's view, the faculty member has not met these ongoing requirements, UBC may revoke its decision not less than one year before the mandatory retirement age by giving written notice to the faculty member, in which case the faculty member will retire at the mandatory retirement age as though no such decision had been made.
- (d) In deciding whether to make an exceptional post-retirement appointment, the Provost will consult with the Head and the Dean.
- (e) The decision will be based on evidence of outstanding success in teaching and in scholarly activity. Where appropriate there must be evidence of ongoing financial support for research.
- (f) An exceptional post-retirement appointment may be full or part-time, but must include a teaching component.



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