

## Eroding our Rights

*An open letter from Al Valleau, Karen Inglis, Cecilia Martell:*

Dear Colleagues,

Recent developments in the Faculty of Humanities lead us to appeal to all faculty members to read with great care a revised document regarding Search and Hiring Proposals (reproduced on pages 3-6), which was voted on at the Humanities Faculty Council meeting of April 9, 2010. Unfortunately, a Council of nine (seven voted for, one opposed, one abstained) agreed to endorse the document, despite the argument that the implications threaten both the job security and academic freedoms guaranteed under our Collective Agreement. The document is now going to Senate Standing Committee on Governance for approval. We believe that other Faculties at Kwantlen are facing

similar pressures to accept new directions that threaten the good working conditions the Faculty Association has struggled for years to build and maintain. Therefore, we ask you to consider the following before you agree to accept any such changes that create the conditions by which administrative bodies can develop a tiered system that advantages a small few over the many who have committed their careers to Kwantlen. We encourage you to share your concerns with your representatives on Council and Senate.

- We are currently in negotiations on a new contract. Our old contract, which

expired at the end of March, remains in effect until a new contract is agreed upon and ratified. The expiry of a contract does not nullify it. It is incumbent upon both parties to the existing agreement and the negotiation process to negotiate in good faith.

- The collective agreement is a legal document to which both faculty and the employer are bound. It is the result of many years of negotiating, building, fine-tuning, revising, and even fighting for rights that are currently written into it. The collective agreement protects our interests as employees, and all of us have benefitted from its protection, even if we may not have been involved directly in the struggles that led to the terms we enjoy now. The collective agreement as it

stands now also ensures that our future colleagues do not have to fight for things that have already been hard won by us and those before us, and will be treated with the same dignity and respect as we have come to appreciate.

- To support a document that appears to contradict the collective agreement is, at best, a tacit agreement to bargain in bad faith. It is, at worst, a potential opportunity for the employer to argue that faculty have turned against the faculty association that represents us,

**If the Proposed Search and Hiring Process document were implemented, it would:**

- erode the job security of all faculty members
- create a confusing and arbitrary evaluation system
- give all power in Search processes over to the Dean
- further restrict the rights of non-regular faculty
- remove proper process and protection in determining conflict of interest/bias in Search Committees

DEFENDING OUR RIGHTS



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and that we have effectively decided to bust our own union through a hostile action against its jurisdiction. In particular, principle # 10 on the list seeks to undermine advancement on our salary scale, while # 11 seeks to introduce new language on post-probationary evaluation that is being discussed in another arena, and #2 proposes a shift from our institutional focus on teaching to a model that requires traditional scholarship and university service. Other clauses in this document suggest strongly that any job security that faculty have achieved through regularization will be subject to new measures to evaluate ongoing employment through criteria not presently in place. Again, advancement, evaluation, and regularization are within the scope of the collective agreement negotiated between our bargaining unit and the employer.

- To agree to turn over the checks and balances that exist in our current collective agreement, handing over to the administration powers that now reside with departments, administrators, and the Faculty Association, collaboratively or by mutual agreement, would be to agree that the administration should be able to make unilateral decisions about us, individually and as a department, without consultation.
- Search, hiring, and working conditions are addressed in the collective agreement, as are academic freedoms. Any changes to hiring practices that faculty, not administration, deem we need should be submitted to the working conditions committee and bargained during the next few months.
- It may be argued that the distribution of this document, and the request for discussion and feedback, is consultative. This is a slippery slope: a set of principles devised by administration to claw back powers over faculty from faculty, and sent to faculty to obtain feedback, does not constitute a consultative process. Faculty did not create this document and consult with one another to develop and hone it. To ask a small minority of Faculty representatives to vote on it, without sufficient exploration of all its implications is, in effect, to pit faculty against one another. Though we are a university, according to the Universities Act, we are a special purpose teaching university, and governed by different policies, principles, regulations, and practices than the research institutions are. Our system of governance is likewise different. We need to remain cognizant of those facts and the administration likewise needs to refrain from misinterpreting the portions of the act that distinguish us from UBC and SFU.

The collective agreement, which can be found on the KFA website (<http://kfa.bc.ca/ca/>), contains several articles that are of particular relevance to our understanding of this document that proposes to alter our current search, hiring, and advancement practices, specifically, articles 1.01, 1.02, 1.03, 1.05, 1.06, 3.01, 4.0-4.08. You will see that this document, which the Humanities Faculty Council endorsed, contradicts, even contravenes, the practices agreed to by both parties to the collective agreement.

Please also read carefully the KFA Special Bulletin circulated on 14 January (<http://kfa.bc.ca/pdf/20100114%20bulletin.pdf>), which states in part that "the employer is attempting to negotiate or change terms and conditions of our work, directly with individual departments and members, ignoring the KFA as exclusive bargaining agent. [The KFA has] filed a policy grievance with President Atkinson at Step 3, seeking a cessation of this bargaining in bad faith." Note that this is a Step 3 grievance, a far more serious step that bypasses the first two steps because of the parties involved.

The Faculty Council represents the academic interests of faculty and, while it may be argued that issues regarding working conditions are distinct from academic ones, we respectfully submit that the two are inseparable from one another. Our functions as academic departments are tied to the processes by which we determine our departmental composition. Ergo, our Search and Hiring of academic faculty is a process that is both a function of academic and working conditions, just as the collective agreement has entrenched in it the principles governing academic and working conditions. So we must consider the implications for our academic freedoms and how these might be affected if we endorse any proposals that threaten to control the working conditions that make our academic freedoms possible for us to have, enjoy, and defend.

Please share your concerns with your Faculty Council representatives and your Senators, to ensure the preservation of our collective, equitable, and fair working conditions, search and hiring practices, and academic freedom. Do not give away those things that are the purview of the KFA, which is charged with negotiating the conditions that allow us to work as valued members of the Kwantlen community. As we go through this process of becoming a different kind of institution charged with shaping our identity, we must all take very seriously the nature of proposed changes and understand that we will only be heard if we all speak up.

Yours respectfully,

Al Valleau, Karen Inglis, Cecilia Martell

## Proposed Search and Hiring Process

### Faculty of Humanities Council

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#### I. Principles

The Faculty of Humanities Council recognizes the following general principles:

1. that vacancies within a discipline<sup>1</sup> should be determined by the needs of that discipline
2. that either permanent or fixed-term appointments may be required by a discipline
3. that, in consultation with the Dean of the Faculty,<sup>2</sup> members of a particular discipline, as experts in that discipline, are best suited to identify the staffing needs of their discipline
4. that, in accordance with (2) and (3), a limited-term appointment may be offered within a discipline
5. that limited-term appointments carry no implication of automatic renewal, but imply that the appointee shall be considered for further appointment, subject to discipline needs, the availability of funds, and (if appropriate) a renewed search process
6. that members of a particular discipline, as experts in that discipline, are best suited to identify the common hiring standards of their discipline
7. that, in accordance with (6), members of a particular discipline, as experts in that discipline, are best suited to set the minimum qualifications required to fill vacancies within their discipline
8. that meeting the minimum qualifications required by a discipline does not constitute a *guarantee* of an appointment, or an unrestricted appointment, within that discipline
9. that, in accordance with (8), an appointment within a discipline may be offered with restrictions, including restrictions on the number and type of courses taught
10. that all academic appointments and reappointments within a discipline shall be based on discipline needs and/or faculty performance, with or without reference to length of service or seniority as deemed appropriate by members of that discipline
11. that the criteria for judging the performance of a candidate shall be based on a combination of teaching, scholarly activity, university service, and community involvement. The proportional weights of these elements shall be clearly defined by individual disciplines
12. that all policies and procedures made by the Faculty of Humanities Council, including these principles, are subject to the *University Act* and the bicameral governance structure at Kwantlen Polytechnic University.

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<sup>1</sup> For the purposes of this proposal, “discipline” is construed to include all academic departments and equivalent academic units that offer *for-credit* courses at Kwantlen Polytechnic University.

<sup>2</sup> It is understood that the Dean of the Faculty shall have the option of assigning a designate to act on his or her behalf, in which case the designate shall have all the privileges and obligations conferred on the Dean within the context of that designated appointment.

## II. Formation of a Search Committee

13. The Search Committee of a discipline in the Faculty of Humanities shall consist of four (4) members: the Dean of the Faculty and three (3) members elected by the discipline for a fixed term (to be determined by that discipline). Each Search Committee in a discipline shall elect a Chair for a fixed term (to be determined by that discipline).
14. Variations to the standard committee format shall be considered when unusual situations arise. In such cases, a formal written request shall be submitted by the Chair of the Search Committee of the affected discipline to the Dean of the Faculty, who shall consider the matter and render a decision accordingly.
15. In the event Search Committee members have not been elected, or if a member who has been elected declines to participate in the search process for any reason, the Dean of the Faculty shall appoint a replacement to the Search Committee. Where possible, the replacement shall be appointed from the affected discipline, but may come from other disciplines within the Faculty of Humanities if no member of the affected discipline is found to be free of a conflict of interest.
16. Where the appointment is in a new discipline, the Search Committee shall be appointed by the Dean of the Faculty from the closest related discipline.
17. Only permanent faculty members who are part of the discipline, or closest related discipline, shall serve on the Search Committee of that discipline.

## III. Conflict of Interest

18. A conflict of interest arises when a Search Committee member's private interests supersede or compete with his or her dedication to the interests of the discipline. This could arise from a real, potential, or apparent conflict of interest and may be financial or otherwise. For this purpose:
  - a. A *real conflict of interest* occurs when a Search Committee member exercises an official power, or performs an official duty or function, and at the same time knows that in the performance of this duty or function, or in the exercise of power, there is the opportunity to further a private interest.
  - b. A *potential conflict of interest* occurs when there exists some private interest that could influence the performance of a Search Committee member's duty or function, or in the exercise of power, provided that he or she has not yet exercised that power, duty, or function.
  - c. An *apparent conflict of interest* exists when there is an apprehension, which reasonably well-informed persons could properly have, that a Real Conflict of Interest exists on the part of a Search Committee member.
  - d. Search Committee members must arrange their private affairs and conduct themselves in a manner to avoid conflict of interest. In cases where conflict cannot be avoided, a Search Committee member has an obligation to declare a conflict of interest to the Chair of the Search Committee prior to discussing or voting on any affected issue. Upon declaration of a conflict, the Chair of the Search Committee should duly note the declaration and the affected Search Committee member must refrain from discussing or voting on this particular matter.
  - e. Where a Search Committee member is unsure whether he or she is in conflict, that member should raise the perceived potential conflict with the Chair of the Search Committee, who shall consult with the non-affected members of the Search Committee and determine by majority vote whether or not a

conflict of interest exists. The affected Search Committee member must refrain from discussing or voting on this particular matter.

- f.* Where a conflict of interest is discovered after consideration of a matter, the conflict must be declared to the Chair of the Search Committee and appropriately recorded at first opportunity. The Chair of the Search Committee shall consult with the non-affected members of the Search Committee and determine by majority vote whether or not a conflict of interest exists. The affected Search Committee member must refrain from discussing or voting on this particular matter.
- g.* If a conflict of interest exists, the Chair of the Search Committee shall remove the affected member from the Search Committee and, in consultation with the non-affected members of the Search Committee, appoint a temporary replacement. Where possible, the replacement shall be appointed from the affected discipline, but may come from other disciplines within the Faculty of Humanities if no member of the affected discipline is found to be free of a conflict of interest. The reconfigured Search Committee shall re-examine all relevant issues and may rescind, vary, or confirm prior decisions made by the Search Committee. After the reconfigured Search Committee has settled all relevant issues, the replaced member of the Search committee may rejoin the Committee.
- h.* Any Search Committee member who perceives another member to be in conflict of interest in a matter under consideration must identify the perceived conflict to the Chair of the Search Committee at the first opportunity. The Chair of the Search Committee shall consult with the non-affected members of the Search Committee and determine by majority vote whether a conflict of interest exists. The affected Search Committee member must refrain from discussing or voting on this particular matter.
- i.* At his or her discretion, the Chair of the Search Committee may invite the member in a perceived conflict to state his or her position on the issue in question prior to absenting himself or herself from discussion and voting.
- j.* Where a perceived conflict of interest involves the Chair of a Search Committee, the non-affected members of the Committee shall decide whether a conflict of interest exists. If a conflict of interest exists, the Chair shall remove himself or herself from the Committee and another member shall serve as temporary Chair. In consultation with the rest of the Search Committee, the temporary Chair will appoint a temporary replacement to the Search Committee. Where possible, the replacement shall be appointed from the affected discipline, but may come from other disciplines within the Faculty of Humanities if no member of the affected discipline is found to be free of a conflict of interest. After the reconfigured Search Committee has settled all relevant issues, the replaced Chair may return to the Committee and resume his or her previous role.

#### **IV. Allegations of Conflict of Interest by Candidates**

- 19. If a candidate for appointment or reappointment, or an appointee who wishes his or her credentials to be evaluated or re-evaluated for further work, has any concerns related to a conflict of interest on the part of a Search Committee member, those concerns should be brought to the attention of the Chair of the Search Committee by the candidate (or his or her designated representative) before the commencement of the interview process, but, in any case, no later than fifteen (15) business days after the date of the candidate's interview. Allegations of a conflict of interest made by a candidate later than fifteen (15) business days after the candidate's interview may be investigated, but may only serve as a basis for overturning prior decisions made by the Search Committee at the Committee's discretion.
- 20. Allegations of a conflict of interest on the part of a Search Committee member must be formalized in writing, dated, and signed by the alleger (or his or her designated representative), and must fully explain the

nature of the allegations, including instances, dates, times, and the presence of witnesses (where applicable). The formal written complaint, along with all supporting documents, must be submitted to the Chair of the Search Committee within the time limits specified in (19).

21. When the Chair of the Search Committee receives the formal written complaint and all supporting documents, he or she shall consult with the non-affected members of the Search Committee and determine by majority vote whether or not a conflict of interest exists. The affected Search Committee member must refrain from discussing or voting on this particular matter.
22. Where a perceived conflict of interest involves the Chair of a Search Committee, the non-affected members shall decide whether a conflict of interest exists. If a conflict of interest exists, the Chair shall remove himself or herself from the Committee and another member shall serve as temporary Chair. In consultation with the rest of the Search Committee, the new Chair will appoint a temporary replacement to the Search Committee. Where possible, the replacement shall be appointed from the affected discipline, but may come from other disciplines within the Faculty of Humanities if no member of the affected discipline is found to be free of a conflict of interest. After the reconfigured Search Committee has settled all relevant issues, the replaced Chair may return to the Committee and resume his or her previous role.
23. Search Committee decisions may be appealed to the Dean of the Faculty, but only on conflict of interest or procedural grounds.

## V. Search Process

24. When a new position is proposed, the job description and the job advertisement shall be drawn up in consultation with the appropriate discipline's Search Committee, and posted in accordance with established procedures.
25. The Search Committee shall review all written applications and supporting material, including the applicant's dossier, compile the interview list, and conduct all interviews.
26. After the interviews have been conducted, the Search Committee shall prepare a short list of qualified candidates with rationale and specific recommendations for the Dean of the Faculty. In the event that a member of the Committee does not concur with the list(s) submitted by the other members of the Committee, that member may submit a separate short list of qualified candidates with rationale and specific recommendations for the Dean of the Faculty.
27. In the event that more than one list is submitted to the Dean of the Faculty, or if the Dean of the Faculty does not wish to follow the Search Committee's recommendation when making the appointment,<sup>3</sup> he or she shall meet with the Search Committee to provide his or her rationale, and attempt to resolve the matter before taking action. The Dean of the Faculty may decide on any one of the following:
  - a. make an appointment from any list submitted by member(s) of the search committee<sup>3</sup>
  - b. not make an appointment and direct that the search process recommence
  - c. cancel the vacancy
28. In the event that the short list is exhausted and a vacancy must still be filled, the search process shall recommence.

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<sup>3</sup> Decanal appointments and reappointments are subject to the university President's recommendation to the Board of Governors and the Board of Governors' approval.