

## Attack on Our Bargaining Rights: A Bad Start to Bargaining

On December 1, 2009, the first day that bargaining could legally begin, the Kwantlen Faculty Association (KFA) received a letter from Scott L. Nicoll, Chair of the Kwantlen Polytechnic University Board of Governors. It states, in part, the following:

It is possible that there are some current provisions in the collective agreement that were bargained in good faith at the time but that deal with areas that may now be under Senate's jurisdiction. If, in the future, the Senate, in carrying out its statutory duties adopts policies that may conflict in whole or in part with the existing collective agreement language, our understanding of the law is that such a conflict would render those parts of the collective agreement in conflict with the particular Senate policy void and of no effect.

In effect, the letter indicated that since Kwantlen Polytechnic University is now governed by the University Act rather than the College and Institute Act, Senate has the power to make decisions that could erode provisions in our collective agreement.

In no uncertain terms, the KFA disputes this interpretation.

### Bad Faith

Before responding, the KFA immediately sought the support and advice of our provincial federation, the Federation of Post-Secondary Educators (FPSE). Cindy Oliver, President of FPSE, wrote John Waters, CEO of the Post-Secondary Employers' Association (PSEA)—the employer bargaining agent for all public colleges, special-

purpose teaching universities, and institutes in British Columbia. In her reply, Oliver asserted that the letter was intimidating and disruptive to our preparations for bargaining. Moreover, she contended that the letter could amount to bargaining in bad faith and could constitute unfair labour practices, actions which contravene the Labour Relations Code of British Columbia; she further warned that should the actions continue, FPSE would seek relief from the Labour Relations Board.

### Misinterpretation of Previous Legislation

Furthermore, FPSE, on behalf of the KFA, also obtained the legal advice of Leo McGrady, QC, who also wrote to the Chair of the Kwantlen Polytechnic University Board of Governors. In his response, he pointed out the Labour Code of British Columbia contains no provision that allows an employer to divide itself into parts, with some governed by a collective agreement, and some not. He also indicated that Nicoll's assertion may have been prompted by the 2008 University of British Columbia (UBC) decision in which Arbitrator McPhillips ruled that teaching evaluations were accepted to be the jurisdiction of the UBC Senate—a ruling which denied the UBC Faculty Association the right to grieve a decision of the UBC Senate on teaching evaluations. McGrady noted, however, that the ruling is under appeal. He also pointed out that the powers and duties of special purpose teaching universities are covered under section 35.2 of the University Act, *not* under section 37—

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the section covering only UBC, Simon Fraser University, the University of Victoria, and the University of Northern British Columbia. Furthermore, he stated that while we agree that Kwantlen Polytechnic University is now governed under a bicameral model, it is not the same as that governing UBC.

### **Ignoring Their Own Advice**

Terri Van Steinburg, KFA President, also wrote Nicoll. In her response, Van Steinburg stated that the KFA categorically disputes his interpretation of the University Act. She reminded him that the KFA is the recognized bargaining agent for our members, a recognition that is embedded both in our collective agreement signed by the employer and the faculty association and in the Labour Relations Code of British Columbia.

Moreover, she pointed out that the legal opinion sought by Kwantlen Polytechnic University and provided by D. Lawrence Munn, of Clark Wilson, LLP, determined that our collective agreement remains in force regardless of the transition from university college to university, from Education Council to Senate:

... it should be noted that the continuation of Kwantlen University College as a university and the designation of faculties will not affect the validity, term or content of the two collective agreements. Those remain in place.

### **Ignoring the Supreme Court**

Van Steinburg went on to mention that in 2002, the Liberal government tried through legislation to alter provisions in signed collective agreements; however, the Supreme Court of Canada later ruled that those legislated actions were illegal and gave its unequivocal support for free collective bargaining, recognizing the fundamental right of employees to negotiate terms and conditions of work with their employers.

She concluded her response by cautioning that the Board of Governors' suggestion concerning provisions of the collective agreement possibly being void and of no effect is provocative and unsettling, especially as we are about to bargain a new collective agreement.

### **KFA: The Recognized Bargaining Agent**

The KFA assures our members that regardless of suggestions to the contrary, we will continue to represent ALL faculty members. We will continue to defend our rights, and we will continue to protect the welfare, professional interests, and working conditions of our members. Most importantly, we will continue to regulate labour relations between Kwantlen Polytechnic University and faculty members as the exclusive bargaining agent.

### **Reconsider Its Position**

**The KFA has asked the Board of Governors to reconsider its position. In the meantime, the KFA will proceed with preparations for bargaining.**

*Questions?*

Contact the KFA at (604) 599-2200 or drop by our office in room B201 on Surrey Campus.