FACULTY ASSOCIATION OF THE UNIVERSITY OF WATERLOO

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GRADE CHANGING AND "INSTITUTIONAL ACADEMIC FREEDOM": DISTURBING INTERPRETATIONS

Two articles that analyze the Stan Lipshitz/FAUW grievances and their journey to arbitration are featured in this issue. Fred McCourt and Ian Macdonald, who have monitored these cases from the beginning, explore the history of the disputes and the academic issues involved, as well as the unanswered questions and unsettling implications of the arbitrator's report.

(The arbitrator's report is available from the FAUW website http://www.uwfacass.uwaterloo.ca. Bound copies are also available from Pat Moore in the FAUW Office.)

Also appearing in this issue are two more general articles that are relevant to the question of the arbitration and academic freedom. In "Of Arbitration, Litigation and Snowball Fights," Ken Westhues summarizes a recent CAUT conference on employer-employee relations in universities, including the problem of settling disputes. Ken examines the question of external legal action vs. "in house" settling of academic disputes. The other article is introduced below.

PROFESSORS ARE UNCONVINCING IN SHIELDING THEIR INTERESTS

Thus argues Alan Wolfe of Boston College in a very timely article reprinted from the *Chronicle of Higher Education*, beginning on Page 14. "How do academics fare when they try to defend their own interests? If recent controversies about faculty workload and grade inflation are any indication, not very well." Wolfe comments on the recently publicized efforts of Harvard professor Harvey C. Mansfield to combat grade inflation at that institution.

ANNUAL GENERAL MEETING
2:30 p.m.
Wednesday, April 4
Physics 145

Refreshments

Inside this issue:

TO GRIEVE OR NOT TO GRIEVE – NOW THAT'S A REAL QUESTION

Fred McCourt, Past President, FAUW
Department of Chemistry

It seems unlikely that any faculty member at UW remains unaware of the recent grievance launched by Professor Stanley Lipshitz (Applied Mathematics) with regard to a violation by the University of his academic freedom in the assigning of grades to students, or of a subsequent Association grievance concerning the establishment of a fair and proper process by which an administrator may change assigned grades when there is evidence that the grades originally assigned by a particular professor are inappropriate. Professor Lipshitz and the Association agreed to an Administration request that the two grievances be heard simultaneously by the same arbitrator. Accordingly, the Arbitrator, Mr. Ross Kennedy, was chosen, and commenced a hearing of the grievances at UW on January 10, 2001. Two additional days of hearing were required, on January 11 and 22, 2001.

The background to Professor Lipshitz's grievance is the following. He taught Math 247, the third and final member of a sequence of advanced-level enriched core calculus courses offered by the Faculty of Mathematics to students who at the time of entry to UW have OAC averages of "at least 80%". In practice, this set of courses is intended only for the top students entering the Faculty of Mathematics. Somewhere in the neighbourhood of 50 students take the first of these courses. There were 18 students from the group of 25 students who completed the prerequisite Math 148 course who registered in Professor Lipshitz's Math 247 course in the Winter 2000 term: 12 of these students had attained grades of 75% or more in Math 148, the remaining six all had grades below 75% in Math 148.

For those readers who are not members of the Faculty of Mathematics, a short aside may be in order. We learned from evidence introduced at the hearing that advisors from the Faculty of Mathematics are authorized to tell incoming students who are considering registering in the two advanced-level enriched core course sequences (one in algebra, one in calculus) that their performance, as indicated by course grades, will not suffer by virtue of their participation in these courses. They are told specifically that their grades in the advanced-level courses will be much the same as they would have been were the students taking the regular level core sequences along with all other mathematics students. To effect this "promise", the Dean of the Faculty has introduced guidelines on class averages in mathematics core and service courses. The guideline document states that a class "average of 60% indicates that a class is performing very poorly, and so should be a rare occurrence"; it further states that the Dean's Advisory Committee recommends that "averages in the first- and second-year core and service courses should normally be in the range from 65 percent to 75 percent", and that the advanced-level courses "will normally have class averages well above 80 percent". It is this final credo that ultimately brought Professor Lipshitz to his grievance, as he believed that the class average had to be "earned" by the students in the class.

Professor Lipshitz pitched his lectures in Math 247 at a level appropriate to an advanced-level treatment of the same material being covered in Math 237 (the regular-level course) but, following the midterm examination, it became apparent to him that it was highly unlikely that the class average would reach 80% unless something significantly different was done. He consulted the Associate Dean for Undergraduate Studies and previous instructors for the course. He was advised that a final exam structured so that 80% or so of the questions were pitched at the level of Math 237 should help the class attain an average consistent with the guidelines. This Professor Lipshitz proceeded to do. His final exam consisted of twelve questions of equal value, eight of which addressed material covered in his lectures, but at a lower level that was consistent with Math 237 (which he had also previously taught). In the end, he gave the students an additional half hour to write the final examination, and he took the raw score out of 120 over 100 (with a cap at 100), which meant that a student could achieve 80% on the final examination by answering all "regular-level" questions perfectly. Even with this the class average was still well below 80%. He then made an additional grade adjustment (a multiplicative factor 1.1) to allow for the possibility that the examination had been a little too long: this brought the class average to 73%, and the average of these 18 students to 74%. Had the class been restricted to students whose final grades in Math 148 had been at least 75% (which would have excluded six students) the class average would have been 82%, thereby meeting the Mathematics Faculty "guidelines".

Because he felt that to do more than he had already done could not be justified academically, Professor Lipshitz turned in his grades, and met with the Associate Dean to explain why the 73% class average was as high as he felt he could justifiably make it. He also made available all his materials for a review of the grades, saying that if

some error or unfairness could be found, then he would be willing to restructure the grades accordingly. He heard nothing for several weeks, until he stopped by the Associate Dean's office to retrieve his course materials for a colleague who was going to be teaching the course in an upcoming term. Upon his enquiring of the Associate Dean as to the outcome of the review of his material, he learned that while no shortcomings had been identified, the Dean nevertheless had decided to change the course grades to bring them in line with the Faculty of Mathematics guidelines which, by the way, have never been approved by its Faculty Council or by Senate, the only bodies that are properly authorized to make such changes.

A professor's grades were thus changed by the Dean of his Faculty without consultation with him and without notification that his grades had been changed! Professor Lipshitz was justifiably outraged by this action. He requested a meeting with President Johnston to discuss his concerns but, as the President was not in town, the matter was referred to the Vice President Academic, and Provost, who met with him, the Dean and Associate Dean of Mathematics, and the Chair and Chair-elect of Applied Mathematics. Professor Lipshitz explained his position, and his grave concern over the action taken by the Dean. The Vice President, Academic and Provost, however, supported the action taken by Dean George, saying that it was his opinion that the Dean of a Faculty has the power to change grades awarded by a faculty member, ultimately whether or not the faculty member agrees to the changes.

It was at this point that I became knowledgeable of such actions by the Dean of Mathematics, although I had been aware through rumours circulating in the Faculty of Mathematics that such things had happened in a few cases. After consultation with me and with other colleagues, Professor Lipshitz decided to launch a formal grievance against the University. I made the President of FAUW, Professor John Wilson, and the FAUW Board of Directors aware of what had happened, and because the Board believed that the action taken by the Dean of Mathematics could be seen as a very dangerous precedent, it was decided to launch a parallel Association grievance under the Memorandum of Agreement as a means of bringing proper process into place. I was asked by Professor Wilson to serve as his delegate in carrying the grievance forward. We asked CAUT for legal help, and they assigned Ms. Mariette Blanchette, their senior legal advisor, to present our case at the arbitration hearings. The University was represented by Mr. Christopher G. Riggs, Q.C., a Toronto lawyer.

At the hearing the University maintained that the assignment of course grades to students was not covered under academic freedom, and that academic freedom with respect to teaching merely pertained to the teaching of material that may be anathema to some segment of the community at large (the theory of evolution comes to mind) or that might criticize the government of the day. Further, the University maintained that a Dean has the power to change grades under UW Policy 45, section II, authorized specifically by the statement "the Dean of that Faculty is its senior executive officer. As such, the Dean is responsible for all matters academic, financial and material pertaining to the Faculty". The University thus maintained that the changing of course grades is a legitimate executive power held by the Dean of a Faculty along with the other powers that are required for the normal day-to-day management of a Faculty, rather than some extraordinary power to be used only in conjunction with an appropriate University policy delineating its boundaries. The Association and Professor Lipshitz maintained that the grading and assessment of students is an integral part of the profession and that it also lies at the heart of academic freedom, so that a Dean should not be able to assume the power to change grades arbitrarily under the rather general statement in Policy 45 regarding the executive powers of a Dean.

> I do not believe for one minute that the grades in Professor Lipshitz's case would have been changed by this process; rather, his position would have been upheld, given the circumstances that prevailed.

The Arbitrator ruled that if one follows American jurisprudence, in which the term "academic freedom" appears to be used not only to denote the freedom of individual faculty members in a university to pursue their ends without government, societal or even institutional interference, but also to denote the freedom of the university itself to pursue its own ends without government or societal interference, then both the University and its Administration also possess academic freedom. In Canada we recognize this latter "freedom" as "institutional autonomy" rather than as "academic freedom of the institution": the concept of institutional autonomy is intended to protect the University as an institution from undue influence by the local, provincial or federal governments of the day. Institutional autonomy, however, is not intended to provide the University with the power to counter the protections afforded by academic freedom to members of its collegium. The Arbitrator noted further in his report that while American academics have a constitutional right to academic freedom, such a constitutional right does not permit individual faculty members to override administrative authority.

What repercussion could this have for an individual faculty member like yourself? Let us consider an example of what apparently can transpire in an American institution of higher learning under the protections afforded according to the above paragraph. You are assigned by your Department (or Faculty) to teach a particular course, and in your enthusiasm you make an extra special effort to give the students a thorough, up-to-date, but nonetheless rigorous course. Your students respond well and, despite your having had rather high expectations of them (perhaps also to your surprise), they give you very high ratings when the end-of-term course evaluation is carried out. However, your Department Chair or Faculty Dean, upon looking over your grades, decides that you have been unduly demanding, even without having to establish what that might mean, and that some implied promise to the students has thereby not been kept. The Chair (Dean) then concludes that he/she needs to increase the class average to some predetermined level in order to fulfil this goal. Under the interpretation given by the Arbitrator in his decision, that administrator would possess the right to alter your assigned grades provided only that if, after discussion with you, it was established that you were not amenable to such a change, he or she made it clear to the students (and presumably to anyone else ultimately accessing those course grades) that the final assigned grades were not those originally assigned by you. According to the Arbitrator, this may be done in the USA, and therefore by extension, also in Canada, on the grounds that the institution has the academic freedom to do so.

The Arbitrator does go on to say in his report that he considers the evidence to be "overwhelming that the grading and assessment of students is and has always been considered an essential component of teaching", and that he is "satisfied that the protection of academic freedom would extend to the grading and assessment component of the professor's teaching". However, he continues by saying that the protection of academic freedom "cannot infringe upon the academic freedom and rights of other members of the University community", and that when the rights imparted to an individual professor conflict with the rights of the institution and its administration, a resolution "must be sought within the policies and procedures of the University". He also states correctly that the Association "conceded that the protection of academic freedom in the context of grading and assessment was not absolute and might have to give way in the face of valid University policies and procedures". The emphasis in our "concession" was on the word "valid": We wished to bring into effect an agreed-upon valid University procedure for the changing of grades in such circumstances. Let me be quite clear that I do not believe for one minute that the grades in Professor Lipshitz's case would have been changed by this process; rather, his position would have been upheld, given the circumstances that prevailed. Unfortunately, the Arbitrator took the position that the unofficial guidelines of the Faculty of Mathematics, taken together with verbal assurances given by faculty advisors to students as they registered in the first of the advanced-level courses in Mathematics *de facto* constituted a valid official UW Policy!

As alluded to above, the Association grievance had as a specific remedy the introduction of a process whereby a Department Chair or Faculty Dean could request changes in the grades assigned by an individual professor if he or she believed that there was good reason to do so. That process suggested by the Association involved the striking of an ad hoc peer review committee (consisting of colleagues with sufficient expertise to judge the grades in the specific course under contention) who would then hold a hearing at which both the administrator who wished to adjust the grades and the professor who assigned the original grades could present their arguments. At the conclusion of the hearing, the committee would then be responsible for determining whether the grades should be changed, and if so, to determine both the amount and the process. The administrator would thus either have the requested changes denied, or he/she would then be responsible for carrying out the grade changes determined by the review committee. We were expecting that the Arbitrator would agree that such a process would be the logical one to use in such a case, and that he would at least recommend that the University negotiate with the Association, possibly through the Faculty Relations Committee, to put an acceptable mechanism in place.

> There are serious concerns raised by the Arbitrator's confusion about the difference between institutional autonomy and "institutional academic freedom", whatever that may mean.

While the remedy sought by the Association was not directly addressed by the Arbitrator, he did criticize the Association for, as he put it in his report, its "contention that without pointing to a specific and particular policy or by-law of the Senate, a Dean has no authority whatsoever". Of course, that was never the position of the Association. We did maintain specifically, however, that a Dean should never have the authority to change grades in an arbitrary fashion, and that any change of grades to be made by a Dean (or any other senior administrator, for that matter) should only be made under the authority of a specific University Policy that has been approved by the

UW Senate, as it involves both central issues of academic freedom and natural justice.

There are serious concerns raised by the Arbitrator's confusion about the difference between institutional autonomy and "institutional academic freedom", whatever that may mean. He has, in effect, extended the definition of academic freedom beyond what it is normally considered to be, by declaring that the University itself (and its Administration) possesses an academic freedom that in essence trumps the academic freedom of individuals. This can be seen from his reference to Article 6.4 of the Memorandum of Agreement, which states in part that "those who are guaranteed academic freedom have a responsibility not to infringe upon the academic freedom and rights of other members of the University community". In his interpretation of those to whom this statement applies, the Arbitrator says specifically that "I would include the administration and the institution itself". This interpretation is bound to bring the academic freedom of individual professors into direct conflict with the issue of institutional censorship; indeed, where would the crossover from the application of an administration's academic freedom (whatever that might be!) to administrative censorship occur? How might such a concept affect the academic freedom of an individual researcher if the topic of research was controversial, and touched upon some aspect of what the administration considered to be its "academic freedom"? What constitutes a valid University policy for the purposes of reinforcing a Dean's executive powers? These are some of the questions that disturb me when I think about the outcome of this pair of grievances on academic freedom and grades.

These are important issues that need to be resolved in negotiations between the Faculty Association and the UW Administration. While there might be some tough bargaining ahead to ensure that the rights of faculty members are fully protected, with good faith on both sides, there is no reason that a satisfactory resolution cannot be achieved.

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COMMENTARY ON THE ARBITRATOR'S REPORT

Ian F. Macdonald
Department of Chemical Engineering

The recent arbitration of an Association policy grievance and the individual grievance of Professor Lipshitz on the infringement by the University of academic freedom with respect to teaching should be of grave concern to all faculty at the University. I would urge each one of you to read the arbitrator's report for yourself (paper copies are available from the Association office and it also is on the FAUW Web site).

As a preamble, I think that whatever institutional powers exist on matters such as this should properly be referred to as "academic authority" rights and not as "academic freedom rights", because I believe that the concept of academic freedom properly applies to individuals, not organizations. However, because the Arbitrator has used "academic freedom rights" in his report, I will use it here but in quotations when referring to institutional rights.

I believe that Arbitrator Ross Kennedy has made two kinds of significant error in his Arbitrator's Report of February 13, 2001 which have important implications for University of Waterloo faculty and probably for faculty at all Canadian universities.

First, I contend that Kennedy has made substantive errors in fact in his ruling which assigns the institutional "academic freedom rights" to the Dean and Administration in general. It is clear at the University of Waterloo that whatever institutional "academic freedom rights" exist belong to the Senate.

Second, even if there is an institutional right (leaving aside for the moment the issue of where such right resides) which, at least in principle, allows replacement of the grades assigned by an instructor with institutionally assigned grades as a *justifiable* infringement on the academic freedom of the instructor, I contend that current policies and practices in the University and its Faculty of Mathematics necessarily result in the exercise of such power being an *undue and unwarranted* infringement of the instructor's academic freedom. I believe that Kennedy failed to give due weight to the evidence to that effect.

A. Re the first kind of error

The University of Waterloo Act 1972, Section 22, makes it clear that the Senate is the body with authority on academic matters. The general authority and relevant specifics are reproduced below.

> POWERS OF THE SENATE
>
> 22. The Senate has the power to establish the educational policies of the University . . . and without restricting the generality of the foregoing, this includes the power . . .
>
> E. to consider and determine the conduct and results of examinations in all faculties or academic units;
>
> F. to hear and determine appeals from the decisions of the faculty councils on applications and examinations by students;
>
> M. to create councils and committees to exercise its powers;

22.M. gives Senate the authority to set up Faculty Councils to exercise its powers. Note that 22.F. addresses appeals of "decisions of the faculty councils . . . on examinations", *not decisions of the academic administration*!

I do not know if there was an explicit motion passed by Senate delegating its powers under 22.E. and 22.F. to Faculty Councils, but the delegation is clear, if implicit, through being included in the constitutions of the Faculty Councils which require the approval of Senate to come into effect. From Senate By-Law 10,

> CONSTITUTIONS
>
> Each Faculty and each academic department of the University is hereby empowered to develop a formal constitution governing its operations, provided that each such constitution and any amendments thereto shall be inoperative and ineffective until approved by the Senate of the University.

The Senate has delegated its authority re examinations and their results to Faculty Councils, and many Faculty Councils have in turn delegated the authority to a committee of council, such as the Mathematics Undergraduate Standings and Promotions Committee and the Engineering Examinations and Promotions Committee [e.g., see the Engineering Faculty Council Constitution (sections II.B (iii), II.B (v), and IV) and Bylaw VIII (Appendix A, sections III.5 (e),(f), (g), and (p)) plus the 2000/2001 UW Undergraduate Calendar, pages 10:14, 10:16; and 10:20, and the Mathematics Faculty Council Constitution (sections II (c) and III) and Bylaw IV (sections (e)1 and

(e)2].

Therefore, whatever powers may be assigned under Policy 45 by the broad and vague "Within her/his Faculty, the Dean of that Faculty is its senior executive officer. As such, the Dean is responsible for all matters academic, financial and material pertaining to the Faculty" – they do not include the powers of Senate re determining the results of examinations, as Senate has delegated those powers to the Faculty Councils. Hence, Kennedy is in error in his conclusion that Policy 45 confers such authority on the Dean.

In the context of the above, the first three quotes Kennedy includes on pages 35 and 36 (all page number references are to the official paper copy of the arbitrator's report, available in the Association office, and now also on the FAUW Web site) in their references to the Academy or the University, clearly refer at the University of Waterloo to the prerogatives of the Senate of the University, not to the prerogatives of Administration of the University, so he is in error in relying on these to assign institutional "academic freedom rights" to the Administration.

Even if one were to concede that institutional "academic freedom rights" are covered under Article 6.4, "the institution itself" clearly would mean the Senate according to the University of Waterloo Act.

With regard to the argument by the University lawyer Riggs according to Kennedy, page 31, line 3-4 from bottom "...and authority on academic matters has been given by the Senate to the Dean. That authority would be restricted only if the Senate put into place a different policy.", I submit that Senate has, in fact, put the restriction in place by approving the Constitution of the Mathematics Faculty Council – a different, more fundamental form of setting policy, which overrides any vague ill-defined rights of the Dean deriving from Policy 45.

While Kennedy's statement in the middle of page 38 that "Article 6.4 is a specific requirement that those who are guaranteed academic freedom have a responsibility not to infringe upon the academic freedom and rights of other members of the University community" is correct, his next statement "among those, I would include the administration and the institution itself" is incorrect and is egregiously wrong in its inclusion of the administration. I believe that Article 6.4 addresses the potential for conflict between the academic freedoms of individuals, not between the academic freedom of an individual and the academic authority of the institution vested in Senate by the UW Act. I believe that the latter type of conflict is best addressed by means of a specific policy (which does not exist now) agreed to by Senate and by the Association. Even if one were to concede that institutional "academic freedom rights" are covered under Article 6.4, "the institution itself" clearly would mean the Senate according to the University of Waterloo Act. There is no such thing as the academic freedom right of an administrator, acting in her/his capacity as an administrator, to infringe on the academic freedom of individual faculty members: if there were, academic freedom for ordinary individual faculty members would be of little value.

The argument on page 41 that administrators "carry the authority to run the day-to-day affairs of the University" is correct, but it is incorrect both to say that administrators "determine the issues that come within the academic freedom rights of the institution", especially if they are judged to have higher status than the academic freedom rights of individual faculty, and to infer that for a Dean to change the grades assigned by an instructor falls under the rubric of administering the Faculty.

The statement on page 41, line 11-13 "Article 6.4 maintains the rights and responsibility of the Dean within the purview of pursing (sic) the legitimate interests of the institution," repeats the egregious error from page 38 (see above). Article 6 deals with academic freedom, not with administrative authority.

I submit that the evidence makes it clear that no Administrative Officer (including the University President) has the authority to replace or change the grades assigned by a course instructor. In doing so, then Dean Alan George usurped the powers of the Senate and Faculty Council. By that illegitimate action, he also violated the academic freedom of Professor Lipshitz. Arbitrator Kennedy's error in failing to so rule not only hurt Professor Lipshitz, but also damaged the academic freedom rights of all faculty. Instead Kennedy ruled only that Dean George violated the academic freedom of Professor Lipshitz by failing to consult with him adequately prior to changing the grades and by failing to make clear that the final grades were not assigned by Professor Lipshitz.

B. Re the second kind of error

It is at least arguable that, given the powers of the Senate to establish the educational policies of the University and to determine the conduct and results of examinations, it is a right of the Senate (and, by delegation, the Faculty Councils) to establish procedures whereby, on rare occasions, the grades assigned by an instructor may be replaced with institutionally assigned grades (suitably identified as such) on the grounds that the instructor's grades are not consistent with the educational policies and practices of the University. A difficult question to resolve is whether or not there can exist such grounds which do not infer inappropriate action on the part of the instructor. The procedure would require that an appropriate peer

committee, established by the Senate (this is preferred to provide consistency across the University) or Faculty Council, rule that the alleged grounds are valid and sufficient. Such a procedure could presumably include giving authority to a Dean to initiate the procedure, if he/she believes such grounds exist, *but not to make the ruling.*

Even if we concede this, the Senate procedures must have the characteristic that they do not infringe *unduly* on the academic freedom of the instructor. In other words, they cannot be simply a right to arbitrarily change grades.

When expectations regarding the average performance of a class in a course are not met, there are two possible explanations. The cause may lie in the performance and abilities of the instructor, or the cause may lie in the performances and abilities of the students. If it is the first reason, it might be reasonable of the Senate following due process to substitute institutional grades. If expectations were not met for the second reason, I submit that it is unreasonable for the Senate to substitute institutional grades and such action would be an *unwarranted* violation of the academic freedom of the instructor. It might be argued that Kennedy failed to give due weight and consideration to the possibility that the explanation for the grades in this course was the second reason, and that, in effect, he treated the expectation as an absolute right of the students, with no accompanying obligation to perform.

Perhaps more importantly, it may be that Kennedy failed to consider whether the University has in place a procedural environment in which there could be an infringement on the academic freedom of the faculty member which would not be an undue infringement. It is my contention that the University does not, and that, therefore, it was not entitled to change the grades. Consequently, even if Kennedy had been correct in ruling that in principle a dean has the authority to substitute grades, he erred in ruling that the Dean could do so in practice in this case, given the existing procedures in place at the University of Waterloo.

It is an academic freedom right of the instructor to evaluate the student and assign grades. There is an institutional (Senate) "academic freedom right" or authority to determine the educational policies and the results of examinations, which potentially can be in conflict with the academic freedom of the instructor. The procedures to resolve such conflicts must take into consideration the rights of both and must only cause "justifiable infringements" on the academic freedom of the individual faculty member. I submit that, if the institution wishes to set course average expectations (a not unreasonable wish), it must make it clear to students that those expectations are not a guarantee and sometimes may not be met because the students collectively failed to perform at the appropriate level. Furthermore, I submit that, especially for enriched courses, there must be institutionally specified criteria for qualifying to take such courses and for denying entrance to such courses to students who fail to meet the criteria in prerequisite education and courses. If feasible, transfer to the parallel regular course at midterm time could be required. In the absence of such constraints, I suggest it is an unwarranted violation of the instructor's academic freedom to assume that failure to meet course average expectations is in conflict with the educational policies of the institution. Since the Faculty of Mathematics, according to testimony from then Dean of Mathematics Alan George at the arbitration hearing, allows any student to choose to enter or remain in an enriched course regardless of any evidence that the student should not be in that enriched course, I believe that Kennedy should have ruled that neither the Dean nor the Mathematics Faculty Council, even if potentially having the authority to replace the instructor's grades, has the authority at the University of Waterloo at present because of inadequate and inappropriate procedures which fail to take into account adequately the academic freedom of the faculty with respect to teaching.

I submit that the evidence makes it clear that no Administrative Officer (including the University President) has the authority to replace or change the grades assigned by a course instructor.

I should make it clear that, although I am a member of the FAUW Board of Directors, I am not writing this article on behalf of the Board. I am writing as an interested member of the faculty who attended the entire arbitration hearing and reviewed the arbitrator's report because I considered the matter one of great importance to faculty. The opinions here are my own.

OF ARBITRATION, LITIGATION, AND SNOWBALL FIGHTS

Kenneth Westhues
Department of Sociology

On the first weekend of March, I was pleased to represent FAUW at a CAUT conference in Ottawa on the legal context of our work. What I learned is of import to all UW faculty. Hence this report.

An ad for the conference in CAUT Bulletin last fall caught my interest. It was headlined, "Dealing with the Difficult Professor." In a letter to CAUT Director James Turk, I objected to this broad and stigmatizing label. The upshot was that Mariette Blanchette, Senior Legal Counsel at CAUT, included in the conference kit a critique by me and four others of the concept of "difficult professor." The FAUW board then decided to sponsor my attendance, along with Stan Fogel's, at the event itself.

Our critique is published on the web (http://mueller.educ.ucalgary.ca/Difficult) and need not be summarized here. Arbitrator Kenneth Swan, against whose paper the critique was aimed, responded intelligently, constructively, and with good humour. Indeed, of the six formal presentations, his showed the keenest grasp of the crisis of governance and human relations in today's universities. In the main, he agreed with our critique. The craziness of universities, he said, is what makes them wonderful places: "They are workplaces like no other, and should stay that way."

The emphasis of the conference, nonetheless, was on how universities are similar to other workplaces, in their common subjection to Canadian law and court decisions about employer-employee relations. All the conference presenters were lawyers. Their main purpose was to show how general provisions of labour law apply to universities. The focus was on one provision in particular, a 1995 decision of the Canadian Supreme Court on a claim brought by Murray Weber against his employer, Ontario Hydro. Suspecting Weber of dishonesty, Hydro had sent private investigators who gained access to Weber's home under false pretenses. Weber sued for breach of his civil liberties under the Charter of Rights and Freedoms.

The Supreme Court dismissed his case on grounds that the courts' jurisdiction had been ousted by the provision for binding arbitration in the collective agreement between his union and Ontario Hydro. Because Weber was an employee in a unionized workplace, almost any claims he might have against his employer should be handled through arbitration as opposed to litigation. Essentially, by accepting employment at Ontario Hydro, Weber had lost his right to sue the company in court, and could only ask his union to file a grievance on his behalf.

The presenters agreed that the Weber decision bodes ill for employees' rights in unionized workplaces, including academic ones. At worst, in jurisdictions like Ontario, where the Weber decision is broadly interpreted, a unionized employee may be restricted to arbitration for almost any claim against the employer, however remotely related to the collective agreement. At best, as Béatrice Vizkelety of the Quebec Human Rights Commission observed, unions acting on behalf of an aggrieved employee will face delays and additional costs for resolution of jurisdictional disputes before the hearing of the case begins.

What of nonunionized universities like Toronto or Waterloo, where faculty and administration have nonetheless agreed to a special plan or memorandum of agreement that provides for binding arbitration of grievances? Jim McDonald, from the firm of Sack Goldblatt Mitchell, offered an answer. Probably, he said, the range of claims to be handled through arbitration rather than litigation is just as broad in these universities as in those where faculty associations are certified as unions.

The implication for UW faculty is clear. In voting to accept the Memorandum of Agreement in 1998, we gained the right to external arbitration of grievances, but thereby lost the right to sue the university in court, on any matter touched on in the Memorandum. Several of the presenters warned against any professor, no matter how badly treated by the university, hiring a lawyer privately and bringing an action against the university in court. The professor might well spend thousands of dollars and months of time, only to see the action dismissed by the court for want of jurisdiction.

The effect of Weber and related decisions is to make FAUW an intermediary between the individual professor (even one who chooses not to be a member) and the justice system. For any aggrieved professor, the all-important question becomes whether the

(Continued on page 13)

EDITORIAL

First of all, let me congratulate John Wilson on his upcoming retirement (see his message beginning on Page 20) and acknowledge the infinite number of hours/days/years that he has served in the FAUW in so many capacities and the many results of his tireless efforts. I'm sure that all who have had the opportunity to know John and to work with him would agree that a more dedicated (and emotional!) "trooper" with the interests of Jane/John Faculty Member at heart would be difficult to find. Best wishes to the Honourable Member from Crooked Island for an enjoyable and rewarding life in "Emeritusland".

I also wish to thank Fred McCourt and Ian Macdonald for taking the time to write the feature articles on the grievances and the arbitrator's report. Both articles raise vital concerns and questions regarding the report that should fuel much future discussion among faculty members and hopefully contribute toward a negotiation of the contentious issues with UW's administration.

Unfortunately, responses from other faculty members on this matter are slow in coming. In contrast, our students have been more vocal. From an article in the student newspaper *Imprint* ("Dean ups students' grades" 9 March 2001), a whopping 67 percent of students interviewed (2 out of 3) sided with Prof. Lipshitz, one student stating that it was "the prof's place to bell the marks."

One could argue that these disputes should never have been allowed to reach the arbitration stage, the entire process having consumed great amounts of time and money, not to mention the inconvenience and unwanted emotional stresses heaped upon Prof. Lipshitz during a supposed sabbatical leave. Ken Westhues (see article on Page 9) will probably argue that it would have been better for both parties, and the University as a whole, if the dispute between Prof. Lipshitz and the Dean of Mathematics would have been resolved without arbitration – presumably through the Mathematics Faculty Council or an appropriate committee that reports to it. This would have provided a perfect stepping stone from which to work out a formal process dealing with marks, contentious "Guidelines" and the role of the Dean. (Did we really need an arbitrator to tell us that such a process was needed?)

The responsibility for letting the disputes go to arbitration lies with UW's administration. Clearly, it believed that it could "win" this case – whatever the word "win" means here. Did the administration "win?" After all, the arbitrator judged that the Dean of Mathematics had the right to change Prof. Lipshitz' grades although proper procedures were not followed. This is about as reassuring to faculty members as the acknowledgement that the President of the United States has the right to push the nuclear button, but only after "proper consultation." The administration may have scored points but, in the name of the Academic Ethic, at what price?

Would the Westhues route – collegial resolution – have been a more sensible approach? Yes, of course, if we were living in an ideal world as members of a true *collegium*. Despite all claims of collegiality and "distributed governance," however, hasn't the time come for us to face the stark reality that UW, as all universities, has been steadily assuming more and more of a corporate identity? And if the nebulous concept of "institutional academic freedom," referred to several times by the arbitrator, is wrongfully interpreted as "administration freedom" (as opposed to "academic freedom of the Senate") will our journey toward UW, Inc. be accelerated? In other words, will a seal of approval finally be put on the separation of UW's spiritual body into "us," the faculty, and "them," the management?

If this be the case, then can we learn to live with such an imposed duality? Ironically, yes, for it leads to the very place where *Stan Lipshitz and his team scored the winning touchdown*, namely, that the University cannot force a faculty member to change her/his grades arbitrarily. Moreover, the University cannot present a grade that it (re)assigns as that of the faculty member. This allows us to rest assured that we can, if we wish, continue to perform responsibly the duties that society has entrusted to us, including the professional assessment of students' performance in courses and thesis research work that lie within our purview of expertise. Moreover, we can perform these duties with integrity and with no loss of self-respect. What if the university chooses to override our assessments? An interesting question to contemplate, especially as regards the role of Senate, supposedly the supreme academic body of UW.

It is indeed timely that Prof. Harvey C. Mansfield of Harvard University has recently received much attention for his way of dealing with the duality of "us" vs. "them." (See the article by A. Wolfe on Page 14.) Mansfield submits two sets of grades to students in his courses – one for their official transcripts and another to reflect the marks he thinks they deserve. Mansfield, known as "Harvey C-minus," claims that grade inflation has spread everywhere, including Harvard. Last year, for example, 51 percent of the students at Harvard received either an A or A- in all of their grades. How does someone who has respect for his profession, his fields of expertise and academic standards in general fight a lone battle against

grade inflation without unduly punishing students who take his courses? For the moment, Mansfield's answer is an experimental scheme of issuing two sets of grades.

Are we destined to adopt a "two-transcript system" in the future? Or would the university settle for a simpler compromise, namely, an additional entry beside each grade on a student's transcript: a P signifying "issued by professor," or a U signifying "issued by university?" A student would then have the option of requesting the P grade corresponding to each U grade on her/his transcript. Also, for example, if more and more engines drop off airplanes and more operating instruments are left inside patients, then perhaps society will eventually demand that professionals be required to make both sets of grades available to customers. Can you honestly claim that you would not be concerned with the *disparity coefficient*, D = P - U, especially as you board that shining, new jet (designed and totally "tested" on a computer, with no recourse to the antediluvian wind tunnel) or, heaven forbid, as you are being wheeled into an operating room to meet with your designated healer, who barely passed the "cardiac" final, thanks to the mercy of "part marks"?

ERV

P.S. Transcripts of an interview with Prof. Mansfield on the CBC radio show, *As It Happens* (aired on 7 February 2001), are available from the CBC.

LETTERS TO THE EDITOR

As I read through the arbitrator's report on the Lipshitz and FAUW/Alan George dispute, I almost felt sorry for the arbitrator. He had little legal precedent to follow and precious little UW policy or guidelines approved by Senate or the Math Faculty Council to address. In the main I agree with his decision: that there may be some circumstances where a Dean is justified in changing grades, but that this shouldn't be done without actual, meaningful consultation with the professor of record. There is a natural justice at the heart of this case. But it has other troubling aspects.

First, I think, is that the very scarcity of precedents in Canada (or the US) suggests that grade changes by senior administrators don't happen very often. It would appear that the Math Faculty administration has embarked on a solo course of action beyond normal university practice. Waterloo is hardly the only university offering enriched advanced level courses.

Second, as a Geography professor, I am outraged by the preferential treatment of a group of "elite" Mathematics students. This is not to disparage those students personally by any means. It's just that the Math Faculty administration's actions are an academic slap in the face to the rest of us peasants who aren't quite so elect. Let me explain.

If I have bright Geography majors in an upper level elective who don't earn the same high marks from me that they did in their previous courses, then there are two alternative implications of the Lipshitz case for my Department: (1) I should give these high-achieving Geography students a much higher grade than I think they deserve, according to the (contractual) statement of my marking scheme in my course syllabus. After all, why should I penalize smart students for taking a more challenging course? (This is the "What's sauce for the goose is sauce for the gander" approach.) (2) Alternatively, those bright Geography majors should just take their lumps – simply because they're not star students from a certain Faculty.

However, this interpretation suggests that the University cheerfully discriminates between categories of students based on their academic discipline, which is verified by the details of the arbitrator's report.

Third, marking is probably the least favourite activity of professors. Most profs put an enormous amount of time, energy, anxiety, care and thought into marking, nevertheless. Perhaps a new UW Policy should come out of this grievance case: that any Dean who proposes to change a Professor's grades is equally on the hook for personally marking all of the tests and assignments that went into the determination of the grades.

Jeanne Kay Guelke
Geography

ASYNCHRONOUS COMMUNICATION (CONT'D): COMMENTS ON THE DROP IN PHD'S ISSUE

Concern has recently been expressed (e.g., *FAUW Forum* Number 105, February 2001) about a claimed shortage of PhD graduates. The major angst originates in the USA, but an American sneeze traditionally turns into a Canadian pneumonia, so the issue seems to be ours, too. It could be argued that, if there is really such a problem, its cause is most likely the time-honoured drainage to the USA under the aegis of better opportunities (real or perceived) for PhD degree holders. In any event, it is highly doubtful that the replacement of the traditional path to the degree which involves a thorough research program leading to a substantial thesis, by ". . . a connected series of essays, some written by the student alone, others in collaboration" would take care of the purported shortage of PhD's. It would simply adulterate the traditional doctoral degree, even if we created a separate and new title, say Doctor of Collaborative Skills (DROLLS).

The idea of separating scholarship from research is more insidious than laughable, because this is the ideology paving the road to two classes of universities, the first class devoted (presumably) to research only, the second class devoted to "scholarship" (translation: teaching) only. Why scholarship is to include only teaching, i.e., why it has to be separate from research is beyond rational comprehension. Doesn't scholarship include the creation of new knowledge? Teaching and research go hand in hand, and its recommended separation by some politicians and bureaucrats is preposterous, if not outright idiotic.

Is there really a shortage of PhD's? We all know that it has been fashionable for some time to set up doctoral programs in weak academic areas, in order to acquire a certain aura of prestige and funding. This may not sound *a priori* objectionable, but do such programs possess quality? Is there any reliable information available about the number of shallow and frivolous PhD programs, and the employability of their degree holders?

The UW Graduate Studies Calendar (p.24, 2000-2001) states that ". . . B standing (i.e., 75% at Waterloo), or equivalent" in a previous degree program is the minimum requirement for admission into our PhD programs. ". . . In addition, candidates must demonstrate *other superior* qualifications, such as *advanced research ability*. . . ." (italics by the writer). Other institutions probably stipulate similar requirements. Only the most naïve would assert that *all* applicants admitted into doctoral programs possess advanced research ability, let alone superior qualifications (is a 75%/B average superior?). Are admission standards not sufficiently high because there are more professors with PhD projects "to sell" than *high quality* applicants "to buy" them? Is there really a universal shortage of PhD degree holders in general, or simply a universal shortage of *first class* PhD's? Are there too many PhD's in certain areas? Do we need PhD's with theses of borderline quality? Maybe these are the relevant questions to ask!

Tom Fahidy
Chemical Engineering

FAUW Forum

The FAUW Forum is a service for the UW faculty sponsored by the Association. It seeks to promote the exchange of ideas, foster open debate on issues, publish a wide and balanced spectrum of views, and inform members about current Association matters.

Opinions expressed in the Forum are those of the authors, and ought not to be perceived as representing the views of the Association, its Board of Directors, or of the Editorial Board of the Forum, unless so specified. Members are invited to submit letters, news items and brief articles.

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OF ARBITRATION, LITIGATION, AND SNOWBALL FIGHTS *(Continued from page 9)*

faculty association will or will not support the grievance and underwrite the legal costs. A number of conference participants underscored the risks of legal action against a faculty association for having failed in its duty to provide fair representation to a professor seeking relief through arbitration.

In the final presentation entitled "Too Much on the Association's Plate," Pascale-Sonia Roy, from the firm of Nelligan O'Brien Payne, described how drastic are the effects of Weber for how academic disputes should be settled. Even in a dispute between professors, as when one alleges defamation by another, if both parties belong to the same bargaining unit, the case would probably have to be settled through arbitration. A grievance might be filed against the university for alleged failure to rectify the alleged defamation of the one professor, or alternatively, if the university had sought to correct the alleged defamation, for allegedly curtailing the other professor's freedom of speech. Either case would be decided by an arbitrator rather than a judge or jury, the proceeding would less likely be public, any damages awarded would probably be modest, and rights of appeal would be almost nonexistent.

As a whole, the conference reinforced the conclusion of my own research on conflict in the academic workplace: that the legal procedures for resolving academic disputes are a quagmire in which huge sums of money and years of life can sink and disappear without a trace of fair resolution. Most of the presenters in Ottawa displayed only mild concern at this state of affairs. It is the real context of their work and livelihood. They are wrapped up in a world of precedents and procedures, charter rights and the notwithstanding clause – rights talk, as Hagey lecturer Michael Ignatieff has called it. Swan offered a candid metaphor. Arbitrators, he said, are pathologists of the labour-relations system.

I suspect we ask too much of lawyers, judges, and arbitrators: that they solve problems we professors are more qualified and properly obliged to solve ourselves, through study, research, dialogue, debate, and decision-making in house. Ian McKenna, chair of CAUT's AF&T Committee, argued along these lines in the closing round-table. When an administrator makes, on our behalf, a decision that seems out of line with policy and academic values, tenured professors might better forgo filing a grievance and instead submit the matter for public airing in campus media, faculty council, Senate, and appropriate committees. The internal political processes of an open campus community may often produce fairer, more creative, more constructive, more lasting solutions to disputes than any individual arbitrator, however expert, can be expected to.

We are, this is to say, each other's best and surest job protection, day by day and issue by issue. External arbitration is but one safeguard against unfairness and stupidity. The stronger safeguard consists of the bonds we forge among ourselves, our shared commitments to education, knowledge, and the search for truth. If things go really wrong, so wrong that filing a grievance must be seriously entertained, this prospect should be weighed against quicker, less costly, and possibly more rational alternatives, for instance a snowball fight.

Last January, as the strike at York dragged on, Martin Loney published an op-ed on university governance in the National Post. "Academic staff," he wrote, "should be compelled to choose between collegial models and industrial unionism." The implication of the CAUT conference is that Canadian courts are in fact compelling us to make this choice.

Two other observations on the conference bear mention. One is that it seemed to mirror the Western and Quebec alienation apparent in federal politics. Most Ontario universities were represented, along with McGill, Concordia, Memorial and St. Mary's. No Francophone universities sent delegates, and just three from the West.

The final observation is that this was a politically correct gathering. Private universities, the corporate campus, neocon politics, and libertarian thinking were all anathema. There was a keen sense of collective rights for women, First Nations, and so on. Jan Narveson would not have felt at home. The comments I heard about Waterloo were of what a curious, unusual university we are. Indeed, for better and worse.

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PROFESSORS ARE UNCONVINCING IN SHIELDING THEIR INTERESTS

Alan Wolfe

How do academics fare when they try to defend their own interests? If recent controversies about faculty workload and grade inflation are any indication, not very well.

It would be difficult to imagine an issue that touches more on the self-interest of academics than how they spend their time. Most people in most jobs are watched – indeed, technology has made it possible for businesses to monitor just about everything their employees do. Not so in academe. When Boston University recently proposed that faculty members appear on the campus four days a week, many of the university's professors reacted with horror.

As it happens, from 1993 to 1996, I was the chairman of a good-sized department at Boston University, and there were many days when, with the exception of myself, two colleagues, and a loyal administrative assistant, the hallways were empty. (Students did not come by, because they had long ago learned that published office hours were meant to be illustrative, not definitive.) What interests me most about the controversy, however, is not whether B.U.'s provost is right to raise the issue – obviously, I think he is – but how much the arguments of those who oppose him totally lack credibility.

So far as I can tell, not a word has been uttered by B.U. faculty members (or many of their defenders who debated the issue in a *Chronicle* "Colloquy" on the Web) to suggest that a rare and unusual privilege may be at stake. Parents and taxpayers may think that professors, because they set their own hours and determine for themselves whether to work near their cappuccino machines at home or to go to the offices provided by the university, have it pretty good; the initial instinct of professors is to tell them how wrong they are. "We do not stay away from campus because we work so little," academics say over and over, "but because we work so hard. Other people leave for the day at 5, but our work, creative and unpredictable, demands time in the evening and on weekends." "Besides," the academic argument frequently goes on, "the pay is lousy compared to what people earn in the private sector, and flexible hours substitute for the income we sacrifice."

No doubt many academics do work long hours (as, by the way, do many Americans). They are also, to be sure, paid less than many people in comparable positions in the corporate sphere, even if they are paid more than working-class couples who hold four jobs between them. Still, arguments that explain away the special privileges of academics are as believable as those that often issue from the public-relations offices of corporations or the mouths of politicians. Such responses make faculty members sound like energy companies that claim to want environmental regulations lifted so they can provide jobs, not make money, or like politicians who say they support regressive tax cuts, not to reward their big contributors but to help ordinary folk.

Academics might be better off to eschew that kind of transparently self-interested verbiage and simply acknowledge that they do not appear often on campus because they are among the luckiest people on earth. Such a response might not help them with frustrated students and confrontational administrators, but neither would it equate them with the strip miners and tax cutters they so often criticize.

Grade inflation is another issue that brings out the worst in faculty argumentation. A few academics – the most publicized, Harvey Mansfield at Harvard University – may publicly say that it is ethically wrong to give high grades to students who do not deserve them. (Mansfield recently announced that, to avoid punishing students willing to run the risk of a low grade in his course, he will offer an official grade in line with the inflated grades of his colleagues and an unofficial one with his real evaluation.) But few college professors speak up, implicitly denying or defending grade inflation by going along with it.

Reasonable people can disagree about whether grade inflation is unethical; my own sympathies are with Mansfield, although I strongly dissent from his theory that grade inflation began with the admission of more African-Americans to elite universities. But no one who has followed academic life can disagree that grade inflation is real. And surely it is hard to deny that, among the many reasons for grade inflation, faculty self-interest plays a role. Grading hard means trouble. Students show up during office hours, expecting to find you there. Deans question the financial consequences if too many students flunk or drop out. Colleagues treat you like a rate buster,

worried that your example makes life difficult for them.

When confronted with Mansfield's new policy, Susan Pedersen, Harvard's undergraduate dean, defended prevailing grading practices. True, grades at Harvard are higher than they used to be, but students are better, she told *The Chronicle*. "If a B+ is more an average grade than it used to be and people understand that, I don't see that as a problem."

Not seeing problems has become a standard trope in the way academics respond to criticism. Of such criticism, there is surely plenty. In an age when much scholarly research seems arcane, when political correctness seems to provide speech codes that contravene the First Amendment, and when the courts question admissions policies, there is considerable public commentary on academic practices. Academics would be right to reject such criticism when it failed to appreciate the conditions that make academic work valuable, like the importance of academic freedom to unfettered discussion and the benefits to society of specialization in the sciences. But nothing would prevent academics from responding that their critics might have a valid point or two from time to time: Sometimes the presentations at the Modern Language Association are, in truth, a bit ridiculous, and, yes, students and faculty members can become overzealous in their allegations of sexual harassment or racism. Academics could even contemplate the thought that, while a B+ is the average grade at Harvard, most people outside Harvard think that B+ means just short of excellence, which, if true, suggests that Harvard could be engaged in a form of deceptive advertising.

But that is not how most academics respond to inquiries, no matter how tepid, into what they do. They rarely acknowledge either problems or self-interest. Unlike people who confess to their sins or have the graciousness to admit when they are wrong, academics tend toward defensiveness. Like conservatives who dismiss poverty or racism by claiming those problems aren't nearly as serious as critics maintain, academics proclaim that postmodern theorists write just the way academic prose ought to be written or that affirmative action works to the benefit of all. And when a dean at Harvard needs to respond to a critic of grade inflation, the reply is automatic: There is no problem here.

To be sure, unlike limited office hours, grade inflation is unlikely to provoke complaints from tuition-paying parents; one generally does not find parents writing angry letters insisting that their child really deserved a C-. But the lack of pressure to change a policy is not an argument for leaving the policy in place. One would expect academics, especially at leading institutions like Harvard, to lead. And leadership, in turn, requires a willingness to step forward and acknowledge that there may be something wrong when a university makes such sharp distinctions between who does and does not get in, and then refuses to make distinctions in how students perform.

Academic responses to the grade-inflation and office-hours controversies reveal a bunker mentality that assigns blame to others while absolving those under scrutiny from any wrongdoing. Furthermore, such responses are myopic, assuming a faculty-centered view of the world that evidences little respect for, or understanding of, the concerns of others.

Perhaps what bothers me most about such responses is that they undermine what many of us hold dear about academe. The academic way of life really is different from other ways of life, especially at research universities like Harvard and B.U. It is not just that the academics who work there set their own office hours (and, in many cases, are evidently under no obligation to keep them). Nor is it that they can avoid difficult decisions about judgment by judging everyone in their classes to be excellent. The true reward of being an academic is that you get to govern yourself. As an individual, you generally decide what courses to teach and what to teach in them; with enough stature, you can determine when they will be taught. You and your department decide who gets hired and who is kept on for life. Administrators and trustees are responsible for the activities of the university, but, in reality, the responsibility for teaching students lies with you. That is as it should be, for teaching and research invariably have an idiosyncratic dimension. They also require us to take responsibility for what we do.

Outside academe, particularly in the corporate and government worlds, there is a frequent effort to shift responsibility elsewhere. When something goes wrong, it always seems to be the market or government red tape or yesterday's politicians who are to blame. When academics respond to their critics by using the same kinds of self-interested arguments as corporate spokesmen and the same obfuscatory language of politicians, they are saying, whether they realize it or not, that academe is little different from other institutions. They ought not be surprised if people from those other institutions respond by questioning whether academics can justifiably keep those privileges, like self-governance, that make them special.

Alan Wolfe is director of the Boisi Center for Religion and American Public Life at Boston College. We thank Prof. Wolfe for permission to reprint his article.

The FAUW Pensions and Benefits Committee has decided that it would encourage members of the Committee to prepare articles, such as this one, for publication under the banner of the P&B Committee. The Committee was aware that this article was being prepared, but responsibility for the contents is that of the author and the contents do not necessarily represent the views of the Committee.

CHOICES TO MAKE AT RETIREMENT: OPTIONS AVAILABLE

A FAUW PENSIONS AND BENEFITS COMMITTEE ARTICLE

Ian F. Macdonald
Department of Chemical Engineering

Since I became a member of the UW Pension and Benefits Committee representing faculty, from discussions with a few friends who are making retirement decisions now, and from reviewing materials from several sources available about retirement, I have learned a lot about the financial choices one has to make and recognize how little I actually had known about this important decision. For that reason, I decided that it might be useful to provide here a summary of the options available that you will have to assess.

Before discussing options, let me define four items which have specific values for each individual. These values can be accurately determined only close to your actual retirement date and are provided to you by Human Resources. Let me also give a few definitions or comments on tax-sheltered plans and rules from Canada Customs and Revenue Agency (CCRA; formerly Revenue Canada).

Definitions

1. **Pension –** the value at the time of retirement of the normal pension paid to you by the UW Pension Plan if you retire within the Plan. It is determined by the formula in the Pension Plan text (see www.hr.uwaterloo.ca/pension.html) and is a monthly payment, indexed for inflation.

2. **Actuarial Value –** the lump sum amount at the time of retirement which is required to purchase the indexed Pension using the interest rate assumptions, mortality tables, etc. in effect at the time of retirement. This is sometimes called the Accrued Value or the Commuted Value.

3. **Excess Contributions –** Your contributions plus interest minus 50 % of the Actuarial Value. This belongs to you, and is not used to fund your Pension, as CCRA rules require that the University must fund at least 50% of the Actuarial Value of your Pension. It is necessary to divide this into two pieces based on simple proportionality, because CCRA regulations treat the two pieces differently.

   (a) Pre-1991 Excess – the portion of the Excess Contributions attributed to pre-1991 pensionable service

   (b) Post-1990 Excess – the portion of the Excess Contributions attributed to post-1990 pensionable service.

4. **RRSP –** well-known tax-sheltered savings vehicle. For convenience, here I include RRIFs under this heading. An important feature here is that these are unlocked vehicles; that is, there is no maximum limit on the amounts that can be withdrawn annually.

5. **LIRA –** Locked-In Retirement Account analogous to an RRSP. For convenience, I include LIFs and LRIFs (analogous to RRIFs) under this heading. These vehicles receive funds originating from a pension fund, and differ from RRSPs and RRIFs primarily in being locked vehicles; that is, there is a maximum limit on the amounts that can be withdrawn annually. Until one's 70^{th} birthday, one can move all or a part of the funds easily back and forth between a LIRA, a LIF, and an LRIF. After that, until one's 81^{st} birthday, one can move all or a portion of the funds easily back and forth between a LIF and an LRIF. After that, one cannot have a LIF.

6. **CCRA Prescribed Limit –** This is an age and salary related limit set by CCRA on the maximum amount from the Actuarial Value plus the Post-1990 Excess that can be transferred out of the Pension Plan in a tax-sheltered way, if you retire outside the Plan. It is determined by multiplying an age-related factor by your Pension. At present, the total Actuarial Value plus Post-1990 Excess exceeds the limit for most retirees.

Two Main Options

There are two main options that employees have to select between at retirement: a) retirement within the UW Pension Plan and b) retirement outside the UW Pension Plan.

The decision to retire inside or outside the Plan is a choice for each individual retiree and depends on the specific circumstances of the retiree and her/his family. I have been told that many employees perceive that choosing to retire outside the Plan is disloyal and view those making that choice with disfavour. I believe that perception to be incorrect and unwarranted. The right and proper decision for you is the one that you judge to best meet the needs of you and your family. As I understand it, the choice you make has minimal effect, positive or negative, on the well being of the University employees collectively and the health of the Plan.

If you retire within the Plan, the Plan continues to be responsible for the investment risk and reaps the benefits or suffers the losses if the Plan investments do better or worse than expected. You are guaranteed that you will receive your Pension as long as you live.

If you retire outside the Plan, you become responsible for the investment risk on the funds transferred out to your LIRA, RRSP, and taxable income to provide your retirement income. There is no guarantee that the investment return on the funds will provide an income over your lifetime equal to the lifetime value of the Pension you would have received by retiring inside the Plan. Perhaps offsetting this aspect for some individuals is the fact that, on your death, the funds remaining go to your spouse or to your estate.

The amounts discussed below for each option do not include any Canada Pension Plan (CPP) or Old Age Security (OAS) payments that you may be eligible for.

a) Retirement within the Plan

Of course, you will start collecting your Pension. In addition, you may have some Pre-1991 Excess and some Post-1990 Excess. The Post-1990 Excess can either remain in the Plan and be used to enhance the Pension, or it can be transferred out as a taxable lump (with taxes withheld) which will be added to your taxable income for the year of retirement. For the Pre-1991 Excess, you have the same two choices, but there also is a third, and attractive choice available to transfer it out tax-sheltered into an RRSP. *This third choice is a new one, which was added as a result of the Faculty Association finding the evidence that the CCRA allows it and presenting it to Human Resources* which had previously understood incorrectly that this was not an allowable transfer.

Subject to a minimum guarantee period (standard is 10 years) for a retiree without spousal survival, the Pension including any enhancements terminates on the death of the retiree. With spousal survival, the pensioner receives a somewhat reduced Pension, a portion of it continues to a surviving spouse, and the Pension terminates on the later of the death of the retiree or of the spouse.

The ability to transfer some of the funds at retirement to an RRSP is valued by many retirees because it does not vanish on the death of the retiree. Any remaining balance in the RRSP is transferable tax-sheltered to a surviving spouse's RRSP. Alternatively, it goes, after taxes, to the beneficiaries of the retiree's estate.

b) Retirement outside the Plan

You have a total amount to be transferred which may have three components: the Actuarial Value, some Pre-1991 Excess, and some post-1990 Excess. Of this total, the amount which can be transferred in a tax-sheltered way is equal to the CCRA Prescribed Limit plus the Pre-1991 Excess. The balance will be transferred out as a taxable lump (with taxes withheld) which will be added to your taxable income for the year of retirement. Of the amount transferable in a tax-sheltered way, the entire Excess Contributions (both the pre-1991 and post-1990 portions) can be transferred into an RRSP. The remainder of the tax-shelterable amount (equal to the Actuarial Value minus the taxable lump) must be transferred to a LIRA. RRSPs are more flexible vehicles than LIRAs, because all the money is accessible at any time, if needed.

Of the funds transferred to a LIRA, all or any portion can be used at any time to purchase a life annuity, indexed or not, and with spousal survival or not. Similarly to retirement within the Plan, this provides a monthly income (a “pension”) for life.

On the death of the retiree, the entire balance remaining in the RRSP and the entire balance remaining in the LIRA or LIF or LRIF, but not in a life annuity, is transferable tax-sheltered to an RRSP for a surviving spouse. Alternatively, it goes, after taxes, to the beneficiaries of the retiree's estate.

There is some possibility in the future that the amount which currently must be taken as a taxable lump can instead be transferred in a way that spreads the taxable income over two to four years, which has the potential to reduce the taxes paid. However, this will not happen until after a retiree somewhere in

Canada takes her/his case to CCRA and receives a favourable ruling.

Finally, an additional factor to be considered is that some of those choosing option a) – namely, those who start collecting their Pension immediately on retirement and maintain residence in Canada* – continue to have Extended Health Care coverage provided by the University out of the Operating Budget. Those who defer taking the Pension for a few years – perhaps because they retire early and their spouse continues working – and those retiring outside the Plan do *not* continue to have Extended Health Care coverage provided by the University.

* There are no limits on EHC coverage for those retirees other than those applicable to active employees, provided that the retiree is a resident of Ontario. For those resident in provinces outside Ontario and retiring after June 6, 2000, there is a lifetime limit per eligible person (normally, the retiree and her/his spouse) of *$80,000 on out-of-province, but within Canada coverage (up from the current $40,000*). This change has been approved by the UW P&B Committee and will go to the UW Board of Governors meeting of April 3, 2001 for approval. This limit is inclusive of the $40,000 limit on out-of-Canada coverage, which is unchanged.

PRESIDENT'S MESSAGE (*Continued from page 20)*

world is possible, and that it is worth while to live with a view to bringing it nearer. I have lived in the pursuit of a vision, both personal and social. Personal: to care for what is noble, for what is beautiful, for what is gentle; to allow moments of insight to give wisdom at more mundane times. Social: to see in imagination the society that is to be created, where individuals grow freely, and where hate and greed and envy die because there is nothing to nourish them. These things I believe, and the world, for all its horrors, has left me unshaken."

I can hardly claim to have had the success which Bertrand Russell enjoyed but I have always thought that his description of his purpose in life caught exactly what I have thought I was here for. Waterloo has made it possible for me to pursue those ends in so many different and constructive ways – as a scholar, as a participant in a university community, and most especially as a teacher – that there will always be a piece of me that stays here.

God bless you all.

OBSERVATIONS FOR STUDENTS

Richard W. Hamming

1. All learning occurs in the student's head.

2. At best, the teacher is only a coach to guide, encourage and criticize your style.

3. The purpose of the examples and exercises cannot be "to get the right answers" because they are already known! Their purpose, like that of running a mile, is to improve you.

4. Apparently, that which you actively learn for yourself you can use later creatively; that which you learn passively you can only use to follow others.

5. The attitude that you are here to be taught rather than to learn is counter productive. So is the attitude that you already know all that is really worth knowing.

6. If you want to succeed (in whatever way you believe is worthwhile) then failing to plan for that success is just plain foolish; you live only once.

7. The purpose of an education is to change you; especially the way you think. Often this is a painful process, but if it does not occur then your time in school was wasted; all you got was a degree.

8. Passively reading a book is not studying – time spent is not a measure of how much you study. Your problem is to get yourself into a mood where you actively want to learn, where you are searching for specific understanding.

9. If you find that the school and the professors are not perfect, then it is a good preparation for life! Profit from their defects.

10. While you need to learn current technologies to do things tomorrow and get ahead, experience strongly suggests that before you are ready to use it much of the material will be only partly relevant, some misleading, and some wrong. Cling to fundamentals, they seem to change more slowly.

11. If lifting 250 pounds is the final test in a weight lifting class, and you cut the weights in half, lift the two 125 pounds separately, and think that you can lift 250 pounds, you are only fooling yourself. Be careful that things that appear to make "getting through" a course easier are not just as foolish. Remember to develop yourself.

12. The most important things you can do while here are:
    a. Learn to learn
    b. Learn to question things
    c. Acquire the permanent habit of learning.

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Richard W. Hamming (1915-1998) received his Ph.D. in Mathematics from the University of Illinois in 1942. He served as an Assistant Professor at the University of Louisville before joining the Manhattan Project in Los Alamos, New Mexico in 1945. There he worked to maintain the computer systems used in developing the first atomic bomb. His frustrations with those machines, with their propensity for failures due to bit flips, eventually led to his work on error correction and detection.

In 1946, Hamming joined the Bell Telephone Laboratories. He was originally hired to work on elasticity theory but spent increasing amounts of time on computers. Most significant was his work on error-correcting codes for which he was awarded the prestigious Turing Award of the Association of Computing Machinery in 1968.

Hamming retired from Bell Labs at the age of 61 to accept a Chair of Computer Science at the Naval Postgraduate School in Monterey, California. For 21 years he was involved in teaching and writing until his retirement in 1997. He also gave many talks on "learning to learn" and "managing your own research", advocating that "the more you do the more you can do, and the more opportunities are open for you." He always strived to teach his students not only technical skills but also an attitude of respect toward science and mathematics. The above document is a testimony to his philosophy.

PRESIDENT'S MESSAGE

John Wilson

This is my swan song – not just as President of the Association, but as a faculty member at this University since 1964. I retire at the end of August and perhaps you will allow me, after a note or two on the current news, to reflect a little bit on my time here.

On the current happenings front the Faculty Relations Committee – having finally disposed of Policy 3 on Faculty Leaves with some comparatively minor changes which are perhaps not totally satisfying – is now into a much more troubling area trying to find a new and constructive way to deal with the issues raised by the changes which have lately come about in the practice of university teaching in Canada and Ontario (I mean by that the impact of the Internet and Queen's Park's decisions to permit private universities in Ontario and to give degree-granting powers to the community colleges).

Along with this there are looming new conflicts between the Memorandum of Agreement and some university policies which must be addressed by the FRC as well, and I have no doubt that in due course discussions will also have to begin on the consequences of the recent arbitration report on the Association's grievance against the University.

Discussions with the Administration regarding the addition to the Memorandum of Agreement of new articles dealing with Program Redundancy, Financial Exigency, and Layoffs are still continuing (our team is led by Fred McCourt with Jim Brox and Metin Renksizbulut). And there have now been several meetings between our Compensation Negotiation team (led by Mohamed Elmasry with Metin Renksizbulut and Cathy Schryer) and the Administration seeking to reach agreement on a salary settlement for at least 2001-2002.

On a broader front CAUT has recently proposed two new ways of addressing in a constructively political way the issue of federal underfunding of post-secondary education. One is the draft of a Canada Post-Secondary Education Act which has been presented to the federal government. This is an attempt to promote Ottawa's attention to the issue following the constitutional route of the Canada Health Act. The case is very simple. While Ottawa does not have the jurisdiction to make laws affecting either post-secondary education or health it has always had the so-called 'power of the purse' – it may spend its money in any way it likes. That includes either outright grants or what used to be called in the old days conditional grants-in-aid (we will pay if you will do this or that). It is an extremely interesting concept and if anyone wants to pursue it Pat Moore has a copy of the draft in the Association Office and I have one as well.

I have had a wonderful time this past five years on the Association Board – four as a director and one as president – and I have valued greatly the opportunity to meet and work with many people I might otherwise never have known. But I am also very close to saying goodbye to this place I have called home in a very real way for nearly 37 years. I will not disappear – I have some important research tasks to pursue – but I won't be on the payroll, as the saying goes. If you will allow me, rather than dwell on the details of the enormous pleasure being at Waterloo has brought me I would like to say how I feel by quoting a passage from an essay of Bertrand Russell which I have treasured for many years.

I only met him once – I think it must have been in 1963 – when he came to speak at the London School of Economics about the bomb, but I remember the occasion as if it was yesterday. The Old Theatre was packed to hear him and suddenly the curtains opened and this very little man with flowing white hair was ushered out onto the stage and to a microphone. He stepped around it to the edge of the stage and said in a firm but squeaky voice "Good afternoon, ladies and gentlemen. I am very glad to be again at the School of Economics. I was one of the first lecturers here when it opened in 1895." And, I remember saying to myself, his godfather was John Stuart Mill. Not long before that occasion he had written these famous lines in his "Reflections on My Eightieth Birthday."

> "I may have thought the road to a world of free and happy human beings shorter than it is proving to be, but I was not wrong in thinking that such a

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