

# BUFA Forum

JANUARY 2008

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## New Year, Old Problems

### *President's Message*

**Carol Merriam**  
**BUFA President**



And so, we've all survived the fall term with varying degrees of success and enjoyment, had a short break to finish the marking and do some prep, and we're back into the thick of things for the winter term of 2008. Those of us whose disciplines have major conferences at the year's end (or beginning) have presented, networked, and collected all the good gossip from our international colleagues, and the year is generally in full motion. And, while a few things have probably changed, many things have most certainly stayed the same.

The most obvious problem that we are facing as we start back after the break is the same old issue about facilities: we may be sharing inadequate laboratory space, working in unsafe conditions in some of these same laboratories, teaching in inappropriate classrooms, or even having to carry the necessary audio-visual equipment to our own classrooms. Most of these are problems for which we have some recourse: article 32 of our old favourite *Collective Agreement between Brock University and the Brock University Faculty Association 2006-2008* mandates that we be provided with the facilities necessary to do our jobs appropriately. These facilities include adequate research space, appropriate classrooms, and the necessary audio-visual equipment. We're entitled to these basic amenities; if you don't have them, ask for them, and please don't be satisfied with the answer that there's not enough space, there's not enough equipment, there aren't enough AV personnel to deliver the equipment. If we accept these answers, which are in effect violations of the agreement in themselves, then we will continue to get these answers. Unsafe conditions are even more egregious, because they violate not only the *Collective Agreement*, but also provincial law. It is simply illegal for any officer of the university to countenance unsafe working conditions for our members (or anyone else's, for that matter!). If your office, classroom or laboratory are in any way unsafe, from slippery floors to falling ceiling debris, complain about that, too – and be sure to contact BUFA's Health and Safety Officer, Jonathan Neufeld, who is very good at getting the university to live up to its obligations with regard to safety.

# New Year, Old Problems

*Continued...*

The other “old problem” that is still with us is what we might call “violations against collegiality”. Collegiality is supposed to be one of the hallmarks of the university environment, and is enshrined in the *Collective Agreement* as one of the goals towards which we, and the University’s administration, all strive. Sometimes we (and they) don’t seem to be striving very hard. When the violations against collegiality come from members of the administration we have recourse; many articles in the agreement mandate collegial relations, and govern, to an extent, our interactions with administration. The problems really occur when we are uncivil and uncollegial towards our colleagues. It is very sad to think that we need a Respectful Workplace policy, and we can be thankful that it does not get even more use than it does. But it can be useful for all of us to be aware of our rights and responsibilities of this policy, which is found in Appendix B of the *Collective Agreement* and online at [www.bufaweb.com](http://www.bufaweb.com).

The possible extremes of uncollegial behaviour were brought home to me in November, when I attended the Council meeting of the Canadian Association of University Teachers, with Kimberly Benoit, the BUFA Executive Director. Much of the first two days of the meeting were taken up with resolutions and discussions that had their origins in member-versus-member disputes in specific departments at individual universities. It reflects badly on all academics that a faction fight or personal vendetta in the Department of Outrageous Studies at the University of East Armpit can escalate to become a national issue, to be aired before delegates from every university in Canada. So please, play nice, use some common sense, respect your colleagues, and let other people look like idiots on the national stage.

And let’s be careful out there.

**Carol U. Merriam**  
**President, Brock University Faculty Association**  
**extension: 3320**

## Audit of Brock’s Health and Safety Systems

*A report from the BUFA Health and Safety Officer*

An audit of Brock University's environment, health, and safety systems will be conducted from January to February, 2008. This comprehensive audit is being done by Human Resources and Environment, Health, and Safety, in consultation with the Joint Health and Safety Committee, and will contribute to Brock University's commitment to attaining and maintaining high standards in environment, health, and safety.

Certified external auditors from Water and Earth Science Associates Ltd. (WESA) have been retained. The audit will cover all of Brock's operations. Its key elements will include a thorough document review, work site inspection and observation, along with interviews with a cross-section of employees. The results and findings will result in assigned numerical scores, a gap analysis, followed by targeted recommendations for improvement. The final report will be public and available for review.

The office of Environment, Health, Safety will post a timeline of details at [www.brocku.ca/oehs](http://www.brocku.ca/oehs).

**Jonathan Neufeld**  
**BUFA Health and Safety Officer**

*Dr. John Knud Larsen, Past-President  
Brock University Faculty Association (BUFA)  
In Memoriam*

In October, 2007, BUFA lost a champion. A former Chair in the Department of Recreation and Leisure Studies (1986-1991; and 1994-1999), John lived life to the fullest. I often referred to him in my lectures as the classic Leisure "Idealist," who lived as a role model for "the good life" through leisure. John came to Brock after a distinguished career as Director and Professor for the Recreation Services degree programs at the University of British Columbia, and Professor in Physical Education at the University of Saskatchewan. He is remembered in both provinces (British Columbia and Ontario) for his commitment to municipal recreation services and worked professionally as an advocate for the Society of Directors of Municipal Recreation in Ontario (SDMRO). He was also very influential with the Parks and Recreation Association of Niagara (PRAN) in ensuring the training and professional development of leisure services providers in the municipalities in Niagara.

John also served with distinction as President of BUFA (1989-90, and 1990-1992). During his time as President, BUFA was not yet a certified (or incorporated) bargaining unit, and membership in the Association was voluntary. Brock ranked 15th out of 15 in salaries, and the average Brock wage was \$53,827.00, while the system average was \$61,000. John admired and extolled with praise the virtues of his highly effective colleagues, most notably the late Professor Velmer Headley, Bill (William) Cade (President at Lethbridge University), Mary Frances Richardson (Professor Emeritus), and Patricia Logan, retired. He ensured that BUFA's Executive, Staff, and Committees worked diligently and tirelessly to improve the academy for the membership.

A number of firsts were established under John's leadership. BUFA achieved a seven (7) year "Memorandum of Agreement" on "language," with salaries then negotiated separately. Without precedence (and not since that time) BUFA attained a direct meeting between the Executive and BUFA's Committee on Salaries and Benefits (with Professor John Black as our Chair) and the Finance subcommittee of Brock's Board of Governors. While the system average imbalances were not redressed, and only a modest settlement gained (9.5% across 3 years), the Board did agree (codified in writing) to pay "catch-up" in future years, should funds become available. Also, we asked for our Professional Development Reimbursement (PDR) payment to be raised to \$600.00 annually, but eventually settled at \$400.00.

Further, the first (and only) "salary inequities by gender" financial settlement was negotiated and implemented. Our professional librarian members first expressed their interest in becoming members of our bargaining unit. Representation by BUFA members on the University Pension committee was improved dramatically, and the University's contribution to our pensions was raised to 9%. We also managed to prevent the University from taking further "holidays" on their pension contributions. The basis for addressing salary anomalies formally was also established. A proposal for an employment equity plan was developed, and models for

## *In Memoriam ... continued*

early retirement (later implemented as “voluntary faculty renewal leaves”) were considered. John believed in people, and he believed in BUFA. He was a strong advocate for establishing and maintaining alliances with the Ontario Confederation of Faculty Associations (OCUFA) and the Canadian Association of University Teachers (CAUT).

John’s life and accomplishments were celebrated in a private ceremony with his family Mrs. J. (Pam) Larsen, son Brett and family, and daughter Andrea, in Niagara-on-the-Lake, Ontario.

Fondly remembered,  
Ann Marie

**Ann Marie Guilmette, Ph.D.  
BUFA Past-President, and  
Chair, Department of Recreation and Leisure Studies**

P.S. I am grateful to BUFA’s Executive Assistant (Leslie Dick) for providing me with copies of the Association’s Newsletters from 1988 to 1992, so that I could more fully reflect upon and identify John’s contributions to BUFA. However, I accept full responsibility for any incompleteness or inaccuracies that might have been reported herein.

## **BUFA General Membership Meetings**

**Wednesday, February 13, 2008 10:00 a.m. to 12:00 noon,  
Sankey Chamber**

**Wednesday, May 7, 2008 10:00 a.m. to 12:00 noon, Pond Inlet  
(Annual General Meeting)**

## **University Travel and Finance Policy**

The university’s Travel and Finance policy is up for review and revision this year, and the administration would like opinions and suggestions from BUFA members about this policy. Many faculty members have encountered problems with these policies, especially in dealing with travel advances and reimbursements for expenses incurred on conference and research trips. This is our chance to influence the next iteration of the policies.

If you have any suggestions for ways to make the university’s policies for travel advances and expense reimbursements more user-friendly for faculty members, please send them directly to Lynne Raybould in the Finance office: [Lynne.Raybould@brocku.ca](mailto:Lynne.Raybould@brocku.ca) .

# ENDLESS LESSONS AND CHANGING OF THE GUARD

## *A Report from the BUFA Grievance Officer*

### THE COMPLAINTS KEEP COMING

In my 18 months (July 1, 2006 until December 31, 2007) as BUFA Grievance Officer, I have worked with over 70 members to resolve their complaints. This is unprecedented at Brock and more than a little alarming.

Here is a partial listing of the foci of the complaints I have worked on just since July 1, 2007:

- Discipline/dismissal
- Abuse of authority
- Academic freedom
- Promotion and Tenure proceedings and appeals process
- Department Rules and Procedures
- Performance Review
- Accommodation
- Chairs' duties
- Interpretation of certain parts of the Collective Agreement
- Research Chairs' issues
- New computer policy
- Sabbatical proceedings and "appeal"
- Sharing offices

I appreciate the opportunity to thank sincerely the following for all their help in resolving so many tough complaints: Carol Merriam, Kimberly Benoit, the members of the 2007-2008 Grievance Panel: Tony Di Petta, Diane Mack, Francine McCarthy, Frances Owen, Doug Suarez, and Deborah Yeager and all those serving on the current BUFA Executive.

### LESSONS LEARNED – THEN AND NOW

In my other article in this newsletter, I outlined some of the lessons that could be learned from work on earlier complaints by members. To review, my top five lessons at that time were:

1. Lessons For Chairs As Integrators and Coordinators:

Chairs need to understand that they are not managers in the corporate sense. In reality, Department Chairs are integrators and coordinators. According to Article 16 of the Collective Agreement (2006-2008), it is the departmental committee which governs an academic unit. Authoritarian Chairs will almost certainly sooner or later be challenged by Collective Agreement-savvy faculty for "abusing their authority" (Article 8.01).

2. Lessons For Departmental Committees Re: Department Rules and Procedures:

If the departmental committee is to govern, then faculty members have the sole responsibility to craft and re-craft an up-to-date and meaningful set of rules and procedures on a yearly basis. Three areas in the departmental rules and procedures that need fleshing out beyond the information in the Collective Agreement, in particular, are: the selection and hiring of LTAs and ILTAs, the collection, use and storage of teaching evaluations, and the performance review process. At the end of this article is a text box showing a rough draft of a checklist for a rules and procedures document created by the Grievance Panel. Feel free to send any comments to the Grievance Panel c/o Kimberly Benoit in the BUFA Office D402.

## ENDLESS LESSONS AND CHANGING OF THE GUARD

*Continued...*

### 3. Lessons for Faculty Re: Performance Review:

According to the Collective Agreement (Article 27), it is the duty of the Department Chair to “advise” the appropriate Dean about the performance of each department member. Thus, it is imperative that each departmental committee articulate its preferred complete performance review process in its departmental rules and procedures. There are only two rankings specified in the Collective Agreement for Performance Review i.e., satisfactory and unsatisfactory. “Satisfactory but ...” is not a ranking recognized by the Collective Agreement.

### 4. Lessons For Faculty Re: Teaching Evaluations:

There are many decisions the departmental committee will need to make re: rules and procedures for teaching evaluations e.g., decisions around acceptable forms of evidence of effective teaching i.e., written peer reviews of a member’s teaching, teaching evaluation forms, etc. The departmental rules and procedures need to go beyond simply outlining the collection process for teaching evaluation forms. For instance, the following need to be spelled out in the rules and procedures document: the analyses to be run if scantrons are used including the running of meaningful comparison statistics, the use(s) of the evaluation data i.e., who gets a copy of what e.g., do faculty alone get the written comments and the Chair and faculty together get the statistical results or ?, the procedure for storage of evaluation data, analyses and written comments, etc. Deans do need to assess the teaching performance of faculty members as part of the yearly performance review.

### 5. Lessons For Chairs and Faculty Re: Hiring LTAs and ILTAs:

When in doubt about hiring (and in some cases, rehiring) LTAs and ILTAs, Chairs and faculty need to be guided in general by the selection and appointment procedures laid down in the Collective Agreement (Article 19) for probationary appointments. In reality, many former LTAs and ILTAs across the University have gone on to be selected for probationary tenure-track positions. Each limited term position must be justified, according to Article 19.03 i of the Collective Agreement.

In the last six months of my term as BUFA Grievance Officer, the foci of the complaints have changed in many “cases” and so too have the lessons learned. For instance, I can think of a number of BUFA members and staff who will not soon forget the spring, summer and fall of 2007 - the many seasons of the recent Promotion and Tenure Appeals Process. For seven long months, the appellants and BUFA worked together. On Wednesday, November 21, 2007, the news came that all of the appellants had been successful in their appeals. The appellants and I gratefully acknowledge the help of the following individuals: Carol Merriam, BUFA President, Kimberly Benoit, BUFA Executive Director, Cathy Lace and Emma Phillips, legal advisors to BUFA, Professors Terry Carroll, Maureen Connolly, and Ann Duffy who acted as advisors for the appellants, and one courageous Dean (not named here so as not to identify one of the appellants) who volunteered to “testify” on behalf of one appellant. Further, we acknowledge with much gratitude the hard work and the professionalism of the Appeals Panel chaired by Michael Kompf.

And so you might ask at this point: “What lessons can be learned from ‘the many seasons of the 2007 P&T appeals process?’” The following lessons come to my mind:

- The task of serving on the University P&T Committee is a vital and increasingly onerous task e.g., in 2006-2007, there were 47 applicants and 72 decisions (often two decisions were required for each application i.e., promotion and tenure).
- The word “problematic” is objectionable at best and must be changed to describe what is needed e.g., more information.

## ENDLESS LESSONS AND CHANGING OF THE GUARD

*Continued...*

- Candidates for P&T deserve to have a “guardian of the Agreement” sitting in on the P&T discussions. Members of past P&T Committees at Brock will recall the role that Evelyn Janke, former Secretary to the University, played in the P&T discussions i.e., whenever the discussion veered away from the criteria and “evidence” as listed in the Collective Agreement, she would speak up and remind the committee members that the Agreement was to be followed “to the letter.” Then, she would say: “Trust the process.” Clearly, Evelyn was right. If the process is followed as articulated in the Collective Agreement, then the process can be trusted.
- Currently, Education and Humanities have “special criteria” identified in the Collective Agreement. It would be helpful if more Faculties identified criteria particular to their disciplines to be considered along with the “standard” evidence of teaching, scholarly activity, and service. There are many different kinds of scholarship – just ask Maureen Connolly about this!
- “The devil is in the details” so every faculty member should read the Collective Agreement word by word i.e., notice with regard to “Evidence of Scholarly Activity” in the area of grants that the Agreement (Article 21.11 b xii) says: “attempting [underlining added] to secure funding for research scholarship ...” Also notice that contrary to the “word on the street” at Brock, the number of papers in peer refereed journals for P&T is not specified in the Collective Agreement. The number “5” is a myth.
- There really is no such thing as “going up early” for P&T. Notice that Article 21.06 a says: “An untenured, probationary faculty member may apply for tenure at anytime [underlining added] but will normally be considered for tenure in: ii. the fifth consecutive year of full-time employment as probationary assistant professor and no later than the fifth year.”
- Department Chairs need to understand their role in the departmental P&T meeting(s) i.e., to make certain that the criteria and process outlined in the Collective Agreement are strictly followed. The Chair’s role should be that of the “guardian of the Agreement” during the *in camera* discussion of the merits of each application. The meeting should start with a thorough discussion of exactly what the Collective Agreement says i.e., what are the criteria and what are not e.g., Article 21.04 d says: “Personal or social incompatibility shall not be a reason for denying tenure” and Article 21.11 c says: “ Although teaching and scholarly activities are the primary criteria for promotion and tenure decision, a candidate’s case shall be strengthened by evidence of other activities appropriate to the discipline and service to the University and the Union.” Chairs need to take a leaf from Evelyn Janke’s rule book and not just act as scribes at the department meetings but rather they must speak up whenever the discussion veers away from the criteria and evidence as listed in the Collective Agreement.
- Candidates for P&T need to get expert advice on dossier preparation and the P&T process from Maureen Connolly and others in CTLET well in advance of submitting their application to their departments.
- Candidates need to consult the BUFA P&T Advice Committee well in advance of submitting their application to their departments.

### A CHANGING OF THE GUARD

Sadly, for me, this is my last report to you as Grievance Officer – at least perhaps for 6 months plus. I accepted the job of Grievance Officer expecting to serve a full two-year term. I have thoroughly enjoyed serving BUFA and its membership in this role.

As you likely know by now, I have been asked to lead the BUFA Negotiation Team as Chief Negotiator. Let me say honestly that this is “an honour I dreamt not of” to quote William Shakespeare. Terry Carroll has left me



## ENDLESS LESSONS AND CHANGING OF THE GUARD

*Continued..*

mighty big shoes to fill!

I am very pleased that Tony Di Petta, Faculty of Education, has courageously and selflessly “stepped up to the plate” for a minimum of the next six months. I will certainly do everything I can to facilitate a smooth transition for Tony.

### BUFA GRIEVANCE PANEL DRAFT CHECKLIST FOR DEPARTMENTAL RULES AND PROCEDURES DOCUMENTS

- Statement of Compliance with Relevant Agreements i.e., BUFA 2006-2008 and CUPE 4207 2004-2007
- Committee Membership and Eligibility for Voting (including if desired student representatives): Article 16 p. 34.
- Appointment of Faculty Members: Articles 19 and 19A pp. 40-59.
- Limited Term Appointments: Article 19.03 pp. 43-44 and Article 19.13 pp. 56-58.
- Appointment of Part-time, TAs, Marker/Graders: Article 19.13 pp. 56-58 and CUPE 4207 Agreement.
- Reappointments: Article 19.09 pp. 52-53.
- Employment Equity: Article 19.04 p. 45.
- Employment Equity Plan: Article 19.05 p. 46.
- Performance Review: Article 16 e p. 35 and Article 35 pp. 142-143.
- Teaching Evaluations: Article 16 f p. 35
- Promotion and Tenure: Article 21 pp. 67-78 (especially 21.11 p. 70-72 and 21.13 pp. 73-74).
- Department Chair/Centre Director – Selection and Duties: Article 27 pp. 113-116 (especially 27.03 and 27.04 pp. 115-116).

**Carol Sales**  
**BUFA Grievance Officer**



## **Reorganizing our Reality: A better work environment for University Women**

On Friday October 26, BUFA's Executive Director, Kimberly Benoit, the chair of the STOW committee, Debbie Yeager-Woodhouse and committee member Christine Daigle attended the workshop hosted by OCUFA's Status of Women Committee in Toronto. This one-day workshop proved to be a great learning experience for us.

The workshop was the occasion for all participants to share experiences in academia across Ontario but also across Canada as some representatives from the Maritimes as well as Western Canada were present. The day began with some exchange among participants where success stories with regards to women in academia were discussed. Participants engaged in conversations where they explained what success they had achieved and what strategies they had used to achieve them (the most striking example probably was how one group of women successfully challenged and reversed a hire that was unfair and inequitable). This exercise proved very useful and produced a wealth of tips for truly constructive activist strategies.

We also engaged in an analysis of the factors that may affect women's equality, well-being and success in academia. The collective analysis of the identified factors allowed us to rank them according to the challenge each factor presented. The top factor was identified as the "scientization" and corporatization of universities along with the dearth of funding in many disciplines. The problem with the latter is that early researcher awards tend to go more to males, and that major funding tends to be awarded to fields that are typically male-oriented. Disciplines in the social sciences and humanities, where there are more women, tend to be marginalized and under-funded. Budget cuts that affect hiring, with a decrease of tenure-track positions and an increase of LTAs and other contingent positions, as well as policies to attract (and retain) new and diverse faculty were identified as very important factors too. The lack of recognition of women's work was also discussed as women may experience gender-specific difficulties having to do with the type of work they choose to engage in, obtaining tenure and promotion as well as being awarded good and fair merit assessments (in institutions where this practice still holds).

Throughout the discussion, we uncovered certain elements that may help us make progress such as having allies in key positions and, importantly, gaining male support for women's issues. In relation to that, the necessity of developing strategies for increasing awareness was deemed crucial. The support of unionized organizations was also considered essential, as is networking, inside and outside the institution. In this regard, OCUFA's workshop was a step toward creating a cross-institutional network for groups of women and union committees to work toward improving the experience of women in academia.

In the second part of the afternoon, participants were asked to formulate wishes for their preferred future in academia. Obviously, the quality of the work environment came first as did the wish for a less stressful environment. This view was shared by most of the participants. These issues are fundamentally connected with issues of structural sexism, respectful workplace, and institutional support for women's concerns but also, and more positively, strong institutional support for curriculum and research that validate women's voices and knowledge. Another important wish was that a better balance be reached between life and work. Issues pertaining to parental leaves, daycare and family care in general were raised. Unfortunately, it is still very much the case that parental and family duties fall upon the shoulders of women

## Reorganizing our Reality

*Continued. . .*

mostly and it is still true that it affects their progress in the profession, sometimes to the extent that they have to leave it because of the inflexibility of the system in terms of tenure-clock and work schedule accommodations (certainly an issue here at Brock with the lack of understanding met with by members when forwarding special requests to scheduling). The wish for more equitable employment was next among the top wishes. **Our recent gains in the CA in that relation should not obscure the problems related to employment equity, for women certainly but also very importantly for other equity-seeking groups.** The need for strong language in collective agreements as well as equity training for union staff and management was identified as one important course of action to achieve better employment equity.

By no means is this an exhaustive report of all that was discussed during that day. In addition to the workshop activities we also heard a talk by Linda Briskin on equity organizing and equity bargaining over lunchtime. With a lunch talk, none of us took much of a break in what proved to be a very packed and very fruitful day! All agreed at the close of it that there were so many issues and problems to discuss as well as strategies to share and think about that we could easily have used a two-day workshop and still not have exhausted the topic. OCUFA's Status of Women Committee will be hosting a conference on May 2, 2008 as a follow up on the workshop we attended which will thus have marked the beginning of a series of events that will most certainly contribute to improve the status of women in the university.

**By Christine Daigle  
Philosophy Department  
Status of Women Committee**

### **BUFA and Brock Community Social Justice Campaign 2008**

**Please visit the BUFA website for more information on  
how you can contribute to the  
BUFA and Brock Community Social Justice Campaign**

**<http://bufaweb.com/content/view/209/32/>**

## Letter to the Editor

### Respect: Get it ... Out of the *Collective Agreement*

The BUFA Executive and Negotiating Team are canvassing the membership with a view to setting priorities for the impending contract negotiations. One priority should be the removal of the Respectful Workplace and Learning Environment Policy from the *Collective Agreement* (hereafter: ‘the Policy’ and ‘the CA’).

The Policy includes some key safeguards of procedural fairness. The respondent’s right to be heard fully – though unfortunately only *after* formal proceedings are initiated – is guaranteed. So is the right of appeal – in the case of faculty and librarians, through the complaint/grievance process. There is plenty of case law to show that administrative decisions reached under policies without such safeguards are routinely struck down by the courts.

Nevertheless, the Policy gives the Administration-appointed, non-academic staff of the Office of Human Rights and Equity Services discretionary powers that are inherently too wide. In administrative law, a delegated authority loses its jurisdiction, even if its actions are in conformity with the Policy, when its powers are not exercised in accordance with principles of natural justice and due process.

The following are among the more Orwellian features of the Policy. (We confine ourselves to verbal behaviour, since other types of violations may have no direct bearing on academic freedom.)

First, the Policy states that in “all but the most serious cases, the University would hope that the matter could be resolved through the personal resolution or informal resolution stages.” Nevertheless, at the sole discretion of the Equity Officer, a complaint may proceed directly to the formal stage without any attempt at personal or informal resolution, indeed without the respondent having been so much as informed that a complaint has been received or of the allegations in it. The decision to accept the complaint and to proceed immediately to formal resolution is made by a non-academic staff member with no professional expertise in academic matters and no special knowledge of what sorts of speech are protected by academic freedom. BUFA can of course grieve an outcome under the academic freedom article of the CA, but it has no right to be consulted at this or any other stage, since the “Office of Human Rights and Equity Services is [solely] responsible for... administration of this policy and related procedures.” A grievance by its very nature is a remedial measure, undertaken after the career damage has already been done.

Second, the Policy states: “All complaints must be initiated within six (6) months (120 working days) of the incident occurring.” The ordinary meaning of these words is that incidents which took place more than six months prior to a given date can no longer be the object of, or form part of the object of, a complaint on that date or thereafter. However, in the case of an alleged *pattern* of verbal behaviour, there is nothing to prevent the Equity Officer from authorizing the investigating team of three (only one of whom need be a faculty member) to go right back through a faculty member’s entire employment history at Brock. Emails, memoranda, even BUFA *FORUM* articles that are presented in evidence can be scrutinized for violations of a policy that did not even exist at the time they were written. In the hands of a zealous Equity Officer and/or investigative team, the Policy is a tool for McCarthy-style witch-hunts.

## Letter to the Editor... continued

Third, if it is one fundamental principle of natural justice that policies of this nature cannot be applied retroactively, it is another that a reasonable person must be able to know what constitutes a violation. Even after the Policy was publicly announced, a reasonable person could not know what constitutes, say, “academic bullying” – defined as “a particular form of bullying that universities must guard against, and includes asserting a position of intellectual superiority in an aggressive, abusive or offensive manner, making threats of academic failure, or public sarcasm and humiliation”. Every key word of this definition is wide open to subjective interpretation. It is doubly difficult to see how this key test of natural justice can be met when the Policy is applied retroactively to a period when no one had even heard of “academic bullying.”

Fourth, the interpretation of this vague Policy is left largely to non-academics: initially to the Equity Officer, then to an investigating team that need include only one faculty member, who may or may not understand Article 11 (“Academic Freedom”) of the CA. Natural justice demands that one’s case be judged by a panel whose members have expertise in the area in question.

Fifth, protecting the identity of the respondent may be prudent and in accordance with the principle of “innocent until proven guilty.” But the Policy’s confidentiality provisions must not be construed so as to limit the respondent’s ability to marshal a robust defence, for example by consulting with and obtaining information from third-party witnesses, experts, lawyers, etc. In short, confidentiality should be the respondent’s right to waive.

Sixth, Article 62 of the Policy states: “The investigation shall be completed within eight (8) weeks (40 working days).” Nevertheless, in “extenuating circumstances” (completely undefined) the Equity Officer may claim the right to extend the time-line. Would three times the prescribed time period, without any new deadline and without the agreement of the respondent, be reasonable? Obviously not. Yet there is nothing in the Policy to prevent such an abuse of process. Article 62 thus provides no real protection at all. The same must be said of Article 8.02(c), which states that the Policy “shall be interpreted in a manner that is consistent with the principles of academic freedom as specified in Article 11 of this Agreement.”

This deeply flawed Policy puts academic freedom at risk. A speech code by any other name is still a speech code. BUFA should either amend it in negotiations or, if that is not feasible, remove it from the CA.

**Murray Miles**  
**Department of Philosophy**

**Grant Brown, DPhil (Oxon), LL.B**  
**Barrister and Solicitor, Edmonton, Alberta**  
**Member, Board of Directors, Society for Academic Freedom and Scholarship**