



QUFA VOICES

Your Queen's University Faculty Association Newsletter

VOICES IN THIS ISSUE: April 2023

PRESIDENT'S VOICE: Looking Back and Looking Forwards, by Jordan Morelli ... 1-2

FYI: Unit Workload Standards, by Micheline Waring ... 2-3

GRIEVANCE CORNER: Bill 26, by Peggy Smith ... 3-5

PRESIDENT'S VOICE

Looking Back and Looking Forwards

The academic year 2022-2023 has been a busy one for QUFA, with collective bargaining successfully concluded, but we still have a lot of work to do for QUFA Members

By Jordan Morelli
President, QUFA

I always find that things get much busier as the term winds down. Lectures end and all the marking begins, to say little of the effort that goes into preparing a quality final assessment. The next few months constitute the end of my term as your QUFA President, and as I look back, I have to say it was a lot of work, but it was also very fulfilling. It has been a great experience, and I gained a greater appreciation of the inner workings of both the union and the university. I highly recommend you consider getting involved as a QUFA volunteer and maybe even take a turn as QUFA President. QUFA has a fabulous and highly professional staff without whom we would be lost, but the team of volunteer faculty, librarians, and archivists who serve on the various committees, Council, and Executive are what make QUFA such a vibrant union. I thank them all for their service and would be happy to chat with anyone who would like to know more about how to get more involved.

ANNOUNCEMENT

Spring General Meeting

The QUFA Spring General Membership Meeting takes place:

Thursday 27 April 2023
1.00 p.m. – 3.00 p.m.
via Zoom

Please Contact Elizabeth Polnicky (ep43@queensu.ca) for Zoom details.

Looking back on 2022-2023, the academic year began with the COVID-19 pandemic still lingering over everything, and with QUFA continuing its advocacy for health and safety measures to be implemented and followed by the university. The COVID-19 LOUs that had been negotiated during the height of the pandemic were set to expire, though some of their conditions, such as the ongoing requirement for the impacts of the pandemic to be considered in personnel processes, remain in force indefinitely.

The collective bargaining process had already been underway for several months by the start of classes, and, as you are surely aware, was not progressing. QUFA Members showed strong solidarity in supporting their Bargaining Team with a clear strike mandate in December. Fortunately, job action was not necessary, and the parties reached a mutually agreeable negotiated settlement without the

need to request a “no-board” and trigger a countdown to job action (strike and/or lockout). The fact that the logjam was cleared after the winter break, when the QUFA Bargaining Team had a strike mandate from Members, is a clear indication of the strength and importance of union solidarity. While we did not get everything we were asking for at the bargaining table, we were able to fight off key concessions the university was seeking to impose, and we made some important gains for Members of equity-deserving groups and for Adjuncts.

The Principal has characterized the salary gains we negotiated as “fair and appropriate”; however, the university is refusing to offer similarly fair and appropriate compensation increases to our colleagues in other unions on campus who had the misfortune of bargaining renewed contracts under the unconstitutional Bill 124 wage restraint legislation. QUFA has been standing, and will

ANNOUNCEMENT

Funding Deadline

The deadline for the Fund for Scholarly Research, Creative Work, and Professional Development (Adjuncts) is

Mon. 5 June 2023

More information can be found on the Faculty Relations Office Web site:

<https://www.queensu.ca/faculty-relations/qufa/research-fund>

continue to stand, in solidarity with members of these other employee groups as they fight for what is fair.

There are also a number of issues that QUFA continues to work on. One of these is the university's insistence, in a draft policy that they are developing, on rules for student accommodations that would override academic freedom. One new proposed rule would prevent instructors from prohibiting audio recordings in their classes, even when allowing recordings would stifle academic discourse or could put students and their families at risk of harm because of the breach of their privacy rights. This is a lazy approach to student accommodations that simply cannot be tolerated.

Another issue concerns the University's continued inability to implement the QSSET surveys in a

manner that is consistent with agreed upon terms and conditions. Specifically, the survey links are supposed to be made available to students during a specific window of class time that the instructor schedules. The reasons for this restriction are:

- to ensure that students who attend classes are the ones filling out the surveys, as opposed to an open invitation to all registered students, many of whom have little actual experience of the class or the instructor; and,
- to ensure participation rates equivalent to those achieved with the paper USAT forms.

Currently, the university is simply opening the surveys for a week or two at the end of classes to all registered students. It is not surprising that participation rates are low and responses are sub-optimal.

Finally, as noted above, it has been a privilege to serve as your QUFA President, and I restate my call encouraging you to consider ways of getting more involved with QUFA: it is very rewarding. I am confident that QUFA will be in capable hands with Mary (Cella) Olmstead stepping in as the next President.

Jordan Morelli can be reached at morelli@queensu.ca.

FYI

Unit Workload Standards

QUFA and the University clarified the workload Standard review process during the last round of bargaining

**By Micheline Waring
Member Services Officer, QUFA**

Unit Workload Standards hold significant importance for faculties, units, and QUFA Members in the determination of workload. And yet, as those documents are only updated every ten years or so, it is easy to overlook the Workload Standard review process. In the last round of bargaining, the parties clarified the review process and added two new elements for inclusion in Unit Workload Standards.

With respect to clarifying the Workload Standard review process (Article 37), Unit Workload Standard Committees are required send their draft standard to the Workload Standard Review Subcommittee before sending it to the unit for ratification. In addition, if units are unable to ratify a Workload Standard after two votes, then the dean may impose a ratified standard from a cognate unit for two years in order to give the unit time to start the process over. Further, during the review process, the Committee shall invite the unit head at three-month intervals to a meeting to provide an update on the progress and

QUFA VOICES April 2023 (Volume 18, Number 4, Issue 110)

QUFA Voices is published by the Queen's University Faculty Association (QUFA), 9 St Lawrence Avenue, Kingston, Ontario, K7L 3N6, Canada (qufa@queensu.ca). It is distributed electronically to all QUFA Members via the QUFA-NEWSLETTER-L listserv. Past issues are archived on the QUFA Web site at <http://www.qufa.ca/publications/>.

QUFA Voices publishes QUFA-related news and information for QUFA Members and provides QUFA Members with a forum to express their QUFA-related ideas and opinions. We want to hear from you! Please send your QUFA-related story ideas, news items, opinion pieces, letters to the editor, photographs, and other submissions to the editor.

QUFA Voices is edited by Robert G. May. He can be reached at mayr@queensu.ca.

anticipated timeline to submit to the Subcommittee for review.

With respect to new elements that are to be included in a Workload Standard, they include:

- in all Workload Standards, mechanisms for dealing with extraordinary tasks related to teaching, such as academic accommodation responsibilities carried forward from a previous term that may impact the Member's research responsibilities; and
- where applicable, mechanisms for dealing with extraordinary tasks accompanying research responsibilities.

Know that the parties were on hiatus from reviewing Workload Standards during bargaining. Therefore, there are several Workload Standards waiting to be reviewed. Additionally, units will want to start to think about what it looks like for them to include the new elements locally. It is going to take time for units to prepare their proposed updates, and for the Subcommittee to process the draft updates across the university.

For those units coming due for a workload standard revision, note that the Workload Standard Review Subcommittee is committed to developing a workload standard template for units to use when updating their standard (New LOA). The parties hope this will make the process smoother for unit-level committees.

If you have questions about the Workload Standard process, please feel free to reach out to the QUFA Subcommittee: Micheline Waring, Mike White, and Lynne Hanson.

Micheline Waring can be reached at micheline.waring@queensu.ca.

GRIEVANCE CORNER

Bill 26

The new high stakes of engaging in sexual relations with students

**By Leslie Jermyn
Executive Director, QUFA**

**and Peggy Smith
Grievance Officer, QUFA**

In 2010, the Ontario Health and Safety Act was amended to include sexual harassment as a potential workplace hazard, subject to the duty to investigate under the Act. Since that time, the government has passed several regulations specifically directed towards relationships between faculty and students in the postsecondary education sector, culminating in the recent passing of Bill 26. QUFA staff have endeavoured to keep you apprised of the impact of both the changing social norms and legislative changes as they apply to your rights and obligations under the negotiated language of the Collective Agreement (CA).

We have summarized previous updates here to help you clearly understand the draconian nature of the recently passed Bill 26. I urge you read this bulletin with care.

Current Member Obligations

Both the Ontario Human Rights Code (OHRC) and the Occupational Health and Safety Act (OHS) prohibit behaviour in the workplace that is "known or ought to be known to be unwelcome," putting a positive obligation on you to reflect and be sensitive to how communications and other interactions with students could be received.

Current University Obligations

The university is required to investigate reported acts of sexual harassment under both the OHRC and OHS. The Ministry of Training,

Colleges, and Universities (MCTU) Act and Regulation 131.16 must also be read into the CA. The MCTU Act requires that all Ontario Universities have a sexual violence policy that addresses all complaints of sexual violence involving all students who are members of the university community. As a result, sexual relationships with any student who is a member of the Queen's community could be the subject of a complaint of sexual violence, triggering a potentially disciplinary investigation.

Application of the Legal Framework to Provisions of the CA

To fully understand your legal rights and obligations with respect to your relationships with students, you must consider the negotiated language of the CA in the context of the applicable legal framework.

Article 15.1

Members shall meet their obligations in a professional manner, including maintaining professional boundaries in their interactions with students.

Practically speaking, Members should know (or ought to know) that professional boundaries extend to both written and verbal interactions with students. All messages shared via social media or e-mail should be considered as being on the record and subject to public scrutiny. The nature of off-duty conduct is also critical to your right to engage in the activity without scrutiny by the university. Any conduct that has a connection to the operation of or the reputation of the university can trigger an investigation and potential discipline, regardless of whether the conduct took place off hours or away from the workplace. The key is the legal characterization of the behaviour. Regardless of where and when an allegation of sexual harassment or sexual violence took place, these are serious allegations that, if

ANNOUNCEMENT

QUFA Member Workshops

QUFA Members are cordially invited to participate in the following workshops:

QUFA RTP Workshop (Applicants)

We encourage tenure-track Members to join us for a discussion and Q&A about the renewal, tenure, and promotion process.

Tues. 2 May 2023
11.00 a.m. – 12.30 p.m.
via Zoom

QUFA RTP Workshop (Heads and Committees)

We encourage unit heads and RTP Committee members to join us for a discussion and Q&A about the renewal, tenure, and promotion process.

Wed. 3 May 2023
11.00 a.m. – 12.30 p.m.
via Zoom

QUFA Adjunct Rights Workshop

We encourage adjunct Members to join us for a discussion and Q&A about adjunct rights.

Wed. 17 May 2023
11.00 a.m. – 12.30 p.m.
via Zoom

If you wish to participate in any of these workshops, please RSVP to Micheline Waring (micheline.waring@queensu.ca) for Zoom details.

substantiated, could give rise to discipline up to and including termination.

Article 18.1.2.1.a

A Member shall immediately disclose to their unit head, in writing ... any personal, sexual, or otherwise intimate relationship or communications with a student with whom the member has a supervisory or evaluative relationship, or with respect to whom the Member may exercise any authority or ability to confer or refuse benefits of a financial or academic nature.

Article 18.1.2.1 does not and cannot limit the application of the MCTU Act, the OHRC, or OHSAA.¹ The fact that the student you are interacting with is not *your* student, or is not currently under your supervision, is not a defence to a breach of your legislative and negotiated obligations, and does not release the University from their statutory duty to launch a potentially disciplinary investigation.

So while you must minimally comply with this provision in a situation where you have engaged intimately with your own student, you cannot assume that the potential for conflict of interest (Article 18) is the only concern under law.

Bill 26

Effective 1 July 2023, Bill 26 expands the definition of sexual harassment that triggers the requirement for an investigation, and makes substantive and meaningful changes to QUFA's ability to challenge a positive finding of sexual harassment by an investigator on your behalf.

Definition

Bill 26 broadly defines Sexual Misconduct with a student to include the following:

- engaging in physical relationships with a student;
- touching of a sexual nature;
- behaviour or remarks of a sexual nature toward the student;
- any act that is found to constitute an offence under the Criminal Code of Canada;
- any act that breaches the employer's sexual misconduct policy or any other policy; and
- any act that found to breach the rights of the student under the Ontario Human Rights Code to be free of sexual solicitation.

The Bill applies to all forms of sexual misconduct and makes no distinction among allegations in terms of severity. This definition supersedes the negotiated definition in the CA.

Impact on the Grievance Process

QUFA will continue to have the right to grieve a finding of sexual misconduct, but the Bill deems any discipline issued by the university to satisfy a just-cause analysis, and removes the jurisdiction of an arbitrator or any other adjudicator to override the penalty if the finding of sexual harassment stands.

If found to have committed sexual misconduct against a student, the Bill restricts the right of QUFA to negotiate a non-disclosure clause, a monetary severance package, or compensation of any kind on your behalf. It also prohibits you from seeking re-employment with the university at any future time.

Strategies Going Forward to Avoid an Investigation

There will likely be a legal challenge to this Bill based on the concerns outlined above. In the interim, consider the following advice:

- know your legal obligations;

- keep relationships and communications with all students professional at all times;²
- limit and manage informal, non-course-related interactions with students;³
- keep records of interactions with students or have a witness if you are meeting a student to discuss a complaint or concern that could lead to conflict;
- seek advice from QUFA at the earliest sign that there is a situation that could give rise to a student complaint of sexual harassment; and
- use your right under the CA to seek an informal resolution of the dispute in the early stages.

Work with QUFA if You Are Investigated

If you are named in a complaint, QUFA will be notified of the investigation and a staff member will contact you to review the investigation process. QUFA can raise any known mitigating factors on your behalf in response to the particulars of the allegations with a view towards eliminating the need for the investigation to proceed. Mitigating factors could include human rights issues such as physical or mental health conditions, or evidence you have that addresses the allegations directly to Faculty Relations. You should also advise QUFA immediately of any reasonable apprehension of bias the appointed investigator might have.

If the allegations are of a criminal nature, you should consider retaining a criminal lawyer to advise you during the investigation to ensure your charter rights are protected.

Legal Options Following a Finding of Sexual Harassment

If the Investigator finds that you have engaged in sexual conduct as defined by the Bill, the penalty imposed by the

university is deemed to be based on just cause, and an arbitrator cannot overturn or substitute the penalty if QUFA grieves the decision. Furthermore, QUFA and the university are barred from negotiating a monetary severance settlement or non-disclosure clause on your behalf. In addition to the inability to get a meaningful remedy, an arbitrator's decision is posted online and is available to the public, potentially causing greater harm to your reputation. Therefore, in the absence of other legal issues such as bias on the part of the investigator, a clear failure of the university to consider and apply established labour law principles in determining the penalty, or a flawed analysis about the application of the OHRC, it is unlikely that QUFA would consider taking a grievance forward.

However, in accordance with the legal duty of fair representation, QUFA will assess the full investigation report, the reasonableness of the penalty, and any other relevant factors in coming to a decision about the merits of grieving on a case-by-case basis.

Bill 26 comes into effect this coming July and will dramatically impact how QUFA can assist its Members in responding to allegations of sexual misconduct with students. Please reach out if you think you may be at risk of having to respond to an allegation of sexual misconduct with students.

In the end, prevention is the best strategy here, so please take care to always maintain professional relationships and communications with students.

Notes

¹See Peggy Smith's Grievance Corner article here: <https://www.qufa.ca/wp-content/uploads/2021/11/102-QUFA-Voices-Nov-2021.pdf>

SOCIAL MEDIA
Interact with QUFA!

QUFA Members can stay up to date with QUFA news, events, and items of interest by accessing our Web site and following us on our social-media channels!


QUFA Web site
www.qufa.ca


QUFA on Facebook
www.facebook.com/QUFApage


QUFA on Twitter
www.twitter.com/QUFAtweet

NEW!


QUFA on Instagram
www.instagram.com/QUFAGram

²See the *QUFA Infosheet* here: <https://qufa.ca/wp-content/uploads/2019/09/Infosheet-Relationships-2019.pdf>

³See Leslie Jermyn's *QUFA Voices* article from November 2018: <https://qufa.ca/wp-content/uploads/2018/11/79-QUFA-Voices-Nov-2018.pdf>

Leslie Jermyn can be reached at qufaed@queensu.ca.

Peggy Smith can be reached at smithpe@queensu.ca.



QUFA cordially invites you to an

End-of-Term Social!

for New Faculty Members*



Thursday 27 April 2023
4.30 p.m. – 6.30 p.m.
Second Floor, The Grad Club
(corner of Barrie and Union)

*New Faculty includes Members hired from 2017 to the present

Please RSVP to Elizabeth Polnick (ep43@queensu.ca) if you are able to attend