President’s Message

Days of Reflection to Strengthen Our Action Plan

For the FQPPU, regularly holding a congress to discuss federation orientations would serve as an opportunity to compare views and analyses of various academic and social stakeholders on evolving issues related to the development of the university network and the professorial workload and promote the adjustment of priorities and courses of action. Such a body, which met occasionally in the FQPPU’s early days and up until 2005, is on its way to being reinstated. Last year, FQPPU members agreed to revive the congress in 2019 with a focus on the devaluing of the profession of university professor.

Since the turn of the millennium, universities have undergone quite a few transformations, which have been accompanied by significant effects on the professorial workload. Among such transformations is the gradual implementation of an entrepreneurial model of university “governance” supported by the dogma of the knowledge economy. As a result, the University saw a shift in its mission. Governments increasingly view universities as tools for economic development that serve society. This logic challenges the very essence of the University, as well as its operations, which have historically been based on a collegial method of administration through which professors had the deciding vote on the future of their institution.

(Continued on the next page)
THE “PROF PORTRAITS” CAMPAIGN

The FQPPU is currently leading a campaign to assert the value of Quebec university professors. The video clips produced for this initiative are now being broadcast on Canal Savoir; they are also on Facebook, Twitter, and the FQPPU’s website.

For more information, go to fqppu.org/valorisation (content available in French only).

DAILY PRESS REVIEW

For several months, the FQPPU has prepared a daily press review for its members that contains journal, newspaper, and blog articles from Quebec and around the world, and covers subjects as higher education, research, and unions.

To sign-up to receive the press review by email every day, please contact Marie-ClaudeThomas (info@fqppu.org).

Competition, which sets the tone for this new form of “governance,” results in enormous pressure for the main practitioners of research, professors, who must, year after year, enter a race to produce knowledge if they want to have access to available resources and secure their jobs. The increasingly high research requirements for funding applications and publication submissions have clear effects on the workload of professors, particularly in a context in which there has been a significant increase in the number of students without an equivalent increase in the number of professors.

A climate of austerity has also been in place since the early 2010s, and the applied measures have resulted in less support staff for teaching and research duties, leading professors to experience permanent work overload and take part in a frantic race that has depleted them and led them to question the direction of their chosen profession.

Faced with the increasing pressure that weighs on the profession on a daily basis, the FQPPU is organizing days of reflection on April 25 and 26, 2019, to take stock of the deterioration of working conditions for university professors, with a focus on three topics:

(1) The first round table will address the new relationships between universities and society by closely examining the entrepreneurial drift that universities have undergone, as well as the instrumentalization of professors, the democratization of access to education without the provision of additional resources, and the erosion of academic and scientific freedom with the rise of ideologies. (2) The second round table will address the devaluing of professorial duties that has resulted, including the effects of the new requirements for performance and profitability on health at work, the pressure placed on teaching and supervision relationships as a result of clientelism, and the fact that the status of intellectuals and researchers who could shed light on any public debate has been reduced to that of experts limited to their fields. (3) Finally, the third round table will welcome interventions that suggest how to reassert the value of professorial duties.

The goal of these days is to identify courses of action and concrete targets that could offer solutions to this issue, to be included in the 2019–2021 FQPPU work plan.

We hope to see you there!

In solidarity,

Jean-Marie Lafortune
From the Executive Committee

Denis Bélisle, Vice-President
Prof!

We frequently use the University mission, academic freedom, and even collegiality to describe university professors. However, what the term specifically refers to remains shrouded in uncertainty, contentions, and obviousness that perhaps isn’t quite so obvious. The first question to ask: is it really a profession? If we are talking professions in the context of professional orders, the answer is absolutely not.

The first and most important purpose of professional orders is to protect the public. The Professional Code is framework legislation that provides the Office des professions du Québec with the necessary authority to ensure that every professional order can exercise the required control over its members to ensure that professional legislation and codes of ethics are respected.

These are not organizations responsible for “protecting” professionals, and aspects such as promotion and solidarity are handled through various other professional associations, for which membership is voluntary, whereas being a member of an order is required for anyone who wants to practise a regulated profession.

Of the 54 professions subject to the Professional Code grouped into forty-six professional orders, twenty-five are regulated by professional legislation that provides them with exclusive rights to engage in certain activities.

This is how doctors have the right to prescribe, bailiffs have the right to seize, pharmacists have the right to sell controlled drugs, and architects have the right to seal construction specifications.

All professions must have a code of ethics and are provided with a reserved title: psychologist, dentist, advocate, midwife, etc. Anyone who engages in a reserved activity or uses a professional title without being a member of a professional order is committing a severely punishable offence.

In exchange for these privileges, which are very beneficial, allowing for careers and, for the most part, earning a decent living, all professionals must show that they have the knowledge and expertise required to practise the profession and agree to strictly follow its code of ethics.

A professional order is an organization mandated by legislation to oversee its members, in order to ensure that such privileges are preserved. Complaints and reported violations are received, investigations are carried out, and in some cases, hearings are held and sanctions are imposed. Through these systems, the public is assured that the person has been designated by the Order as a trustworthy “professional,” able to provide us with quality service with honesty and dignity.

In November 2018, UQAM lecturers adopted a new designation for their union, the “Syndicat des professeures et professeurs enseignants de l’UQAM” (UQAM union of teaching professors). A year earlier, in September 2017, ENAP lecturers formally chose the “Association des professeures contractuels de l’ENAP” (ENAP association of contract professors) as the official name of their union.

These terminological onslaughts on the term “professor” have a double meaning. First, they show the great importance of the manner in which a person practising certain duties is designated.

Rightly or wrongly, lecturers want to be recognized as “professors,” which in their eyes would certainly be something advantageous for them. Second, the fact that they were awarded the designation and that it was not contested clearly demonstrates that university professors do not have a reserved title.

What about activities? We teach, conduct research, supervise theses and dissertations, are part of peer committees to evaluate scholarship and grant applications, as well as articles, are involved in program and university administration, and, when we have time, engage in service. None of these activities are reserved.

What about qualifications? The norm is a PhD, of course, but there are numerous exceptions. While it can be understood in some cases, such as for disciplines that are being developed, there are no mandatory regulations or legislation. In addition, a PhD is not required to lecture.

Many practising professionals and graduate students lecture in a perfectly appropriate manner.

It is clear that without a reserved title, reserved activities, and required qualifications, being a “professor” is not a profession, at least not legally.

We also do not have the equivalent of a code of ethics. We are subject to labour standards and the regulations of our
respective universities, and our relationship with our employer is specified in our collective agreements.

We had to wait for the Act to prevent and fight sexual violence in higher education institutions in order for this delicate aspect of interpersonal relationships between members of the academic community—in which, most likely, the largest concentration of sapiosexuality can be found—to be the subject of a serious attempt at providing a formal framework.

This begs the following question: would we have found ourselves in this ultimately embarrassing situation, which required legislative intervention, if university professors had their own code of ethics and the means to enforce it autonomously when up against university authorities?

When the tidal wave of technology, which continues to escalate, meaning that resulting disturbances will continue to change the conditions in which the university mission is carried out, affecting research subjects, scientific methods, and teaching methods alike, is added to the equation, it is clear that the time for stalling is over. It is time to wake up. Doing nothing is the same as consenting to the erosion of our responsibilities and associated privileges.

By not fighting against the dilution of the value of what we do on a daily basis, we are dangerously ignoring the centuries-old (or even millennia-old) mission of the University that, since its inception, has guided the evolution and development of civilizations and societies.

What methods can we take to define, or redefine, the role, status, and even the character of what is now becoming difficult to refer to as a “university professor”?

Louis Demers, Councillor
British Universities, New Public Management, and Brexit

The United Kingdom is one of the countries that has most extensively experimented with new public management. Since the Thatcher era, governments have largely been involved in the privatization of public services, public-private partnerships, the creation of agencies, and the establishment of regulatory bodies for service providers. The government therefore partially withdrew from funding public services in favour of direct contributions to its users/customers. The organizations that offer such services are thus subject to an incentive plan that is similar to that of private companies.

British universities did not escape this shift. Competition between universities in the UK reached a level rarely observed elsewhere. In this article, I will provide you with a quick overview of recent developments for British universities, as well as the risks they face as a result of a population decline and an uncertain future with Brexit.

Historically, access to higher education was free in the UK. In 1998, tuition fees were capped at £1000 per year (CAD 1700) for undergraduate students. The maximum amount for tuition then increased dramatically. It is currently capped at £9250 in England (CAD 15,725). Students registered in public universities are entitled to a loan of the same amount, to be repaid after graduation, once their annual income reaches £21,000.

Contrary to what might be expected, this dramatic increase in tuition fees did not reduce university attendance. From 2006 to 2015, there was instead an increase in the number of applications to universities. Over the same period, the percentage of students from disadvantaged areas also increased. As expected, however, the tuition increase has also contributed to significantly increasing student debt, particularly for students from disadvantaged areas.

Debt reached new heights in 2015, when the British government abolished grants worth about £3500 (CAD 5950), paid annually to the poorest students, and instead provided them with additional loans of the same amount. This decision led to widespread protests by student associations. The National Union of Students stated that the measure punishes students from disadvantaged areas, leaving them “with a lifetime of debt.”

A 2016 study found that for many students, paying off their student debts erased the income increase they receive as a result of their degree.

1 The devolution of powers to UK member countries (England, Scotland, Northern Ireland, and Wales) includes the capping of tuition fees.
2 https://en.wikipedia.org/wiki/Tuition_fees_in_the_United_Kingdom
3 https://www.theguardian.com/science/the-lay-scientist/2016/jan/28/the-evidence-suggests-i-was-completely-wrong-about-tuition-fees
5 https://www.theguardian.com/money/2016/aug/01/maintenace-grants-scrapped-for-poorest-students
Another study estimated that British students from the poorest 40% of families in the country who began their studies in the fall of 2017 would incur debt of £57,000 (CAD 96,900).6

It should, however, be noted that in practice, reducing public funding for universities in favour of tuition hikes is not such a good thing for public finances. More than 77% of those with student debt will not be able to fully repay their loans within 30 years, the period after which the government pays off outstanding student debt.7

Until recently, the British government’s policy seemed to be a success, at least from the perspective of universities, which were attracting increasing numbers of students and especially foreign students. They were flourishing financially, which motivated them to expand, particularly by investing in new facilities.

The limitations of this market logic can currently be seen in a context that is clearly less favourable. The “clientele” of British universities is failing to meet expectations. On one hand, threats to the future relationship between the UK and the European Union following the vote in favour of Brexit have resulted in reduced interest on the part of students from continental Europe to study in the UK. On the other hand, the size of the cohort of 18-year-old Brits is on the decline.

The first signs of this reversal have begun to emerge. First, high salaries for vice-chancellors, directly linked to the tuition hike, seem increasingly questionable, both by the public and the government, not unlike the situation in Quebec in recent years. A study conducted in 2018 by The Guardian found that British vice-chancellors received salaries that were significantly higher than their public-sector counterparts in both the municipal and health sectors. Some vice-chancellors received an annual salary of over £400,000 (CAD 680,000).

Such a salary, worthy of presidents of private companies, has led to even more disapproval, since during the same period, strikes broke out in more than 60 universities due to a reduction in staff pensions.8

Unlike Quebec, it is not the minister responsible for higher education who questions vice-chancellors about their pay, but a regulatory body. In this case, the body is the Office for Students (OfS), which was established on January 1, 2018. This body replaced two others.9

The OfS has committed to asking universities to justify any salaries above £150,000, but the ways in which it could sanction universities remain unclear.10

Second, the OfS recently had to address the potentially concerning issue of widespread grade inflation in British universities. A study carried out by the body indicated that at least 84% of universities have awarded significantly more first-class honours degrees11 to their students than in the past.

As a defence, university administrations noted that the quality of teaching has improved in recent years and that since students were paying a higher share of the costs, they were working harder to obtain better grades. These improvements in pedagogy and student motivation are all the more impressive considering that, faced with increasingly smaller cohorts of 18-year-olds, as previously noted, British universities recently accepted a higher percentage of secondary school graduates with lower grades.12

While the OfS admitted that these two factors—pedagogy and motivation—without a doubt contributed to higher grades, part of the increase remains unexplained. For the regulatory body, the situation remains concerning since it has the potential to undermine public confidence in the higher education system. As such, it threatened to fine universities that did not take action to address grade inflation.13

References:
10 https://www.theguardian.com/education/2018/jul/05/poorest-students-will-finish-university-with-57000-debt-says-ifs
11 A bachelor’s degree with honours has three classes (first, second, and third), for which the second class is subdivided into two levels. https://en.wikipedia.org/wiki/British_undergraduate_degree_classification
12 https://www.theguardian.com/education/2018/dec/19/universities-watchdog-threatens-fines-over-grade-inflation?utm_term=RWRpdG9yaWFsX0d1YXJkaWFuVG9kYXIV
Furthermore, as the year of comparison selected was 2010–2011, it is difficult not to associate grade inflation with the rise in tuition fees, which went from £3225 to £9000 in 2012 (CAD 5480 to CAD 15,300).\(^{14}\)

Third, despite accepting students who would not have been accepted in the past, several British universities are currently facing budgetary challenges that could, in some cases, jeopardize their survival. Some are even planning to eliminate jobs.\(^{15}\)

When asked about the issue, the head of the OfS was very firm in stating that his organization would not bail out failing universities, for reasons such as financial discipline and university autonomy.\(^{16}\) However, nothing could be less certain.

In the summer of 2018, a university received a £900,000 emergency loan.\(^{17}\) More significantly, a research note from Moody’s, a credit ratings agency, stated that its estimation of the financial risk for British universities reflected a high probability that the government would bail out universities that become insolvent.\(^{18}\)

To conclude this overview, I would like to reassure those who are concerned about the fates of Oxford and Cambridge, given the current situation. Even if, however unlikely, there was a decline in their clientele, the various colleges that are part of Oxbridge have a collective wealth of almost £21 billion (as of 2018), or nearly CAD 36 billion, which would help them weather the storm.\(^{19}\)

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\(^{14}\) https://en.wikipedia.org/wiki/Tuition_fees_in_the_United_Kingdom


\(^{16}\) https://www.theguardian.com/education/2018/nov/06/failing-universities-bailouts-michael-barber-office-for-students

\(^{17}\) https://www.theguardian.com/education/2018/nov/16/english-university-given-900k-emergency-loan-by-regulator


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**Mireille Dubé, Secretary-Treasurer**

(Pipe?) Dream for 2019—A Database That Would Lead to New Insights

Our data collection stage is essentially complete, and we are almost ready to begin programming a database that will consolidate not only all financial data for Quebec universities, but also non-financial indicators such as the numbers of faculty members and students, methods for determining grant amounts, and the percentage of professors with research contracts.

The simple, user-friendly tool must allow for the collection of all such information while avoiding redundancy.

Over the past few years, the FQPPU has been able to rely on descriptive financial analyses about very specific positions, primarily from only one financial statement. However, the database we are preparing will allow for such analyses to be carried out more quickly, as well as for other analyses that go deeper.

It will be possible, if we put in the time, to prepare a complete financial portrait, based on all financial statements, of our respective universities, to construct indicators adapted to our workplace, and to carry out comparisons. Such comparisons could identify not only existing situations, but also issues. The discovery of such issues could eventually support interventions by professors who are on boards of governors. Such issues could also be the basis for a critical review supported by management methods and decisions of the administration.

Finally, a yearly follow-up could be carried out in just a few clicks. We could also move from a reactive approach to a proactive approach by having good financial reflexes and raising relevant issues. Above all, database queries could identify subjects and situations that should be studied.

That’s my dream for 2019. May our efforts come together to make way for this reality that would provide the FQPPU with another string to its (already quite hefty) bow, so as to keep an even steadier finger on the pulse of our field.
Publishing Crisis

These days, the majority of scientific publication is controlled by very few publishers: Reed Elsevier, Springer-Nature, and Wiley-Blackwell.\(^20\) We know that this industry is extremely lucrative. How could it not be when publishing company owners have access to a large labour force that is highly qualified and unpaid?

In fact, editors and referees of the various articles submitted are practically all professors who carry out these tasks for free. In addition, given their position of strength, publishers are able to charge university libraries exorbitant subscription fees.

In 2017, for example, Reed Elsevier’s sales totalled 8.4 billion euros, 2.8 billion of which came from scientific journals. With Reed Elsevier bringing in profits of 2.6 billion euros, its scientific journals had a profit rate of 37% \((\text{idem})\). This translates to enormous profits for Elsevier and astronomical subscription fees for university libraries.

In Germany, the Max Planck Society (MPS) recently ended its subscription to Elsevier publications.\(^21\) This is no small issue since the MPS brings together 14,000 scientists who publish 1500 articles per year in Elsevier journals. In addition, several hundred German and Swedish universities also ended their Elsevier subscriptions.

In the United States, the University of California (UC) is in negotiations with Elsevier.\(^22\) The UC system is a very influential organization with 10 campuses and produces nearly 10% of research in the United States. UC is currently asking its professors to no longer act as referees for Elsevier and to publish elsewhere.

Closer to home, Université de Montréal has “denounced the fact that part of the strategy of commercial publishers is to multiply the number of journals to justify the exorbitant cost” [our translation]. In Denmark and France, the same protests can be heard.

Finally, a coalition of research funding agencies in Europe and the United States requires that grant recipients publish their findings in open-access scientific journals that are legitimately published online (providing everyone with access to the texts) in exchange, of course, for an administrative fee. Such fees are sometimes reasonable and sometimes very high for prestigious journals such as *Nature Communications* (approximately CAD 6000).

However, open-access journals are not an ideal solution, since they lead to an increased presence of so-called predatory journals and conferences. Every day, I receive three to five invitations to publish articles in journals I have never heard of, but that have serious-sounding names, or to give conferences, often in exotic locales.

Predatory Journals

Dear Dr Guittion D,

This is an invitation for original articles or review articles from you/your group for publication in:

**CURRENT TRENDS IN NEUROLOGY**

There are no publication costs for the present –year volume...

Article Submission Guidelines available at [http://www.researchtrends.net/forms/index.asp](http://www.researchtrends.net/forms/index.asp)

Looking forward

Dr J Menon

Editorial Executive

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But, best to be careful! You exercise caution and decide to verify a few things. You google Current Trends in Neurology and see the following red flag: the publication is a predatory journal according to Beall’s list (https://beallslist.weebly.com/), compiled by Jeffrey Beall, a librarian in the United States. The list is long and troubling: it contains about 850 predatory journals and publishers. However, you know that there are some errors on the list, so you decide to push your search further for Current Trends in Neurology. You google Dr. J. Menon, but nothing comes up. On the journal’s list of editors, you see the names of known neurologists. You check each of their websites and see no mention of their involvement with Current Trends in Neurology.

What should you do? Submit your article to this journal with a prestigious name? Danger! Researchers who do so may end up in a system where costs are higher than expected or often where anything is published, irrespective of quality. These journals frequently do not have a peer-review committee to ensure the value of submitted articles. This means that the door is open to all kinds of fraud (fake science).

This is one of the dilemmas created by this flood of predatory journals that has resulted in part from the push for open-access publications, which has been brought on by the concentration of the scientific press. The degradation of the referee process in legitimate journals also plays a part: researchers have less time than they did in the past to properly carry out peer reviews, as they are spending more and more time on increasing numbers of grant applications. This degradation also promotes the pursuit of fast and easy methods of publication.

This situation in the so-called predatory realm of scientific publishing has not always been as clear as the text above suggests. One trick in this fraud factory is the emergence of “alibi journals,” created by certain editors of predatory journals to divert attention and give their activities credibility.

According to an August 2018 article in The Guardian, in May 2018, the US Federal Trade Commission accused an American subsidiary of the Indian company OMICS of engaging in publishing practices that were deceptive. However, while OMICS’s peer-review practices are quite questionable, the organization also publishes Anthropology, a journal that some experts consider to be reputable. Others say that “you simply don’t know if the studies published with [OMICS] are good, worthless, or bad, because you cannot be sure if and what kind of editorial or peer review process takes place there.” Note that OMICS organizes 3000 predatory conferences each year.

Predatory Conferences

Another important current topic is the attack on science led by predatory conferences, which now outnumber legitimate ones (Times Higher Education, October 26, 2017). Such conferences, like predatory journals, accept almost any proposals submitted (at an average price of CAD 700). The organizers of such activities, some of whom we could qualify as criminals, often successfully collect funds from “junior” researchers, mostly from developing countries.

Some take great lengths when it comes to falsification. Here is one example: the Canadian Anti-Fraud Centre recently exposed and denounced two “bogus” conferences in neurology that were supposedly being held in Toronto. As usual in this type of scheme, none of the researchers listed (with photos!) as conference “organizers” knew about the meeting. In addition, no meeting room or rooms in the hotel that was supposed to be the site of the conference had been reserved. Incidentally, one of the groups that plans these predatory activities (OMICS) owns several Canadian medical journals! Beall’s list includes the names of some predatory organizations, including OMICS.

Conclusion

There are clearly significant issues when it comes to science communication. The concentration of publishers gives rise to increased costs for subscriptions to “classic” journals, which favours open-access journals, and leads to an explosion of predatory journals. Owners of such journals have discovered that there is a great deal of money to be made in organizing predatory conferences. From these facts, it can be concluded that confidence in science is eroding—a poison that is slowly infiltrating our lives as researchers.


The FQPPU’s Participation in the Échec aux paradis fiscaux Collective’s Action Plan in Preparation for the 2019 Federal Elections

Maryse Tétérault, Professional Researcher

Two years after the release of the Panama Papers, the fight against tax avoidance and evasion remains an uphill battle. The related numbers are astronomical and require critical action. For example, according to the International Monetary Fund (IMF), half of all global capital passes through tax havens. With the help of globalization, these transactions cost governments around the world $3100 billion dollars annually!

For Canada, the Conference Board estimates that the tax gap could range from $8.9 billion to $47.8 billion. To understand the full scope of this amount, the gross domestic product (GDP) for the world was about $81 billion in 2017 alone!

If these numbers seem obscene, it is because these amounts could certainly be spent by the government, for example, to allow for more funding for public expenses in terms of goods and services, such as education. After this observation, the FQPPU felt the need to join the movement by officially becoming a member of the Échec aux paradis fiscaux (EPF; [tax haven elimination]) collective in the fall of 2018.

Bringing the Fight Against Tax Havens to the Forefront of the Campaign

Recent meetings organized by the collective had the goal of developing an action plan to remind the Liberal government of its timid attempts to fight against the use of tax havens. Given this disappointing situation, the collective is urging the government to provide Canada Revenue Agency with additional human and financial resources to fight more effectively against such practices and to implement new measures to tackle this issue. Finally, the collective is proposing that Canada conduct an in-depth review of its international tax commitments with notorious tax havens.

Taxation of the Digital Economy

Taxation of the digital economy is also a hot topic. In the absence of clear tax rules in this area, which creates an unfair competitive environment for businesses, this practice also deprives the government of revenue that could be invested in public service.

For Quebec, losses resulting from failure to collect the QST for online purchases are estimated, for 2017, to have been about $270 million, or nearly 40% of the total tax loss for the province. This is in addition to tax loss due to tax avoidance and evasion on the part of major digital companies: Google, Amazon, Facebook, Apple, and Microsoft (or GAFAM).

The recent debate within the European Union on whether to adopt digital taxation had subjected the issue to questioning, but the debates have not yet resulted in appropriate taxation that, if applied, could generate revenue of CAD 7 billion to CAD 12 billion in the euro zone.

A New Tool—Ultimate Beneficial Ownership Register

It is definitely not a tool that is on the minds of all journalists, but the proposal to create such a register has been gaining ground for some time. The tool will allow for gaining access to the bank secrecy associated with shell companies and for making the activities of companies public, providing somewhat of a history of such companies. The UK already has such a register, and one will be created for all other EU countries beginning in 2020.

International Co-operation, a Major Issue

International co-operation has turned out to be a recurring theme because it is specifically at the core of the issue: collective action is essential for the fight against tax avoidance and evasion.

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26 Idem.
Given this situation, the collective has examined the role that Canada should play on the committee for the OECD Base Erosion and Profit Shifting (BEPS) project, as well as how to exert pressure so that Canada becomes a leader by going beyond the minimum recommendations of the BEPS project.

However, the stakes are high for national economies: all countries must willingly begin this adventure together, otherwise the results will likely not be significant. Already, many countries have agreed to BEPS reporting; some have even gone further and adopted measures to combat tax havens, such as a tax on diverted profits.

Closer to home, there have been changes to the American tax regime, with the introduction of the base erosion and anti-abuse tax (BEAT) and the global intangible low-taxed income (GILTI) regime. Patriotic in nature, these taxes are aimed at fiscally penalizing multinational enterprises by, for example, establishing a new minimum tax on a portion of their profits.

Despite these advances, there is still a long way to go. In fact, we should not get too excited: many countries that have implemented such initiatives have also lowered their general corporate income tax rate—a clear case of giving with one hand and taking away with the other!

Judicialization of Conflicts Related to the Confidentiality of Research: What Protection Is Available for Researchers and What Falls Under the Responsibility of Universities?

Hans Poirier, Professional Researcher, FQPPU

In the January 2017 newsletter, I wrote about setbacks for the researcher Marie-Éve Maille, whose doctoral thesis, published in 2012, was on the social acceptability of a wind farm construction project in the regional county municipality (MRC) of L’Érable. At the time, her thesis was subject to a judgment of the Superior Court, which ordered her to turn over to the business Éoliennes de L’Érable all of the research materials used for drafting her thesis. The business believed that these materials, which included, among other things, recordings of Ms. Maille’s interviews, the questionnaires she had administered, the names of the respondents and their addresses, and the names of all of the people identified by pseudonyms in her thesis and logbook, were necessary to prepare an adequate defence for a class action suit brought by citizens who opposed the construction of the wind farm.

Fortunately, this story had a happy ending in May 2017. The judge was finally responsive to the arguments of the researcher, who feared that by disclosing her research material, which had been provided to her confidentially in compliance with the requirements of research granting agencies, she would be participating, on one hand, in the deterioration of the social climate of the MRC de L’Érable and, on the other hand, in the erosion of the relationship of trust between researchers and research participants.

Publication of a Book

Mindful that her experience could contribute to preventing litigation of a similar nature and encouraging discussion about the responsibilities of researchers and universities with regard to research ethics, Ms. Maille published a book entitled L’Affaire Maille in October 2018 with the publisher Écosociété. The book takes the form of a story/“testimonial” that allows readers to experience all steps of the judicial process that the researcher faced and her extensive journey, despite limited financial resources and delayed support, particularly from UQAM, where she obtained a certificate of ethics approval to carry out her doctoral research and defended her dissertation, which was the subject of the litigation. Part of the value of the book is its demonstration of the difficulties faced by those who carry out research with findings that could, for example, offend or go against the interests of private companies. It reminds us that it is important for the principles of academic

31 For more information: http://www.oecd.org/ctp/beps/.
32 A tax on diverted profits was introduced in the UK in 2015 and applies to foreign multinationals. A similar tax was imposed in Australia in 2017. The Anti-Tax Avoidance Directive will come into effect in January 2019 in the EU. It will serve to change the behaviour of businesses and protect the tax base in the EU.
freedom to be not only asserted, but also defended by universities, as well as by unions and researchers themselves, so that research can continue to be carried out on a variety of topics, no matter if they are controversial in nature or if they may lead to lawsuits. To quote Yves Gingras, who wrote the foreword, “this work [...] should be read first and foremost by [...] those who plan to hold administrative positions in the field of scientific research, no matter the discipline. It will remind them that their primary role is to be a watchdog for freedom of research, i.e. of the right to ask all possible questions, without taboos or censoring, and, above all, to accept conclusions, even when they are unpleasant, if they are adequately supported.”

Another Professor Involved in a Lawsuit Regarding the Confidentiality of Her Emails

Chantal Pouliot, a professor in the Department of Teaching and Learning Studies at Université Laval (UL), is also involved in a lawsuit between citizens, the Administration portuaire de Québec, and the company Arrimage Québec. Two residents of the Limoilou neighbourhood, Véronique Lalande and Louis Duchesne, allege they suffered material damages and moral injury as a result of negligence on the part of the Port and Arrimage Québec during a spill of “red dust” containing contaminants, which occurred in Québec in 2012. They began a first class action lawsuit in 2013, concerning the liability of the Administration portuaire and the company, which was heard in the fall of 2018 and is currently under consideration. A second class action suit, demanding, among other things, punitive damages for violating the right to a healthy environment, will be heard between September and December 2019.

Professor Pouliot’s research is focused on citizen involvement in socio-technical controversies and in the decision-making process. As a resident of Limoilou at that time, she was interested in the action being taken by Lalande and Duchesne because she was trying to understand how those involved in citizen mobilization develop expertise about the issue affecting them. Although her work mainly involved the consultation of public documents—rather than interviews or discussion groups, for example—her research on the controversy surrounding the Port of Québec led her to meet Lalande and Duchesne and maintain email correspondence with them.

A Worrisome Request to Access Emails

In the wake of the filing of the second class action suit, the defendants filed a motion for Lalande and Duchesne to provide them with all emails they had exchanged with Professor Pouliot since 2010. For her part, Ms. Pouliot refused to make her emails public because she felt that they were protected by the same confidentiality rules as research data.

Believing that she should be adequately represented with regard to this issue, Ms. Pouliot contacted the UL administration to obtain advice and the services of a lawyer. At first, UL’s attorneys met with those of the Administration portuaire de Québec, which resulted in a withdrawal of its motion to obtain the emails. However, a few weeks later, another motion for access to her emails was filed, this time by Arrimage Québec, supported by the Administration portuaire. The professor once again contacted the UL administration, which refused to support her, believing that it was not liable. The Syndicat des professeures et professeurs de l’Université Laval (SPUL) then covered Ms. Pouliot’s defence costs.

Several aspects of this story are concerning. Although the emails between Ms. Pouliot and the citizens behind the class action were not exchanged in the context of formal research and were not subject to a consent form, chances are that the professor and those to whom she was writing did not think that their conversations were of a public nature, particularly since Ms. Pouliot was writing to them with the unmistakable objective of advancing her research on citizen engagement, which her prior publications clearly demonstrate. If a third party were to obtain these emails, it would potentially break the relationship of trust between researchers and those that participate in their research, whether in a formal manner or not, and threaten future recruitment of participants. In fact, if the outcome of

38 Lalande et Duchesne c. Compagnie d’arrimage de Québec et Administration portuaire de Québec.
39 Lalande et Duchesne c. Compagnie d’arrimage de Québec et Administration portuaire de Québec (2).
41 For more information about her research, see: Pouliot, Chantal. 2015. Quand les citoyen.ne.s soulèvent la poussière : La controverse autour de la poussière métallique à Limoilou [when citizens kick up dust: the controversy surrounding metallic dust in Limoilou]. Montréal: Les Éditions Carte blanche.
42 At the time of publication of this newsletter, the date had not yet been set for the hearing at which the motion to obtain the emails will be ruled on.
this case is unfavourable for Ms. Pouliot, chances are a number of researchers will hesitate before tackling controversial research topics, for fear that lawsuits will be brought against them. This perspective would have adverse effects on society as a whole, as the spectrum of topics informed by research would become more limited.

An Apparent Conflict of Interest

It should go without saying that universities should take up the defence of their professors when they are involved in cases that concern their research. According to Susan Zimmerman, Executive Director of the Secretariat on Responsible Conduct of Research, responsible for the implementation of the Tri-Agency Framework on Responsible Conduct of Research on behalf of Canada’s three research granting agencies, “an institution must provide financial support to researchers so they can have access to legal counsel independent of that of the institution so that only the interests of such researchers and their research participants are taken into consideration.”

Ms. Zimmerman added that if universities are found not to do so, it could impact their eligibility for funding from federal granting councils.

Why then is UL refusing to support Professor Pouliot? While it is difficult to answer that question, it is, however, interesting to note that the chair of the board of directors of the university, Marie-France Poulin, is also the chair of the board of directors of the Administration portuaire de Québec, which supports the motion that was filed by Arrimage Québec to obtain access to the email exchange between Professor Pouliot and the citizens behind the class action suit.

While it is risky to establish a causal link between UL’s hesitation to support its professor and the presence of Ms. Poulin on the board of directors of the university, it is clear that there seems to be a conflict of interest. We can also assume that excessive caution on the part of UL is also connected with the fact that the university is currently in discussions with the Port of Québec to develop strategic partnerships, as described in a recent article in Le Soleil, aimed at enabling students in various disciplines to acquire practical experience studying and working in the field. While these agreements are not a problem per se and can often be beneficial to all parties, they may, however, hinder universities from fulfilling their responsibilities to their communities when such responsibilities go against the interests of their partners.

This possibility is even more likely when members of the board of directors of the organization also sit on the board of directors of the university.

Universities Must Better Protect Academic Freedom

In conclusion, while the contexts of the Maillé and Pouliot cases are different, the cases both provide opportunities to examine the response of universities to violations of academic freedom. In both cases, unfortunately, the universities showed a great deal of hesitation to defend not only the people affected individually, but also the ability of the members of their communities to conduct research without experiencing obstacles or pressure from groups with differing interests. This freedom is, however, one of the fundamental pillars of academic work based on the pursuit of truth. In a context in which researchers are increasingly encouraged to get involved in projects that mobilize actors external to the halls of academia and to think outside the box, they need to be able to feel supported by their institutions when such efforts, often incidentally, lead them to experience difficulties.

While it is difficult to accurately determine exactly what made UQAM hesitate for so long before defending Marie-Ève Maillé and what motivated UL to refuse to support Chantal Pouliot, it appears that we are quickly reaching the limits of the theoretical commitment universities have made to defend academic freedom. In this context, it is important to strengthen collective agreements in order to support union action for such matters. It is also important to mobilize to remind university administrations that their primary responsibility is not to develop business opportunities, but to support their own communities.

44 Idem.