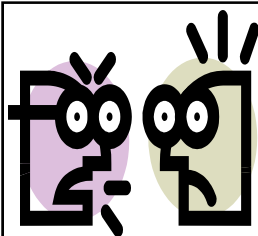


FACULTY UNION NEWS

SAINT MARY'S UNIVERSITY

VOLUME 10, NUMBER 2

NOVEMBER 2004



Plain Words on Grievances

by Douglas Vaisey
Grievance Officer

A grievance is a *formal allegation* that there has been a *violation* of the legal terms and *conditions of employment* in a work-

place. At Saint Mary's, in addition to federal and provincial laws governing labour (e.g. minimum wages, right to unionize), most of our conditions of employment are set out in the *Collective Agreement*. A grievance then is a specific complaint that the Collective Agreement has not been followed.

The *grievance process* requires that the person lodging the complaint point clearly to a section of the Collective Agreement and indicate in what fashion the terms of that section have been violated. Personal disagreements (e.g. differences of opinion on the War in Iraq) or dislikes (e.g. tastes in clothing or music) are not grievable, unless there is a section of the Collective Agreement which covers the matter explicitly. In short, all grievances are complaints, but not all complaints are grievances.

Complaints that are just complaints are to be taken seriously, but they should not be grieved.

Many grievances center on

- Procedures not properly followed
- Time limits not followed
- Dismissal or discipline without cause.

How are grievances handled?

The Faculty Union *carries* all grievances. There are several types of grievance:

- Union grievances: directly affecting the Union [the Union is deprived of its on-campus office]
- Policy grievances: matters of general policy or general application of the Agreement [retroactive pay is not paid to any members]

- Group grievances: affecting a group of Employees [procedures unevenly followed in administering the 3:2 teaching load]
- Individual grievances: initiated by the Union on behalf of an individual Employee [procedure not correctly followed during promotion or tenure]

Before an *individual complaint* is formalized as a grievance, it must be considered by the Grievance Committee made up of members of the Union representing each constituency [Science, Commerce, Arts, Librarians]. This group examines the complaint, gathers data which might inform the complaint, identifies any relevant sections of the Collective Agreement that were breached, and makes a formal recommendation to the Union Executive. Data gathering includes dates and times, names of participants, written documentation, and informal steps taken by the griever. It does not include rumour, "the way we've always done things," or personal antipathies. The procedure also involves identifying all of the remedies that might be sought.

This grievance process is widely followed across the country in universities. It ensures that any grievance that goes forward reflects a solid, well-documented case, representing due diligence by the Union and a fair representation of the members' rights.



The Annual Report

Section 8.4.13 of the Collective Agreement requires an annual report from each faculty member. The form and substance of this report should not be taken lightly. When Section 15.1.12 (c) and (d) are examined closely, you will see that the Deans, in consultation with Department Chairs, have the ability to determine a faculty member's "level of scholarship appropriate to [his or her] discipline and rank" using as a basis the last two year's Annual Reports. Furthermore, this determination can be used to make the case for an increased teaching load for individual faculty members.

Our first instinct might be to treat the Annual Report as a nuisance, but this document provides a visible record - maintained in your official file- of scholarly productivity, teaching loads, contributions to the University and your discipline through committee or association work, and research ongoing or completed. The care taken and detail provided protect you as a faculty member when workload issues arise, when tenure and promotion are being considered, or when you need to compile your portfolio for a grant application.

Annual Reports fall due on October 31 every year.



Recent Advances in Atlantic Canada Labour Law

by Steven M. Smith – Member at Large

On October 12, I had the opportunity to attend a Workshop at the Westin in Halifax exploring developments in labour law in Atlantic Canada. The workshop was hosted by Pink Breen Larkin, SMUFU's lawyers. Although I enjoy attending this annual workshop because it often provides very amusing anecdotes (e.g., the money handling employee who appealed her being fired after it was revealed she had spent 6 years stealing money – she lost; or the corrections officer who appealed when he was dismissed for having 65 marijuana plants in his basement – he won), I also find the workshop very informative. There are always new developments that are relevant to SMUFU and our members.

The workshop covered a variety of topics including recent arbitration decisions, changes in Canadian and Atlantic law, the utility of mediation, pensions, and a union's duty to fair representation of its members. Although I cannot cover all of these topics in this short report, I will highlight some of the important developments in implications for union members under PEPIDA, human rights and responsibilities, new workplace health and safety laws, and rights and remedies under the collective agreement.

PIPEDA

PIPEDA stands for the Personal Information Protection and Electronic Documents Act. In many respects it is very similar to FOI-POP (the Freedom of Information Protection of Privacy Act). The main difference is that FOI-POP is provincial, whereas PIPEDA is federal legislation. Both pieces of legislation were designed to protect personal information from being sold by and to commercial entities. However, both pieces

of legislation also cover all non-profit organizations such as SMUFU and SMU. With respect to how SMUFU operates, we must obtain permission from our members before we share their contact information with any other organizations (especially across provincial boundaries). This is important because there are some organizations (e.g., AN-SUT, CAUT) with which we share our members contact information. For example, all SMUFU members are CAUT members and receive the CAUT Bulletin. SMUFU will be addressing this issue shortly.

Human Rights and Responsibilities

Like any employer, all unions need to be aware of and defend the human rights of all of the union members. Employers (and unions) are required to provide a workplace free from discrimination. Employers and unions have a duty to accommodate all employees regardless of disability (which is generally broadly defined), as long as it does not cause "undue hardship" to the employer or union. Fortunately for our members, there is a very strict definition of what is considered undue hardship. However, recent cases have highlighted that addictive behaviours (alcoholism, drug addiction, chronic gambling) are sometimes considered disabilities, although often they are not. Thus, these types of situations remain difficult to interpret.

Other topics discussed under the section on *Rights* included rights of parental leave, benefits, so called "last chance agreements" (often used with employees with addiction issues) and attendance management. In the latter case, although generally not an issue for SMUFU members, some employers in Canada have tried to punish employees for taking too many (verified) sick days. This has been deemed a violation of employee rights.

Bill C-45: Workplace Health and Safety Crimes

Bill C-45, inspired by the Westray mine disaster, came into effect in March. The new law amended the Criminal Code of Canada and defined responsibility for safety in the workplace. A person or group (e.g., a supervisor, a company owner, a company board, a senior company official, or a faculty member) can be held responsible if a person is killed on the job. Specifically the law states: "Every one who undertakes, or has the authority, to direct how another person does work or performs a task is under a legal duty to take reasonable steps to prevent bodily harm to that person, or

any person, arising from that work or task". Thus an employer and/or direct supervisor can be charged with criminal negligence causing death if a person is killed due to lack of action by the employer or their agent. For example, if a contractor or employee is killed while on the job at SMU, and it is determined that the employer and/or direct supervisor is responsible (e.g., by not enforcing appropriate health and safety rules, or allowing a person to do a job that is known to be dangerous) those persons in charge (e.g., supervisor, manager, vice-president and/or president) could be charged with criminal negligence causing death. This being the case, SMU must ensure that all employees are working under safe conditions, or supervisors could face a sentence of life in prison. A more relevant issue for SMUFU members is that we, as faculty, often supervise student work. If for example, students were working in a field setting and were injured or killed, the faculty member in charge could be held both civilly and criminally liable. A faculty member supervising lab work could be held liable for any injuries to students in a lab setting (i.e., from chemicals, fires, etc.). Thus, it is the duty of supervisors and management (as well as faculty) at SMU to be aware of these problems because they could be held liable (both criminally and civilly) for any injuries or deaths that occur.

Rights and Remedies Under Collective Agreements

Another interesting development comes from a case that was argued in front of the Supreme Court of Canada (*Weber v. Ontario Hydro*). It was decided that arbitrators who rule on grievances have the exclusive jurisdiction to decide matters that arise expressly or inferentially from a collective agreement. Because collective agreements must be interpreted in conjunction with the law of the land, an arbitrator has the jurisdiction to apply a variety of tort law and apply appropriate remedies. Some examples of tort law that can arise would be charges of assault, battery, intentional infliction of mental suffering, negligence, and defamation. An important consequence of this is that a grievor may only have the opportunity to get redress from the courts through the grievance process. In other words, a person who has grieved through their collective agreement shall not be able to sue the employer through a separate civil matter. However, if there is a potential tort claim, this can be pursued through the grievance process. For example, let's say an employee is fired for theft, and the employer somehow releases that information to other employees. Assuming that a claim of innocence could be argued, the employee could grieve the firing, and then under the grievance, sue for damages

for defamation. This new development gives employees significant redress within the grievance process. Thus, when any grievances are filed, these issues should be considered.

Conclusion

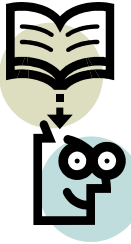
Overall, this workshop was very informative and enjoyable to attend. If any SMUFU members would like more information about the conference or Canadian Labour Law, or the collective agreement, please feel free to contact me: ssmith1@smu.ca; 420-5852.



President's Report

Principles behind the Collective Agreement

Between negotiations, most of the SMUFU Executive's efforts focus on protecting the provisions of the *Collective Agreement* and the principles that underpin it. Our *Agreement* is designed to: 1) ensure fair and equitable treatment of members, 2) protect Academic Freedom and 3) protect our right to collegial governance. All unions share the first goal, but the last two relate specifically to the work performed by our members. In an academic institution, it is vital that the people responsible for the creation and dissemination of knowledge have the right to pursue their inquiries without restraint; therefore, we have to remain vigilant on matters of Academic Freedom. In addition, since our contribution to knowledge is based upon cooperation among scholars in our various fields and quality ensured through the peer review process, it is also imperative that scholars make the decisions regarding academic content. At Saint Mary's, the Union has argued vigorously for our members' right to collegial governance, and this has resulted in such measures as the inclusion of both Department Chairs and Associate Deans in the bargaining unit and the establishment of Faculty Councils in order to ensure that academic decisions are approved by our members. While the Union Executive has been active in protecting these rights, especially over the last few months, it is equally important that members do not take them for granted and ensure that they continue to participate in collegial governance and to report any violations of Academic Freedom, or any other part of the *Collective Agreement*, to the Union.



Grievance Officer

As I reported in the last newsletter, we have adopted a new method of grievance handling. We have created a Grievance Committee that has the responsibility for dealing with members, investigating complaints, and making recommendations to the SMUFU Executive. [The role and responsibility of the Grievance Committee is described on our website: <http://www.dbis.ns.ca/~smufu/documents/>] Doug Vaisey has agreed to serve as Grievance Officer and will attend the CAUT Grievance Officer's Workshop in Ottawa from Nov. 5-7, 2004. Doug describes grievance handling in an article printed in this newsletter, but I would like to restate the reasons why we have adopted this new approach. In the last round of negotiations, SMUFU obtained sole carriage of all grievances. This means all grievances must be undertaken by the Union, whether the grievance regards an individual member or a general policy matter. The Union has a legal obligation, under the Duty to Fair Representation, to behave consistently and equitably toward all complaints. In order to meet this obligation, it was determined that grievances should be handled by a separate committee that would report to the Executive. Committee members would be trained in grievance handling procedures and representatives from each of the Faculties and the Library would be appointed to the committee. Thanks to Doug's willingness to serve, we now have an active Grievance Committee that includes members from the Library and Faculty of Commerce. We are, however, still looking for volunteers from the Faculties of Arts and Science. Since April, I have referred all grievance matters to the Grievance Committee, and I would ask members who believe that they have discovered a violation of the *Collective Agreement* to discuss the matter with the Grievance Officer.

Since last April, a considerable number of potential grievances have come forward. After investigating the complaints, the Grievance Committee advised that some complaints were not grievable under the *Collective Agreement* while others were resolved without recourse to the grievance procedures. The Committee did, however, recommend action on several cases; the Executive agreed and instructed me to submit the formal complaint triggering the grievance clauses in the *Collective Agreement* [Article 22.5]. As I write, some of these matters are still not resolved while others have gone to the point of submission to an Arbitration Board before the Union and the Administration could agree on a mutually acceptable resolution. Clearly, it would be inappropriate for me to com-

ment on grievances still being considered and others, since they concern individual members, are confidential by their very nature. I can, however, say that the matters that have been brought to the Grievance Committee concern all three principles underpinning the *Collective Agreement*. For example, we have had complaints regarding the application of the procedures for consideration of promotion and tenure, the contracting out of academic work, the attempt to limit members' public statements to the media, and the circumvention of structures for collegial governance. In general, there has been a significant increase in the number of members' complaints coming to the Union and, as a consequence, the Executive is pleased that we now have a predictable, consistent procedure in place to handle them.



Union Relations

Part of the explanation for the increase in grievances we are receiving is the Administration's greater insistence on their "management rights" and, indeed, a managerial approach to academic matters in general. This approach is at times in conflict with the principles of our *Collective Agreement*, but it is also apparent in the Administration's dealings with other bargaining units on campus. The clearest illustration of this more assertive approach was the conduct of the negotiations with the NSGEU this summer. Indeed, it was the Administration's attempt to have Department Chairs perform some of the duties of Staff Union members in the event of a strike that prompted the notices we sent out to members regarding our contractual obligations. This sent a clear message that, under no circumstances, were our members to perform the work of other unionized employees on campus. The Administration's approach to last summer's negotiations was disturbing, and SMUFU will continue to monitor labour relations on campus carefully.

More positively, we continue to work with the other unions on campus on matters of mutual concern. I am pleased to report the joint union effort calling for a more responsible University Storm Closure policy has resulted in a new policy crafted by representatives of the unions and members of the Administration. The new policy was sent to all Department Chairs and is available from them.



No Sweat

This summer the University announced its new "No Sweat" policy for Saint Mary's. Essentially, this takes the form of a "Code of Conduct" for those suppliers who provide the University with goods bearing the University crest. The SMUFU Executive was not involved in crafting this policy and does not endorse it. We are concerned that the policy does not include an enforcement mechanism, unlike the policies at many other Canadian and American Universities. Indeed, the new policy merely requests that vendors provide a written assurance that they will follow the "Code of Conduct." We find this an inadequate means of ensuring that the goods sold by Saint Mary's are not produced by sweated labour. We expect that in the not too distant future the University will agree to join one of the monitoring consortiums currently ensuring that "No Sweat" policies are followed. In the meantime, members should not be misled into thinking that the University's policy is actually combating sweated labour. Members who wish to learn more about this issue should visit the Worker's Rights Consortium website: www.workersrights.org. It is our contention that membership in the WRC would be the most effective means of ensuring an effective "No Sweat" policy at Saint Mary's.



CAUT Council

Last spring Leonard Preyra and I attended the CAUT (Canadian Association of University Teachers) Council in Ottawa. As usual, many topics were discussed ranging from issues of health and safety in Universities to approaches to negotiating benefit packages. Among the general run of business, two presentations struck me as particularly noteworthy. The first was from Dr. Jane Buck, the President of the American Association of University Professors, who provided the assembly with an update on the implementation of the PATRIOT Act and its impact on issues relating to academic freedom. One startling development is the monitoring of Middle Eastern Studies programs in the United States with, in Dr. Buck's words, the intent of eliminating the study of the work of Edward Said! The second presentation, in welcome contrast, was from Robert Quinn, Director of the Scholars at Risk Network based at New York University. The organization finds temporary work at member institutions for scholars who are fleeing from persecution in their home countries. Through it, these scholars are given the means to carry on their academic work while a more permanent solution can be found for their predicament.

In Canada, only the University of Toronto has a permanently funded position allocated to the network, but it strikes me that if the universities in Halifax, or Nova Scotia, cooperated we might be able to do the same here. For more information on the network see their website: <http://scholarsatrisk.nyu.edu/>



SMUFU Workshops & Events

This September, Steven Smith and I held another Tenure and Promotion Workshop which was well attended by members at various stages of their careers. I would like to thank Steve for assisting with the workshop and all those who attended. If there is enough interest, I will organize another workshop on the same theme in the winter semester. In the last newsletter, I indicated that we were willing to run a workshop on the Reduced Duties provisions of the Collective Agreement, but I have not received any expressions of interest to date. If you are interested in either of these proposed workshops or have a suggestion for a workshop on another topic, please contact Karen at karen.crowell@smu.ca

I would also like to thank all the members who turned out for the SMUFU Annual General Meeting in October and helped us to get necessary business, such as passing next year's budget, accomplished. I would also like to once again congratulate Guy Chauvin and Milt Chew, who received their Dedicated Service Awards from CAUT during the reception that followed. Thanks is also due to the members of the Union Scholarship Committee, Geraldine Thomas, Janet Gregory and Robert Singer, for sorting through all the applications and coming up with the final list. The Union Scholarship winners are listed in this newsletter. I will present certificates to the winners at the University scholarship ceremony on Nov.7.

Finally, I wish to acknowledge the support given to me by the members of the Executive, and to thank the numerous volunteers who serve on our various committees and as union observers. Thanks also to Karen Crowell who continues to provide invaluable administrative support.

Michael Vance
President

QUIZ – from ANSUT**Test your knowledge of students, student loans and what a post-secondary education really costs ~**

1. What is the average undergraduate student debt load upon graduation across Canada?
 - a) \$20,000
 - b) \$25,000
 - c) \$30,000
 - d) \$32,000
 - e) none of above
2. Which province has the highest tuition fees?
 - a) MB and SK are tied
 - b) NS
 - c) PEI
 - d) Ontario after Mike Harris government
 - e) none of above
3. This autumn is the 10th anniversary of what?
 - a) Millennium Scholarship
 - b) NS loan remission plan
 - c) NS bursary program
 - d) b and c
 - e) Royal Bank's exclusive student loan arrangement with feds
4. What is the government's de-designation policy?
 - a) a typing error
 - b) has to do with student loans
 - c) has to do with institutions whose graduates default on student loans
 - d) has to do with poor quality teaching
 - e) has to do with financial penalties
5. Which law school resisted pressure to raise its fees by \$3,000 per year?
 - a) Dalhousie University
 - b) University of Western Ontario
 - c) Osgoode Hall, York University
 - d) University of New Brunswick
 - e) University of Manitoba
6. A student at which university successfully challenged an instructor's requirement that students submit their written work to a private, for-profit plagiarism-detection website.
 - a) University of Guelph
 - b) Concordia University
 - c) McGill University
 - d) Dalhousie University
 - e) Memorial University
7. Universities and colleges in which province(s) have suffered most dramatically from the effects of low funding and high tuition fees?
 - a) Ontario and BC
 - b) Nova Scotia .
 - c) Ontario and NS
 - d) NS and New Brunswick
 - e) New Brunswick
8. Name the top three NS institutions with the highest student loan delinquency rates.
 - a) NSCAD, UCCB, SMU
 - b) SMU, MSVU, UCCB
 - c) Kings, SMU, NS Agricultural College
 - d) SMU, St FX, UCCB
 - e) none of the above
9. The average student earns how much during the summer and the average tuition fees in Canada are:
 - a) earns \$5,000. fees average \$5,000
 - b) earns \$2,500. fees average \$4,100
 - c) earns \$3,100. fees average \$4,000
 - d) earns \$4,000 fees average \$4,100
10. How many Student Unions in Nova Scotia universities have food banks?
 - a) all of them
 - b) none of them
 - c) 2
 - d) 4
 - e) only universities in Halifax



Answers: 1c, 2b, 3d, 4c, 5c, 6c, 7c, 8a, 9c, 10d



The SMUFU Scholarship Committee has selected the following students for this year's scholarship award:

Morgan McCormick
 Shannon Spence
 Lovemore Mukandi
 Luc Sipkema
 Catherine Tweedie
 Melanie Gibson
 Katherine Dewhurst
 Amanda Dillman
 Adish Jain
 David Miller
 Jacqueline Glister

UNION LIBRARY

The following items have been added to the library available to members in the Union Office:

Reports:

- Strategies for Faculty Renewal in the Maritimes, October 2003 (A465)
- Heeding New Voices: Academic Careers for a New Generation—AAHE Forum on Faculty Roles & Rewards(A462)

Newsletters:

- AUFU Communicator, Vol. 12, No. 1, Nov 2004
- AUFU Communicator, Vol. 11, No. 4, May 2004
- MAFA Newsletter, May 2004
- Manitoba Alternatives Magazine 2003 (A469)
- MPHEC Trends in Maritime Higher Education Vol. 3, No.1, March 2004 (A461)
- MPHEC Multi-Year Business Plan 2003-2004 to 2005-2006, June 2003 (A460)•

CAUT Newsletters & Publications:

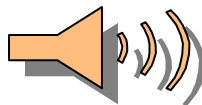
- CAUT Education Review, Vol. 6, No. 2 (A468)
- CAUT Analysis of the 2004 Federal Budget (A467)
- CAUT Librarian Salary Survey—Salaries Part 1 (A463)
- CAUT Librarian Salary Survey—Classifications Part 2 (A464)
- CAUT Bargaining Advisory— Maternity and Parental/ Adoption Leaves, No. 12, May 2004 (A470)
- CAUT Compassionate and Other Family-Related Leave Provisions, No.13, June 2004 (A458)
- CAUT Bargaining Advisory—Intellectual Property, No. 14, September 2004 (A457)
- CAUT Education Review, Public or Private? University Finances, 2002-2003 (A456)
- CAUT FACTS & FIGURES, Vol. 6, No. 3 October 2004 (A455)
- CAUT Legal Review, Vol. 5, No. 2, October 2004 (A454)

ON THE WEB

- [Canada Labour Code](http://laws.justice.gc.ca/en/L-2/): <http://laws.justice.gc.ca/en/L-2/>
- [The Personal Information Protection and Electronic Documents Act](http://www.privcom.gc.ca/legislation/02_06_01_e.asp): http://www.privcom.gc.ca/legislation/02_06_01_e.asp
- [Faculty Association of Simon Fraser University Newsletter](http://www.sfufa.ca/newsletters/0405/November%202004/2004_5_1.htm): http://www.sfufa.ca/newsletters/0405/November%202004/2004_5_1.htm

The three Rs: Respect for self, Respect for others, and Responsibility for all your actions.

from the Dalai Lama



CAUT DEDICATED SERVICE AWARD

CAUT Dedicated Service Award recognizes the contribution members have made to their union/ association. The Award Certificate and a CAUT pin were presented to Milt Chew and Guy Chauvin. The presentation took place at the Annual General Meeting reception on October 15, 2004.

In Remembrance

Two stanzas from Robert Service's "On the Wire."

Hasten, O God, Thy night!
 Hide from my eyes the sight
 Of the body I stare and see
 Shattered so hideously.
 I can't believe that it's mine.
 My body was white and sweet,
 Flawless and fair and fine,
 Shapely from head to feet;
 Oh no, I can never be
 The thing of horror I see
 Under the rifle fire,
 Trussed on the wire . . . the wire . . .

Of night and of death I dream;
 Night that will bring me peace,
 Coolness and starry gleam,
 Stillness and death's release:
 Ages and ages have passed,
 Lo! it is night at last.
 Night! but the guns roar out.
 Night! but the hosts attack.
 Red and Yellow and black
 Geysers of doom upspout.
 Silver and green and red
 Star-shells hover and spread.
 Yonder off to the right
 Fiercely kindles the fight;
 Roaring near and more near,
 Thundering now in my ear;
 Close to me, close . . . Oh, hark!
 Someone moans in the dark.
 I hear, but I cannot see,
 I hear as the rest retire,
 Someone is caught like me,
 Caught on the wire . . . the wire . . .

Your Two Cents: Submissions and Suggestions

All SMUFU members are invited to contribute comments, news ideas and, yes, even written submissions for future issues of the Faculty Union News. Contact: Bob Cook – 420-5174 or Mike Vance 420-5766