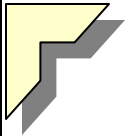


FACULTY UNION NEWS

SAINT MARY'S UNIVERSITY

VOLUME 12, NUMBER 1

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THE PRESIDENT'S REPORT

Faculty Union Members:

As I have in the past, I wanted to include a brief report to the membership to keep everyone updated as to developments in SMUFU-Administration relations.

At the forefront of discussion on campus recently has been the issue of academic freedom. Although we all know we enjoy academic freedom, many of us are not exactly sure about what it is.

Article 8.1 of our *Collective Agreement* states: "The common good of society depends on the search for knowledge and its free exposition. Academic freedom in universities is essential to both these purposes in the teaching function of the university as well as in its scholarship and research. Faculty shall not be hindered or impeded in any way by the University or the Faculty Union from exercising their legal rights as citizens. Academic freedom does not confer legal immunity, nor does it diminish the obligation of faculty to meet their contractual responsibilities to the university. The parties agree that they will not infringe or abridge the academic freedom of any Faculty Member. Faculty Members are entitled, regardless of prescribed doctrine, to freedom in carrying out research and in publishing the results thereof, freedom of teaching and of discussion, freedom to criticize the university and the faculty union, and freedom from institutional censorship. Academic freedom carries with it the duty to use that freedom in a manner consistent with the scholarly obligation to base research and teaching on an honest search for knowledge. In exercising their academic freedom, Faculty have a responsibility to respect the academic freedom and rights of other members of the University Community." (p. 9-10). Similar language exists in

the agreement to protect the librarians.

The Saint Mary's University Faculty Union is dedicated to the defense of the academic freedom of all its members. As many of you know, we have been involved in a number of cases in which we have steadfastly supported the academic freedom of our members. Should the University attempt to restrict the academic freedom of any faculty member or librarian the Saint Mary's University Faculty Union will act to protect it.

Academic freedom is absolutely necessary for the proper functioning of institutes of higher education. Sometimes our research findings, what we teach, or what we discuss offends others. We should not be afraid to offend people in this way. Indeed, if scientists had not been able to challenge existing religious beliefs, we would all still believe the sun revolves around the earth and that the earth is flat. However, with freedom comes responsibility. Academic freedom does not mean the freedom to defame others. Academic freedom does not mean the freedom to spread hate speech. Academic freedom does not mean the freedom to harass others in the university community. Academic freedom does not mean the freedom to engage in behaviour that compromises the general safety and health (physical and psychological) of faculty members, students, and/or staff members. Academic freedom is necessary so that academics can do their research and do their jobs. But academic freedom is not absolute unrestricted freedom and it does not mean we are accountable to no one.

Steven M. Smith
President, SMUFU



**Negotiating the Changing Culture of
Academic Librarianship.
The CAUT Librarians Conference,
Ottawa (October 20-22, 2005)**

Keynote speaker Carla Stoffle, Dean of Libraries and Center for Creative Photography, University of Arizona, got the conference off to a controversial start by stating that academic libraries will need to transform their thinking, practices, and physical spaces to meet the challenges presented by insufficient funding and cost increases and to thrive in the new global information environment. Key to these changes will be a "planned abandonment" of existing services so that libraries can pursue new innovative projects without adding to existing workloads, staff stress, and burnout. It will be necessary to eliminate the massive amount of resources (including space) devoted to managing legacy collections and to channel the saved resources into digital projects. Library space should be redesigned to replace books with computers and with people space for active learning.

Ms Stoffle contended that libraries should move to digital as the preferred format in allocating resources unless there is a compelling reason to buy in another format and that librarians should focus on outsourcing and collaboration rather than collecting and processing information. These changes will require interdependent pooling of resources and reliance on repositories for little used material. Moreover, work should only be done locally when it is most economical to do so.

According to Ms Stoffle, the academic library should be a place for the production and distribution of knowledge. It should manage all campus knowledge and information, not just scholarly information, and become an integral part of the learning environment. The library should deliver in all formats, provide services to the desktop to the greatest possible extent, and empower users with self sufficiency. In accomplishing these goals, libraries should aggressively seek ways to collaborate with other campus organizations. As well, libraries will need to create new sources of revenue through fundraising and from new funding sources such as coffee shops, and librarians will need to be politically active to influence information policy and protect access.

A session presented by Daniel Boivin, on the Online Computer Library Centre's 2003 Environmental Scan, provided evidence in support of Ms Stoffle's views. Mr. Boivin, Director of OCLC Canada, described the Environmental Scan as a comprehensive review of global issues affecting research, learning, and libraries. The scan examined five landscapes – social, economic, technology, research and learning, and the library. The three dominant patterns that emerged were a decrease in guided access to content as reflected in intelligent information containers, unguided searches, and e-learning aids; disaggregation of institutions and services with a focus on micro content and a redefinition of the least publishable

unit; and collaboration, which creates new patterns as it becomes easier for people to connect. With the steady decline in traditional activities such as circulation and reference questions due to competition from the web, libraries will need to reallocate positions to new roles such as digital scholarship, preservation of digital information, open source projects, and management of information content.

Allison Sivak, a Research Associate for the 8Rs Research Team, presented the findings of the 8Rs Canadian Library Human Resource Study. This project examined eight core issues integral to resource management in Canadian libraries - recruitment, retention, remuneration, reaccreditation, repatriation, rejuvenation, retirement, and restructuring. The overarching issues identified for research libraries are the high level of impending retirements, redefining competencies as roles shift between librarians and paraprofessionals, developing management and leadership competencies, needs for organizational rejuvenation as a result of continued retrenchment and downsizing, achieving an environment of respect, greater librarian involvement in decision making, and issues of workload and stress.

The high percentage of impending retirements in academic libraries was also emphasized by Larry Dufay, Senior Research Officer for CAUT, in his presentation on the biennial Librarian Salary Survey, and by Linda Lowry, Brock University, speaking on Knowledge Management Techniques. Ms Lowry examined how organizations, including faculty associations, can capture and share the knowledge and expertise of retiring faculty and librarians, improve the flow of knowledge within the organization, and improve organizational performance through knowledge management techniques such as exit interviews, storytelling, and after action reviews.

A session on Affirmative Action and Academic Librarians, presented by Mary Kandiuk, York University, addressed the lack of progress made in promoting employment equity for visible/racial minorities, aboriginal people and persons with disabilities. Ms Kandiuk explained the connection between investment in diversity and an organization's success and she discussed strategies for, and obstacles to, promoting employment equity. She emphasized the need to focus not just on recruitment but also on retention, which requires a sustained organizational commitment. Mentoring is also of critical importance.

Interdisciplinary Studies and the University Library was the subject of a presentation by Wendy Rodgers, University of Guelph. Since librarianship is totally interdisciplinary, librarians should be well positioned as the academic culture shifts toward interdisciplinary studies. Librarians need to make the rest of the campus aware of their collaborative potential. Increased cross-campus collaboration can lead to greater visibil-

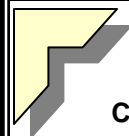
lity for the library. This visibility can be exploited through marketing the profession to students on campus to broaden the disciplinary intake to library schools. This in turn can lead to more disciplinary variety among library school graduates, which will provide a better pool from which to recruit librarians with potential for interdisciplinary work.

Many conference attendees rated the final session, on Negotiating Collective Language, as the most useful. In this session, Francesca Holyoke, University of New Brunswick, examined many of the aforementioned issues from the perspective of collective bargaining. Overall, Canadian librarians have not been able to use collective bargaining to gain a proactive voice in the introduction of technological changes. Contract language should specify that technological change be taken into account in librarians' workload. It is also necessary to provide protection from technologically mediated librarianship, for example automation of cataloguing operations. Another problematic issue is that, as libraries increasingly turn to consortia arrangements for purchasing journals, librarians are losing their intellectual input into collection building and this is leading to a universal blandness of collections. As well, librarians have a shared concern with faculty regarding matters such as protection of intellectual property and technologically mediated instruction.

A further concern is that librarians are being drawn into a culture of assessment that is manifested in a shallow business approach to evaluating everything we do and a focus on quantitative rather than qualitative indicators. There is also a danger that data gathered in surveys such as Lib-Qual may be used as a form of anonymous individual assessment and review rather than just a means of evaluating services. There needs to be contract language to prevent this use. Control of how the data is used should be in the hands of a broad group of librarians rather than the Chief Librarian. It is also important to remove from the data collected any references that could be related to individual employees. A similar concern can arise with online services such as chat reference where everything can be traced. Again, there needs to be contract language that specifically excludes such data from assessment and disciplinary processes.

Some of the attendees were disappointed that the conference was not more focused on improving working conditions and other faculty union issues rather than on general concerns about improving library service, especially since faculty unions were subsidizing the cost of attendance. Others disagreed, arguing that it was relevant to talk about the general work environment and matters that influence what we do and what we need to bring to negotiations. While I could see the merits of both views, I would like to see a more even balance with more sessions devoted to bargaining and other faculty union issues in the next CAUT Librarians Conference, which is scheduled for 2007.

Bob Cook
Librarian



Money Matters! Bargaining Total Compensation in the Post-secondary Context

CAUT Collective Bargaining Conference, Ottawa (February 2- 5, 2006)

The CAUT Collective Bargaining Conference was held in Ottawa from February 2 to February 5, 2006 with the theme "Money Matters! Bargaining Total Compensation in the Post-secondary Context."

Ted Montgomery from the Ontario Public Service Employees Union set the theme of the conference in an examination of the wider context of bargaining for total compensation. He emphasized the importance of preparation, research, focusing on goals, consensus, bargaining team solidarity, identification of key players on the employer side, and building the confidence and support of the union membership. As well, he gave numerous practical tips for bargaining teams based on his extensive experience in contract negotiations.

Brenda Austin-Smith from the University of Manitoba examined how the distribution of compensation relates to equity issues and she suggested strategies for addressing inequities. She urged faculty unions to pay particular attention to the politics of compensation and to make a genuine commitment to equity. This will involve educating members about the issues and working to bring about change. There must be recognition of the different interests of groups distinguished by age, gender, and other factors in matters such as parental leaves, pensions, and mandatory retirement. In particular, salary issues including starting salary, salary scales, merit pay, and market differentials that are a major source of inequity need to be addressed.


Chris Ferns, Chair of the CAUT Collective Bargaining and Economic Benefits Committee, spoke on the subject of strategies for changing academic salary structures. He observed that academic staff salaries have lost ground progressively compared to salaries in other sectors and have also decreased as a percentage of university budgets. This is an indication that we have not set sufficiently aggressive bargaining goals in the past. A large part of the problem is salary scales that, when compared to other sectors, have too many steps and result in disparities between entry and final salaries that do not reflect realistically the value of the work. As a result, compensation is deferred so that senior academics are being paid for work done in the past and for which they were not adequately compensated at the time. This situation also makes it appear that individuals are prospering over time when, in reality, the salary scales are eroding. The solution proposed by Mr. Ferns is to flatten the scales by raising the floors and reducing the number of steps. This solution will address the problem of academic staff salaries that are too low at the beginning of one's career and, at the same time, it will eliminate many of the inequities built into present salary structures.

Presentations by Michael Piva (Chair, CAUT Contract Academic Staff Committee), Doug Lorimer (Wilfred Laurier), and Vicky Smallman (Organizing and Collective Bargaining Officer, CAUT) addressed questions relating to leakage in salary structures resulting from discretionary payments, particularly those arising from merit pay, market differentials, and inequities in starting salaries. From these presentations it clearly emerged that most existing discretionary payments are not based upon due process or any justifiable criteria, but are inequitable in their application and put too much power in the hands of academic administrators. Moreover, base salaries are reduced to pay for these discretionary payments. The increasing number of limited term, contract, and teaching-only positions are another form of leakage and also increase the inequities built into the system. To address these issues, the goal of contract negotiations should be not only to maximize the total amount of money but also to distribute it more equitably.

The conference wrapped up with a presentation by Neil Tudiver (Assistant Executive Director, CAUT) who spoke on The Bargaining Climate for Structural Change. He emphasized that excessive employer discretion in market and merit increase, large per course stipends, research grants, and course releases, contradicts the principle of collective control of compensation, undermines peer review procedures, and exacerbates historic inequities. Employer discretion in compensation matters also causes friction among colleagues, divides faculty along gender and age lines, increases the number of grievances, and is detrimental to academic freedom as faculty gear their work to the incentive system. Mr. Tudiver continued by identifying suitable tactics that bargaining teams can use to reform salary structures, strengthen member solidarity, and take advantage of opportunities presented by the current seller's market for labor.

The excellent presentations provided conference attendees with a comprehensive understanding of the many problems inherent in present salary structures in Canadian universities and suggested practical strategies to address these problems. The presentations were supplemented by break-out group sessions that provided opportunities to further discuss these issues with colleagues from other institutions.

Bob Cook
Librarian



Leading Issues in Grievance Handling CAUT Senior Grievance Officers Workshop, Ottawa (January 20-22, 2006)

General

The annual Senior Grievance Officers' Conference, held at the Westin Hotel (Ottawa), attracted about the same number of participants as last year. The conference focussed on four themes: the structure and role of grievance committees, handling member-to-member disputes, saying no to grievors, and handling accommodation grievances (with mental health concerns prominent in the discussion). There was also a report on a survey run by CAUT on the most recent issues being sent to grievance. In the process of plenary and group discussions, other issues emerged which pointed to potential stress points, including appeal procedures and generating membership interest (both to serve and to participate in union management).

There were two over-arching themes in the workshop. First, the rights of faculty and of faculty unions are under siege. There is a greater tendency for universities to remove policy decisions from the collegial process and to make arbitrary decisions. We have seen this at Saint Mary's as the decline of collegiality, and this decline resonates else-where in the country. Secondly, it is becoming challenging to balance questions of individual suffering against collective processes. Doing what is best for the total membership may not line up with individual concerns, thus causing tensions in the Union.

Grievance Survey

Paul Jones of CAUT sent out a questionnaire concerning the last three grievances handled within the last three months by the unions or associations represented. The results, deemed a "first effort" and "statistically inconclusive", were presented. In the order of numerical significance, the top three issues in grievance were compensation, discipline, and workload. What was problematic about the survey was the fact that many more grievances outside these three categories were handled. And the discussion from the floor following the survey analysis was much more illuminating. Some highlights:

- a) Several universities have a "Joint Committee to Administer the Collective Agreement". This body is responsible for receiving all issues arising from the Collective Agreement and determining which of them can be resolved informally and which by grievance and arbitration. The universities that had such committees seemed to be larger.
- b) Many of the most problematic issues arise from renewal, promotion and tenure decisions.
- c) An equal number of issues arise in institutions where there is a "merit pay" provision in the Collec-

tive Agreement (also referred to as a "career development increment"). This has given rise to grievances against deans and other administrators for abuse of authority.

- d) Several institutions commented on difficulties in getting memoranda of agreement from letter to implementation.

One Size Fits All? The Structure and Role of Grievance Committees

The activities and roles of grievance committees at Memorial University and at the University of Saskatchewan were addressed. Their practices were out of step with those of small institutions (such as Saint Mary's), but some of their practices gave rise to questions that SMUFU ought to address:

- a) At Memorial, grievance officers are elected for a three-year term. Because of the size of their committee, there is a staggered election to ensure continuity. The Chair of the Grievance Committee is elected and receives a one-half course teaching reduction. Every three years, the Executive of the Union reviews the operations of the Grievance Committee. Question for Saint Mary's: do we want the Union membership as a whole to endorse the composition of the Grievance Committee? Does the Executive wish to pursue an equivalent review of grievance officer/committee practices?

At the University of Saskatchewan, the composition of the Grievance Committee is outlined in the Union Constitution. The Union Executive appoints the Grievance Officer.

- b) The MUN Grievance Committee has weekly meetings of 2-3 hours in duration, with detailed minutes and copies of all correspondence archived. Given that MUN has, on average, 70 issues on the go at any one time, weekly meetings make sense.

University of Saskatchewan's Grievance Committee meets monthly, but it works within the context of a joint Grievance Committee (Union/Employer) that tackles the informal resolution of complaints.

- c) For grievances arising from promotion and tenure decisions at MUN, only a tenured faculty member may handle the case. Should we consider such a protocol?
- d) Because of the number of promotion and tenure complaints that arise and have arisen at MUN, the Union meets annually with heads of promotion and tenure committees and with deans to review the process. This is a public education issue that might be of benefit. Some other unions put on a promotion and tenure seminar for members whose hearings or applications are coming up. This ensures that the faculty members involved are familiar with the process.
- e) Because grievances often involve personal information, it is advised that the Grievance Officer have a letter which permits the Grievance Committee or the Union to reveal personal details should consultation with a lawyer

become necessary. Personal information should be made available on a need-to-know basis; and this rule should apply to any grievance officer files. Most institutions adhere to this principle; many keep the grievance files under lock in the Union office.

- f) To ensure a level of proof against a complaint for lack of duty of fair representation, every telephone call is logged.
- g) MUN and University of Saskatchewan have a professional officer, hired by the Union. This person knows the Collective Agreement thoroughly and is the point of first contact on all grievances. Such "first contact" is possible because the professional officer works out of the Union Office.
- h) University of Saskatchewan reports to its membership in a non-specific (no personal names) fashion all of the grievances taken by the Union together with a general statement of outcomes.
- i) At the University of Saskatchewan, the Union makes a decision about which grievances go to arbitration, often with a consideration of the costs of arbitration as a factor.
- j) One piece of advice was that, on peer-to-peer disputes, the Grievance Officer should remain out of the loop, at arms length from both parties.
- k) An issue of common concern was the recruitment of new volunteers for the Grievance Committee. In many cases, the original committees were formed by former Union Executive members. The main issue is how to refresh the pool of participants and how to give them adequate training. On this subject, some unions turn to retired faculty members as possible grievance officers.
- l) Although it was taken almost as a given, there was discussion of the grievance appeal process. Saint Mary's does not have such a process, and whether it is a reasonable idea given the checks and balances in our current grievance handling structure is a good question.
- m) In discussion, the matter of liability insurance for union officials (executive, professional officers, grievance officers) was raised.

Both Sides Now? Handling Member vs. Member Disputes

Peer to peer problems frequently arise out of harassment and discrimination. It is an evolving phenomenon in the workplace and one which is problematic for unions. Under law, it falls to the Employer to provide a harassment-free, safe workplace – an outcome of the duty of the Employer to manage. A general decline in civility in the workplace has been noted, some of it attributed to the use of email instead of conversation as a mode of communication.

Harassment is a behaviour that must be seen in context. The work environment and practice of teamsters and of teachers is different and arbitration decisions take this context into account. Harassing behaviour is

behaviour that the offending party knows or ought to have known is offensive. A harassment complaint requires that the offended party complain to the offender about the behaviour. And the standard on which a complaint can be judged is what a "reasonable person" would conclude given the same context.

The terms of anti-harassment clauses often blur the line between "giving instruction" (a legitimate management activity, especially where deans and department chairs are involved) and harassing behaviour. If an instruction is given and not complied with, at what point can follow-up be deemed as harassment? Arbitration judgments rest almost totally on the contextual merits of the action. While the legal text (wording of clauses, for instance) may be objective, the subjectivity of a personal complaint and of disputes between parties forces grievance officers and union executives into a difficult position.

The duty of fair representation applies to both parties, when a peer vs. peer dispute arises. One solution (albeit uncommon) has been to send one of the opposing parties to get independent counsel. In larger institutions, with several grievance officers, each side of a dispute is assigned to a separate officer for investigation. Some institutions have an ombudsman in the Union to assess and address peer-to-peer issues.

Grievance and arbitration law stipulates that, whether it is an individual grievance or a peer-to-peer one, the Union

- a) must inquire into the problem
- b) must take a position on the merits of the case
- c) where the matter is mediated, must ask for intervener status.

Questions arising from discussion:

- a) What to do about conflict of interest issues, where the Grievance Officer or Grievance Committee may know or have issues with one or both parties.
- b) The role of internal mediation (e.g. the Union hires a mediator to attempt to resolve peer-to-peer complaints)
- c) Records retention: how long do you keep records of grievances? Should you maintain a historical file from which the personal identities are deleted?

Saying No to Grievances and Grievors

The basis for any complaint is a record of the process, from initial interview to final resolution. In a grievance that the Union decides *not to pursue*, there is a duty to have investigated, to have weighed the issues, and to then place the case inside or outside the Collective Agreement. A sound starting point is a complaint form in which the grievor expresses the problem in his or her own words.

There are often confusions between complaints, injustice and grievance. While a potential case may contain the first two elements, it may lack sufficient grounding in the Collective Agreement to proceed. The Union is bound to the Collective Agreement and the welfare of the greater member-

ship, and may have to refuse to pursue a complaint formally. Telling a grievor "no" (if the refusal is accompanied by reasonable grounds and if there has been a reasonable investigation) is not a breach of the duty of fair representation. *It is strongly advised to say "no" in writing, stating the reasons for refusal and outlining the process that was followed.*

In some instances, members of the Union may misunderstand the Grievance Officer's or Grievance Committee's role, assuming that these individuals are required to be personal champions of the grievor. The Union actually speaks to a breach of the Collective Agreement that has affected the grievor. This is both an education issue for the general membership and part of a grievance officer's early communication with a grievor.

Some unions have embedded the grievance procedure in their Union Constitution, and in some instances they have added an appeal process. There is no strong view for or against the notion of appeals; however, in instances of a contentious grievance where the grievor is not satisfied with the refusal, not having an appeal process can unleash a backlash on the complainant's part against either the Executive or the Grievance Committee. There seems to be a minority of unions, which by appearances are from larger institutions and possessed of deep pockets, who will provide access to external legal opinion as a means to deflect a Duty of Fair Representation allegation. There are no known case or arbitration decisions that have resulted from a union's saying "no" with reason.

This does not stop efforts to pursue alternative routes to achieve a measure of justice. It is entirely possible that the Union may approach the University informally and, laying out the "injustice" issues of the complaint, try to craft a working solution. This sort of effort seems to succeed in institutions where there is a strong working relationship between the Union and the University or in institutions where the Grievance Committee develops a track record of effectiveness.

In some instances, the conditions of a complaint may not be covered by Collective Agreement language, but might well have to do with an unsafe workplace. Since maintaining a safe workplace is the Employer's legal responsibility, issues arising from a lack of safety (which could include bullying) can be challenged as the Employer's failure to manage. Thus, it is possible at times to stretch provisions of the Collective Agreement to good effect. Even lodging a strategic grievance—one to get the University's attention but with no hope of success—can get an issue on the table with the potential of an informal resolution.

Issues arising from discussion:

- a) The need for a paper trail for the grievance, starting with a written complaint on the griever's part.
- b) If present in the Union Constitution or handbook, an articulate procedure for appeal. By codifying the steps, such procedures ensure consistency of process.
- c) The need for the Union to remain vigilant on issues of general importance (such as compensation) by using the technical information from the University (e.g. dues reports) to check for irregularities. If a faculty member's union dues decrease suddenly, it might suggest that there are irregularities in their over all compensation.

Accommodation Grievances: Issues and Observations

The legal requirement to accommodate persons with physical or mental disabilities is imposed on the Employer, but recent arbitration decisions have laid responsibility on the Unions as well. Of the two types of disability, physical challenges are the easier to accommodate, and mental illness or incapacity has given rise to the most problems.

- a) The accommodation of a disability places a higher duty of care on the Union under its duty of fair representation. It is not enough for the Union to act. It must be alert to signs of difficulty before they arise, it must take extra measures of assertiveness to ensure resolution of complaints, and it must ensure that its members recognize *their duty* to accommodate the disabled faculty member.
- b) In approaching an accommodation issue, the Union will serve itself well if it can offer creative solutions. In many instances, the Employer is stymied and a series of recommendations will smooth the way. It is good practice to prepare the member for any discussions with the Employer on accommodation matters, and it is particularly useful to caution them that accommodation is often functional but not perfect.
- c) One of the flaws in the assessment of needs and in the identification of the extent of disability is differential reliance on medical opinion. It is always best to seek an independent expert medical examination, in which (particularly in the instance of mental illness) a link can be made between the illness and any aberrant behaviour on the part of the employee. Reliance on general practitioner's opinions will not help if the matter goes to arbitration; it is best to get the opinion of a specialist (thus psychiatrist over psychologist).
- d) The operational word in most accommodation issues is "reasonable." In many cases, the complainant may not consider the solution adequate. It is always in the best interests of both Union and Employer to refer the proposed accommodation to a third party. Current case law suggests that the refusal by a griever to accept accommodation which, to a third party or arbitrator, is deemed "reasonable" is grounds for dismissal / termination.
- e) The failure by an individual with a physical or mental disability to disclose the disability to the Employer nullifies the Employer's duty to accommodate. Thus, someone with a diagnosed problem that might erupt into an

untoward behaviour should let the problem be known. Human rights and labour standards legislation protects any employee from discrimination, but adjudicators have made disclosure a reasonable precondition to accommodation.

- f) The privacy of the employee is over-ridden by the need to disclose a disability. In essence, the Employer cannot be expected to accommodate a condition to which the Employer is not alerted. And efforts to claim retroactive accommodation (on the basis that the Employer "should have known") have failed.
- g) Co-workers may be expected to experience some dislocation of normal practice to accommodate a colleague with a disability. Many workers do not realize that the duty to accommodate applies (under arbitrators' decision) throughout the workplace. One initiative that has been successful is to arrange education seminars (presented by the Employee Assistance Plan or other personnel) to raise consciousness among colleagues who might be affected by an accommodation arrangement. Such initiatives are especially important in cases where mental issues are involved. Should the accommodation of one member's disability give rise to protest or complaint by other members, it is sound practice to provide these members with access to outside legal advice
- h) An unpredictable behaviour (in the case of a mental problem) can create conditions under which the Employer might argue "undue hardship" (which exempts the Employer from the duty to accommodate). There is, therefore, a balance to be achieved between a "safe workplace" (an Employer duty) and the "duty to accommodate" (also an Employer obligation).
- i) In order for the balance of worker's rights, Employer's accommodation, and Union's vigilance to work, the disabled member must follow any prescribed therapeutic regime.
- j) While the Union may have some obligation to provide access to legal counsel to address issues arising from accommodation, there is no obligation to provide legal assistance concerning criminal acts arising, for instance, from an eruption caused by a mental problem.

Issues arising from this:

- a) While there are provisions to protect members from each other ("the duty to maintain a safe workplace"), who protects the Grievance Officer?
- b) There is a difference between individuals with personal difficulties (e.g. anger management) and those with diagnosed mental disabilities (e.g. bipolar disorder). The duty of accommodation applies to the latter but not the former.
- c) An unreasonable expectation of accommodation (e.g. working 60% of workload but being paid 100% of salary) will not succeed as a grievance and will

most probably fail in arbitration.

- d) In an emotionally "poisoned workplace," the Employer has a duty to remedy the problem whenever that atmosphere becomes unsafe.
- e) Retroactive accommodation is improbable, especially when the employee has concealed or minimized the extent of the disability.

G. Douglas Vaisey Library

SMUFU WEBPAGE DOMAIN NAME AND E-MAIL ADDRESS:

The Saint Mary's University Faculty Union webpage domain name is smufu.ca and the e-mail address is unionoffice@smufu.ca.

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

FACULTY UNION MEMBERS

GENERAL MEETING

TOPIC: DISCUSSION ON NEGOTIATIONS

ROOM: SOBEY 165

DATE: FRIDAY, MARCH 17, 2006

TIME: 3:00 PM TO 4:00 PM

**REFRESHMENTS TO FOLLOW IN THE
FACULTY LOUNGE**

UNION LIBRARY

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

Reports:

- MPHEC R & D Funding in Atlantic Universities - November 2005

Newsletters:

- AUFA Communicator Vol. 12, No 2
- AUFU Communicator Vol. 13, No. 3
- Trends in Maritime Higher Education - November 2005

CAUT Newsletters & Publications:

- CAUT Travel Advisory: Attending Conferences in the United States January 2006 <http://www.caut.ca/en/publications/traveladvisory/default.asp>
- Alternative Fifth Year Review of Canada Research Chairs Programs November 2005
- CAUT Legal Advisory: Workplace Harassment is Grievable, even in the absence of specific contract language January 2006

ON THE WEB

- CAUT Travel Advisory: <http://www.caut.ca/en/publications/traveladvisory/default.asp>

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