

# MAFA NEWSLETTER

**Mount Allison Faculty Association**  
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JANUARY 2009

## PRESIDENT'S MESSAGE

Winter is upon us, and I hope that the cold weather is not taking its toll on your spirits. Again, the last months have been busy ones, and my time has been divided among local, provincial, and national concerns.

At Mount A, I and other members of the Executive have been working on several grievances, the judicial review, and a tenure denial. (Some of these are discussed elsewhere in this newsletter.) In September, I told you that relations between MAFA and the Employer were cordial, but this cordiality has been strained by the judicial review, given its apparent frivolity and its very real financial cost.

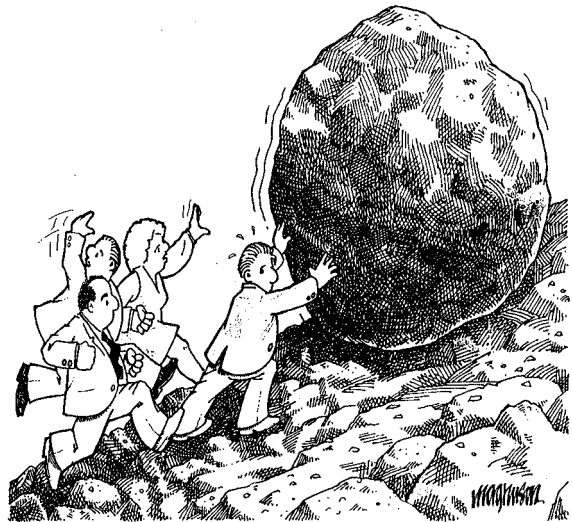
You'll be pleased to know that, in the province, things have improved, since, for the immediate future, the Graham government is focussing on community colleges rather than universities. The Federation of New Brunswick Faculty Associations (FNBFA), our provincial organization and lobby group, was instrumental in organizing resistance to some of the government's proposals. Of course, post-secondary education remains a priority of the government, so we will have to wait to see what challenges the future brings.

At the national level, Paul Berry and I attended the Canadian Association of University Teachers (CAUT) Council in November. The most significant event at Council was the decision to censure First Nations University; the story is told in the December 2008 issue of the *CAUT Bulletin*. In January, I attended the Presidents' Forum in Ottawa. There I met and discussed a number of issues with other presidents of faculty associations. We considered such topics as university governance, workload, the commercialization of post-secondary education, and several other concerns.

In meeting and talking with my fellow presidents and with CAUT staff, I became more fully aware of two facts. First, MAFA is a well-run and organized union.

Second, the challenges that we face at Mount Allison are faced by our colleagues across the country; that is, issues that might seem local and specific are often typical of national and even international trends.

I wish you all the best for the rest of the semester, and I hope that you'll keep in mind the incredible verdancy that marks spring in the Maritimes.



## SABBATICAL ARBITRATION DECISION UPHELD AT JUDICIAL REVIEW

On Friday, January 16<sup>th</sup>, Mr. Justice Alfred Landry of the Court of Queen's Bench dismissed the Employer's request that he quash an arbitration ruling on the subject of teaching duties in half-sabbatical years.

Members who follow MAFA activities will know that this past summer MAFA won an arbitration on the subject of the teaching duties of our members on half-sabbaticals. MAFA argued that, based on our collective agreement, members who normally teach five courses per year, and who take half-sabbaticals, should teach the same number of courses over a seven-year period as those who take a

single twelve-month sabbatical.

The Employer argued that members should be assigned three courses in the teaching term of the year in which they take a half sabbatical, regardless of how many courses they taught in the teaching term of a previous half sabbatical.

The arbitrator, Donald MacLean of Moncton, agreed with MAFA's position. The Employer decided to pursue judicial review of this decision at the Court of Queen's Bench in Moncton, on the grounds that they claimed that the Arbitrator made errors and effectively amended the collective agreement. The judicial review was heard on Monday morning, January 12<sup>th</sup>, 2009.

In preparing for the judicial review it came as a surprise to MAFA to find, in the Employer's written brief to the Court, the argument that a memorandum of agreement which was signed by both sides in the last round of collective bargaining should not be accepted as "relevant for interpretation as part of the collective agreement." The memorandum in question provides MAFA with an assurance that, "with reference to Article 12.07(c) [which stipulates that the Employer shall not increase the existing duties of faculty members], the Employer recognizes that the existing teaching assignment for faculty members is five (5) courses per annum." Such memoranda have an important role to play in the timely conclusion of bargaining, although it would seem that MAFA needs to reconsider the prudence of relying on them in the future.



So far MAFA has spent a total of \$11,180.22 (for September through December) in legal fees for the preparation and conduct of this judicial review. The bill for January has not yet been received. The Employer is likely bearing similar costs.

## MAFA SUPPORTS MEMBER IN CHALLENGING DENIAL OF TENURE

On January 13<sup>th</sup>, 2009, MAFA filed individual and union grievances to address a number of violations of the Collective Agreement which have been identified in the case of a member who has been denied tenure.

The violations are procedural and the outcome of this process may be of importance to all members who apply for tenure or promotion in the coming years.

Under Article 17.25 of the Collective Agreement a member who has been denied tenure can request a review of the tenure decision by an Internal Review Committee (IRC) composed of three faculty members, one appointed by MAFA, one appointed by the Employer, and the third chosen by mutual agreement of the first two. The IRC has the power to "require" the sub-committee on Tenure and Promotion to revisit the case but it can only "recommend" specific steps to be taken to ensure that the member receives a fair hearing.

Because its recommendations are not binding the IRC falls below the standards of the New Brunswick Labour Relations Act, which grants to unionized employees the right to "final and binding settlement by arbitration or otherwise" (Section 55) of all employee-employer disputes.

The IRC has been struck in this case but MAFA has requested that it suspend its process until the union and individual grievances are resolved. MAFA has been following the advice of its own legal counsel as well as the Canadian Union of University Teachers (CAUT) in seeking the protection of our Collective Agreement in this important case.

## MAFA COMMEMORATES DECEASED MEMBER

The Mount Allison community was saddened to hear of the death of part-time English professor **Elin Elgaard Thorpe**. Elin taught at Mount Allison, mainly in Continuous Learning, for many years and was a well-known figure in local literary circles.

Members can access her full obituary at the bottom of this web page:

<http://www.sackvilletribunepost.com/index.cfm?sc=134>

The family requests that memorial donations be made to the

Tantramar Extra Mural Programme, Sackville, or the International Fund for Animal Welfare.

**SENIOR GRIEVANCE OFFICERS WORKSHOP  
FOCUSES ON THE ASSOCIATION ROLE IN  
CARRYING FORWARD ARBITRATIONS**

This past December, I attended a two-day CAUT workshop for Senior Grievance Officers in Ottawa. The chief focus of the meeting was on the need for associations to take a more active role in the arbitration process.

There was a lot of useful information at the sessions and quite a bit of debate over the degree to which academic staff associations need to use external legal counsel to argue grievances at arbitration. Michael Piva, a labour historian and member of CAUT staff, pointed out that the arbitration process was originally designed to be an opportunity for rank-and-file members to appear before a neutral third party to argue their individual case or to argue for their interpretation of the collective agreement. In the last number of decades, the legal profession has come to dominate the ranks of arbitrators as well as those who argue cases. It was pointed out that some unions, such as the Canadian Auto Workers, routinely train their own members to conduct their arbitrations.

CAUT staff lawyer Mariette Pilon discussed the arbitration process, and Ontario labour lawyer Paul Champ provided some tips on preparing for arbitration and in conducting the arbitration hearing, including the handling of witnesses and evidence. The participants also heard from Maureen Shaw of Kwantlen Polytechnic University (BC) and Mikael Swayze (CUPE Local 3902) (U of T, Ontario), both of whom described their own experiences in arguing before an arbitrator. CAUT says that intensive training for one week will prepare academics to present at arbitration.

Skeptics of this movement argued that, like anything else, it takes practice to do arbitrations well, and that many associations don't have enough arbitrations to adequately build the skills of one or two members. Also, given that it can be hard to get members to do service, it may be difficult to recruit members to get the training and argue arbitrations as their service to the association.

Those who argued in favour of association members conducting arbitrations pointed out that this will help the association save money on legal fees, and therefore allow the association to send more grievances to arbitration. People have the impression that many employers are prepared to outspend unions when it come to arbitration, so

this would right the balance. Further, they note that there will still be a role for lawyers, who are best able to research cases and offer advice. But those who have dealt with lawyers in academic staff associations know that it is experienced members who have the most thorough knowledge of the contract, and they often find themselves explaining the situation to the lawyer, who then explains it to the arbitrator. So why not explain it to the arbitrator directly?

Geoff Martin

**CALL FOR NOMINATIONS,  
GEORGE J. DE BENEDETTI BOOK PRIZE**

Do you know any students who are excelling in social activism, advocacy work, or student, university-wide and/or broader community issues?

If so, why not nominate them for the George J. de Benedetti Book prize, awarded annually to a student who best embodies these commitments. The prize, which includes a book and \$200 cash prize, is given in recognition of the many years of outstanding service to the Mount Allison Faculty Association, Mount Allison University, and Canadian university academic staff, by George J. De Benedetti, retired professor of Economics (1968-2000).

Nominations must arrive in the MAFA office by Monday, March 2<sup>nd</sup>, 2009, and the prize will be awarded at the upcoming MAFA Annual General Meeting.

**IMPORTANT UPCOMING DATES**

***January 31***

Deadline for those employees granted a Sabbatical leave to confirm in writing intent to take the leave or postpone it for one academic year (Article 23.20).

***March 31***

Elections to the Sabbatical Leaves Committee will be completed - Article 23.02(g)



**EXECUTIVE COMES CLEAN ON 2008 CHARITABLE DONATIONS**

There's not much that interests MAFA members more than how the union gives out its charitable donations every December.

Given this interest, and response to a recommendation from our Donations Committee, the Executive has decided that all members should know of the donations made on their behalf in 2008.

At a regular meeting in December after the General Meeting, the Executive accepted the recommendation of the Donations Committee (composed of Ron Aiken, Lorelea Michaelis and Andrew Nurse) and cut cheques to the following local charities:

Amherst Women's Shelter	\$500
Sackville Christmas Cheer	\$500
Sackville Food Bank	\$500
Sackville Public Library	\$500
Tantramar Adult Learning Centre	\$500

In response to expressions of member support, the Executive also decided to make a \$100 donation to the Lillian Allbon Animal Shelter in Amherst. Previously, the Executive had, on its own initiative, donated \$200 in support of the "Second Summit on Poverty," organized by the Common Front for Social Justice in Moncton.

The Executive decided to underspend its charity line item by \$800, because of our anticipated deficit for 2008.

**MAFA WILL MONITOR UNIVERSITY SENATE'S REVIEW OF COURSE EVALUATION**

Members will be aware that the university Senate has appointed an Ad Hoc Committee on Course Evaluation. The unit 1 collective agreement has language on this issue in the Evaluations article, which says (Article 14.03) that: "An employee may choose to include the results of student course evaluations in the summary of professional activities. The Employer shall neither request nor require that this summary include student course evaluations results."

While MAFA recognizes that conducting course evaluations is mandatory, it is the position of MAFA that any change to our members' terms and conditions of work must be negotiated between the Employer and MAFA.

**MAFA 2008-2009 EXECUTIVE**

- Peter Brown - President (English)*
- Jeff Lilburn - Vice President (Library)*
- Paul Berry - Past President (Commerce)*
- Maritza Fariña - Treasurer (Modern Languages and Literatures)*
- Lorelea Michaelis - Grievance (Political Science)*
- Rob Cupido - Unit 2 (History/Continuous Learning)*
- Zoe Finkel - Membership (Geography and Environment)*
- Laurie Ricker - Collective Bargaining (Math and CS)*

