jacfa John Abbott College Faculty Association

news

May 2007 Volume 6, Number 4

Inside this Issue

From Faye's Desk

Here's to hoping you are not too piled up with marking to spare some time to read this issue of our newsletter. After all, there is a lot of good news in here, so that I am sure you will want to read on.

First of all, our dedicated webpage committee comprised of Stephen Bryce, Jane Hannah, Michel Milot, and Louise Samoisette completely overhauled the JACFA page. It is much easier to navigate and is more clearly organized. It also gave us an opportunity to revise much of the content and there is a current issues page that is updated frequently. Please check it out soon at this address: http://www.johnabbott.qc.ca/jacfa.

The College will be adjusting our salary scales because of the pay equity settlement and paying retroactive adjustments back to August 2003 on our May 17, 2007 pay cheque. While not all of us will be benefiting financially from this settlement, it is also important to remember that unions fought hard and long to ensure that female members of the public sector are treated fairly.

JACFA has also reached an agreement with the Administration concerning gradual retirement that will allow you, for instance, to work full time in the fall semester and take off the winter semester. Please read the article carefully if you are considering this option as there may be budgeting issues.

You will find an extensive insurance report inside, but one of the highlights is a reminder that there is a premium holiday for teachers for Long Term Disability during this summer's vacation period.

The History of JACFA series resumes with an article by recently retired HPR teacher, Linda Collier, entitled The Strike of 1983 or "What Are Nice Teachers Like You Doing in a Place Like This?" It is such a timely article considering the decree in December 2005 as Linda concludes, "...if you believe that we cannot stand by and merely shrug our shoulders when governments rule by decree, tear up contracts and attack civil liberties, then John Auboutte's actions both in and out of court stand as a contribution to the on-going struggle against the arbitrary use of power." John Auboutte is the nickname JACFA earned amongst our fellow union locals for our imaginative and creative strike actions.

We have also included excerpts of a speech by FNEEQ President Ronald Cameron at a CIREPE conference in March on the evaluation of teaching. He argues cogently that becoming better teachers does not only come from an evaluation mechanism but it also comes from a real investment in professional assistance and that a culture of professional support needs to be developed and implemented.

All this and much more, so keep on reading. We hope to see you all at the general assembly on Thursday, May 10 at 10 a.m. for a discussion and vote on a union dues increase, a report and discussion on the evaluation of teaching, as well as the annual election of the JACFA Executive and College committee members. And if all that grading works up an appetite, please join us at the JACFA BBQ on Wednesday, May 16 at noon, weather permitting.

ONGOING SERIES - PART II

THE HISTORY OF JACFA

On Evaluating Teaching…

The following is a translation of parts of an commentary given by Ronald Cameron, President of FNEEQ, at the CIREPE (Centre d'intervention et de recherche en évaluation du personnel enseignant) conference in March. Two members of the JACFA executive, Faye Trecartin and Clea Notar, were at the conference with members of the academic administration.

Hi everyone,

(…) I would like first of all to thank the members of the organizing committee of this conference for allowing us to present our union's approach to the evaluation of teaching.

When we received the invitation to participate in this roundtable discussion, we immediately wondered: why come here? We questioned the value of this discussion, in the context where, on the one hand, evaluation was a subject of negotiation, and on the other, that it ended with a decree. The question of faculty evaluation in higher education is closely tied to questions of power in an institution, so this question is a sensitive one. (…)

It is highly likely that we will take a different approach from most of the college representatives registered at this conference. However, the exercise we are doing here will not be in vain if our participation contributes to a better understanding of our legitimate concerns and a reluctance toward the type of approach that is being proposed in some colleges (…)

To associate our concerns about systematic evaluation with a resistance to change is, we believe, a refusal to debate the profound implications of evaluation. On the contrary, our reservations come from a deep and continued reflection at FNEEQ, over the past twenty years, about the conditions that need to be developed to allow teachers to better fulfill the mission that is higher education at the college level (…)

Some of the reasons suggested for putting in place a system of evaluation are not very convincing. According to some, it is needed to attest to the quality of education provided by public funds. We find that in a context where the large majority of experts agree that this process must remain confidential, this argument is, to say the least, paradoxical. At the same time, the magnifying glass is being focussed more and more on the quality of programs and teaching. Evaluation is everywhere and many policies and regulations have been put in place to implement it. Working together with our peers to accomplish shared objectives, interacting with many students — teachers are already widely scrutinized by others.

For others, evaluation would simply be there to give teachers the tools they need to become better teachers. Formative evaluation would be more acceptable, but this seems to imply that reflection on the practice of teaching is not already an active part of our everyday work in departments and programs. It's clear to us that becoming a better teacher does not only come from an evaluation mechanism for individual teachers; but it also comes from our willingness and desire to invest in our teaching practice. We think that evaluation is just one model among others to achieve this (…)

So where does this desire to systematize evaluation come from? Why make it compulsory?

Has there been a generalized decline in the quality of cegep teaching? Not to our knowledge, in any case. To us, the quality of the education we provide is not in question, and there is a great deal of evidence bearing witness to this. Some colleges are ready to spend big bucks on a systematic evaluation process, while at the same time, for example, placing restrictions on the number of photocopies of course materials and the purchase of software! (…)

There are inherent limits in the very nature of the act of teaching: it is a complex human relationship where many interactions take place at the same time. This places limits on our ability to evaluate teaching. In their practice, teachers have to make judgements about the progress achieved by their students. Are the latter truly in a position to gauge the achievement of the objectives and the quality of teaching given, putting aside their personal interests? An unchallenging class context is likely to produce an unchallenging evaluation. But is that what we want? (…)

Prudence is the key. We believe that making the means available is more important than to having one obligatory system (…) FNEEQ is convinced that investments must be made in professional assistance and that a culture of professional support needs to be developed and encouraged. We do not deny that there are problems out there. But they are exceptions and should be treated as such (…)

…The main problem is that our job has become more demanding and complex. After witnessing the Ministry of Education and the Federation of Cegeps deny the increase in our workload during the last negotiations, it is not

(*continued on page 3*)

...On Evaluating Teaching

surprising that many teachers view with suspicion the desire to impose a systematic evaluation process of teachers (...)

It's true that we accepted a letter of agreement on evaluation in the FNEEQ-forced agreement. But the reason for this is simple: the problem is not evaluation per se, but its implementation as obligatory system across the board. Many of our unions are not comfortable with this situation. Many prefer to define evaluation as an assistance and support system. Others are trying to negotiate with their local administration. But whatever is happening locally, it is clear to us that the agreement of the local union is an essential condition for putting in place an evaluation policy. The letter of agreement in our collective agreement (Appendix VIII-3) clearly states that both federations (FNEEQ and the Federation of Cegeps) encourage the local parties "to agree to elaborate, develop and implement" an agreement on evaluation – we underline the expression "agree to".

We can debate the merits of a systematic evaluation system and find ways of working together in this issue. A good working climate and a college's vitality is built on mutual respect. Some administrations have understood this fact. We hope that this short talk will convince other administrations to do the same.

You will find the complete French text "*À propos de l'évaluation des enseignantes et des enseignants*" on our JACFA website under this link.
http://www2.johnabbott.qc.ca/webpages/organizations/jacfa/library/library.htm

ILO Decision on Law 43:

A Symbolic but Important Victory

Quebec unions (CSN, FTQ, CSQ, CSD, FIQ, SFPQ, SPGQ, SPEQ and APEQ) filed a complaint with the International Labour Organization (ILO) alleging that Law 43 (Bill 142) violated international rights and attacked the freedom of union association because it abruptly ended the negotiation process. It also deprived the unionized workers of a fundamental right, namely the right to concerted actions and the right to strike.

The ILO ruled in favour of this complaint and called on the Charest government to amend Law 43 so that it complies with Convention C87 on Freedom of Association and Protection of the Right to Organize and C98 on Right to Organize and Collective Bargaining.

Unions are now asking the minority Liberal government to comply with the ILO recommendation.

Gradual Retirement

JACFA has finally come to a new understanding with the Administration concerning gradual retirement. You are eligible for gradual retirement if you are between 65 and 69 years of age. Gradual retirement is a provision in the RREGOP pension plan (administered by CARRA) that allows a teacher to work and receive pension at the same time. The teacher cannot receive more than the "reference salary," the annual salary you received on the last day of work. The question at stake was: can you work full time in the fall semester and be off completely during the winter and receive a salary of 50% spread over two semesters? The advantage of this is that you would receive a fixed and pre-determined amount every 2 weeks, half from the College and half from CARRA. However, even though CARRA has no problem with the fixed, pre-determined payment method, the College has held fast and states it cannot use this method, blaming income tax regulations. The College's bottom line is that it cannot pay you during a semester you do not teach.

If you want to sign up for gradual retirement, you have to be aware that:

- you will not be covered by salary insurance anymore, but you will receive sick days in proportion to the work you do;
- you must retire at the latest on December 30th of the year you turn 69;
- you will not have to pay pension premiums anymore;

Here is one example that illustrates the plan:

Joe Gradjack

Number of years of contributions:	**33**
Average salary of the 5 best years:	**$66,000**
His yearly pension is 66% of $66,000 =	**$43,560**
His reference salary is:	**$68,720**

He starts gradual retirement in January 2008. He gives the College notice before October 15, 2007. He decides to work 0% in the winter 2008 and full time in the fall 2008.

How will Joe be paid?

The following numbers are only estimates:

January 1 - February 15:	College pays for Fall semester. (January 15 - February 15 is the vacation pay) (estimated salary: $8,590)
February 15 - August 15:	Pension for 6 months: $21,780
On August 15,	the college notifies CARRA that Joe has started working full time again.

How fast will CARRA stop the pension payments? We don't know.

August 15 - December 31:	College pays you for 4.5 months for a total of $26,285
Joe should receive	$68,720-($8,590+$21,780+$26,285) = **$12,065** from CARRA at some point to reach the reference salary.

Please note: if it takes CARRA one or two months (or more) to stop the pension payments, this money will have to be paid back, or deducted from future pension income.

Joe could also decide to work both semesters at 33% and receive his 66% pension. It's easier to budget this way!

The following is a new series on faculty members who make a difference in the college community. If you would like to nominate someone, please let us know.

Sharon Rutherford

Sharon joined the Biology Department in 1995, eight years after receiving her D.E.C. in Health Science from Abbott. In 1997, on her own initiative, she started the Laboratory Apprentice Project, which provides students with the opportunity to spend a few days with "hands-on" experience in research labs in the Montreal area. Sharon has personally placed approximately 500 students in over 70 different labs since the start of this initiative. As one of her former students, now a biology professor herself, notes, "Sharon truly was an inspiration for my career. When I look back on my years as a student, Sharon's course and apprenticeship ... played a large part in developing my learning goals and teaching philosophy."

Sharon has always been a strong believer in community work and has volunteered extensively in local schools, churches and at the Veteran's Hospital. In 1992, Sharon started and currently chairs a registered non-profit charitable organization known as Zimbabwe Education Affiliates (ZEA). Since its beginning ZEA has helped more that 100 destitute, but capable, students secure high school educations. Many of these students have completed or are presently attending university. Sharon is also on the founding board of The Canadian Friends of Vamos, a registered charity dedicated to empowering the poor in Mexico. Since 1997, she has been spotted volunteering at the fair trade store Dix Mille Villages. Several of her students have followed her example by establishing Free the Children groups, by volunteering for the fair trade movement, and by raising funds for ZEA.

Aircraft Maintenance in English at Edouard-Montpetit?

As you are aware, John Abbott's Aircraft Maintenance Program will soon be a thing of the past. The last cohort of students came in September 2006, and since they will be doing their third year at l'École Nationale d'Aérotechnique (ENA), the program will be phased out in May 2008. One of the main reasons for the closure is the cost involved in revising the program and purchasing the equipment needed to meet the standards of Transport Canada. We suspect that this was also part of a deal with the Ministry to open the pharmaceutical and first responder programs. Edouard-Montpetit`s "Entretien d'aéronefs" has now become the only program of its kind in the province.

The administration of Edouard-Montpetit has decided to offer the program in English. Apparently, arrangements were made to allow Anglophone students to do their general education at the St-Lambert campus of Champlain College. However, after the first round of applications, only 8 students applied to do the program in English. Of these 8 students, 6 have changed their mind and decided to take it in French. A minimum of 30 students is necessary to run the program. At this point it seems quite likely that the program will not run in the fall. There is also strong opposition by the faculty union to opening the program in English.

The aircraft industry is essentially an Anglophone world. Even in Francophone countries, work is done in English, including manuals and communication. The ENA, in the 1980s, underwent a process of translating aircraft terminology into French, which may explain the uproar going on at Edouard-Montpetit.

The Strike of 1983 or

Linda Collier taught in the Humanities, Philosophy and Religion (HPR) department at John Abbott from 1976 until her retirement this semester. She was a member of the JACFA Executive from 1980 to 1985.

Ask any of the longer-serving teachers if they remember the strike of 1983 and many of them will have a store of vivid memories. Some will speak nostalgically of our Picket Players; others of the warmth and solidarity; others of the snow and cold on the picket lines. Each of us has a story or two to share. The particular story I have been asked to share with you is the story of how we led the legal struggle against government decrees and oppressive laws.

Our collective agreement took effect in 1979 and should have lasted until December 31, 1982. However, in April, Premier René Lévesque announced that his government would face a financial crisis if it were to respect the salary increases to which it had previously agreed. The government needed, he believed, to negotiate a salary freeze and abolish those increases scheduled for the last six months of the contract. The government, he said, had no intention of acting unilaterally. One week later, the government announced that, if the unions did not agree to a salary freeze, the only alternative would be to eliminate 17,000 posts in the public and para-public sectors. Five days after this, Lucien Bouchard, chief government negotiator, gave the unions an ultimatum: "Accept the salary freeze within a week or the government will legislate to end the collective agreements and impose a wage freeze". The three union centrals, CSN, FTQ and CEQ (Centrale des Enseignant/e/s du Québec), countered by offering to negotiate salaries if the government sped up discussion of other issues. Rejecting this offer, the government passed Law 70 in June 1982, effectively breaking the contract it had signed with us. This law extended the collective agreements by three months, during which time it rolled back salaries by 18.85%, and denied any monetary increase for experience for a year.

Continuing its assault on the public sector, the government passed Law 105 on December 11, 1982. This law decreed the working conditions of the public and parapublic sectors. News footage showed truckloads of so-called "contracts" arriving at the National Assembly for passage as decrees. Law 105 meant, said the government, that these documents were "decrees taking the place of contracts".

The government apparently believed that this straitjacket of laws would allow its cash grab to succeed by scaring the workers and unions. This did not happen. Instead, by December 20, 1982, the Cegep teachers in FNEEQ voted with an 80% majority to call a strike at the opportune moment. On January 26, 1983, Cegep teachers spearheaded the strike of the Common Front, a group comprising 300,000 members. The strikes dominated the headlines. Neither side backed down. The government claimed that these strikes were illegal and broke labour laws because the workers were now bound by "contracts." It acted to re-assert its authority by sending out around 30,000 summonses to striking workers to appear in labour court. I remember well the bailiff ringing at my door to have me sign for mine. All of us on the Executive at that time received the hand-delivered yellow document. Off we went to labour court, along with hordes of others. A scene of mayhem ensued in the impossibly overcrowded courtroom where various individuals responded to the charges by stating that they were no longer working at that institution, were on maternity leave, on sick leave and so forth. Meanwhile, the government continued its media campaign against what it termed "illegal and irresponsible striking workers."

We objected to these characterizations coming from a government that had torn up our contract. In many FNEEQ meetings, JACFA delegates had implored the unions to combat these laws and the government propaganda with legal challenges. Time after time, the FNEEQ executive responded that the CSN/FNEEQ lawyers saw no grounds on which to contest the laws. The union leadership, believing that the "battle will be won in the streets, not the courts," doubtless wanted to avoid any tactic they saw as undermining their strategy of massive strikes. Eventually, dissatisfied with the response, the JACFA executive decided to try for our own challenge. Jim Leeke (Labour Relations), John Sheshko (President) and I (Vice-President) met with Philip Cutler Q.C., a prominent labour lawyer. We outlined to him our many objections to the law and the need we saw to put on a very public and media-savvy show combating the government propaganda that we were all law-breaking, disreputable, and irresponsible teachers. After careful consideration, Cutler pronounced himself willing to carry our challenge

(*continued on page 7*)

"What Are Nice Teachers Like You Doing in a Place Like This?"

forward. He soon showed himself a brilliant legal practitioner whose Labour Code textbook the judge himself brandished in court and an able manoeuvrer around the legal circuit. Besides which, like Louis Laberge's (President of the FTQ) lawyer in the previous major public sector strike in 1972 when the three Centrals' Presidents were jailed, Cutler had proven experience in how to handle the media. Two days after this first meeting, we held a press conference in a downtown hotel to announce that we had served the Quebec government with notice of our intention to contest the legality and constitutionality of the laws under which we had been charged with labour offences. By now, we had asked those teachers in Cegeps Rosemont and Vieux-Montréal, who had also received summonses, to join forces with us. We did not want to be portrayed as a group of Anglophones fighting the Parti Québécois government; these local unions agreed that we shared a common cause.

The only other union to notify the government of its constitutional opposition to the laws within the legal deadlines was the small Syndicat des Professionnels. As none of the large union centrals or locals belonging to the centrals apart from us had done so, it meant that we became the precedent-setting case for the vast majority of those who had received summonses.

As the tactic of massive penal action in Labour Court did not bring the unions to heel, the government then resorted to extraordinary (in those days) tactics. It passed Law 111. This law contained many draconian sections. For example, it set the penalty for one day's strike at the loss of one year's seniority and two days' pay. Speech inciting others not to work led to penal charges, etc. As well, given that the regular labour courts could not process the immense number of people summoned for being on illegal strike, the government transferred these cases to the common courts. This led to those of us at JACFA who had received summonses having our names posted on the notice board for Criminal Court and appearing in the Criminal Court division. Hence, the "What are nice teachers like you doing in a place like this?" question the guards asked us when we appeared at the Palais de Justice in Montreal to challenge the laws.

Incensed by the government's latest move, almost all JACFA members wanted to defy this oppressive law, even some who had chosen not to respect the strike up till then. However, the Executive believed it had no option but to urge the members back to work. If we did not return, potentially non-permanent or surplus teachers in other Cegeps who did return to work could take our jobs. So, after three days of defiance, we enjoyed a last skit by our much-loved Picket Players, then followed our bagpiper back into the college. We added Law 111 to our legal challenge.

Although we returned to the classrooms, the legal struggle continued. Fortunately for me, my last name was the first in alphabetical order of those of us who had received a summons here, so I enjoyed the fame and glory of headlining in court: Attorney-General of Quebec vs. Linda Collier. For a short period, I enjoyed seeing my photograph on the front pages of all major newspapers, doing radio and TV interviews, and revelling in my fifteen minutes of fame. Jim Leeke and I continued to spend hours plotting, consulting and learning legal procedures and manoeuvres as we worked our way through the courts. We also plotted, manoeuvred and consulted on another front: the three union centrals had never appreciated our legal initiative. Initially, FNEEQ had stated that they

(*continued on page 8*)

The Strike of 1983

would support our challenge, but its Executive soon changed its mind as we refused to relinquish all control. We became an embarrassment and a major thorn in the sides of the centrals since they had no power over us. They constantly moved to thwart us. Two highlights of this struggle would be: the time Jim and I and our lawyers were called to a midnight meeting in the CSN building boardroom with about twenty union lawyers and higher-ups from the centrals; and the time a high-ranking Executive member in the CEQ passed on to us a $10,000 cheque from the Canadian Union of Postal Workers as a contribution to the Legal Defence Fund we had established. The CEQ apparatchik mentioned that he wanted it to be clear that "there were no strings attached". Duly impressed, we assured him that this was a first for us. We had never before received such a donation with an explicit mention of no strings attached! Then the politicking continued. We raised something like $100,000 to cover the costs of our legal cases. Individuals and unions all over Canada sent us cheques; we made speeches and raised funds from many of our sister locals in FNEEQ as well as other Quebec unions.

Justice Gérard Girouard rendered the first judgement in the precedent-setting case of the Attorney-General of Quebec vs. Linda Collier on March 17, 1983. Of the many arguments we offered, the Judge singled out one to rule in our favour: that the decrees had been passed only in French but should have been in English as well to have force of law. The Government appealed. On appeal, Chief Justice Jules Deschênes of the Superior Court ruled against the Attorney General; the Government appealed yet again. Off we drove to Quebec City. (Quebec City because our case was parallel to that of the Syndicat des Professionnels and it had lost in the lower court). The Quebec Court of Appeal pronounced in our favour. Once again the government appealed. In February 1990, Jim, John and I had the excitement of attending the hearing in the Supreme Court of Canada. In this instance, the nine red-robed, ermine-sashed judges pronounced an unusual immediate judgement, from the bench, against the government.

What did our win at the Supreme Court achieve? It meant that individuals, local unions and the union centrals did not have to pay fines of about $8 million. The government even had to reimburse – years later, with interest - the teachers whose administrations had deducted two days pay for each strike day under Law 111. (This had not happened at JAC). We did not win back any of the salary lost under Laws 70 and 105 because the government rapidly translated the decrees and passed retroactive legislation, putting an end to any legal action to recover lost wages. How successful were we in our struggle for justice and the protection of democratic freedoms? Although we entered the court battle with all kinds of legal arguments based on individual and collective freedoms, Judge Girouard restricted his judgement to the question of language. The fact that the decrees existed only in French, he reasoned, meant they were unconstitutional. To have the force of law in Quebec, decrees must be adopted in both French and English. The appellate courts necessarily only examined this argument. Now the Government can still decree working conditions but must do it in both official languages.[1] However, if you believe that we cannot stand by and merely shrug our shoulders when governments rule by decree, tear up contracts and attack civil liberties, then John Auboutte's[2] actions both in and out of court stand as a contribution to the on-going struggle against the arbitrary use of power.

[1] Apparently the Liberals omitted to do this when they legislated public sector working conditions in December 2005.

[2] Our imaginative and creative strike actions earned us this nickname amongst our fellow union locals.

By Linda Collier

Insurance Report

FNEEQ union representatives met on April 20, 2007 to discuss possible changes to the group insurance coverage when it is renewed in January 2008.

A proposal to create a complementary insurance package optional by union (with a four year commitment) was debated. This would offer coverage for eye care (covering exams and $200 or $250 per 24 months for glasses) and possibly massotherapy (maximum $30 per visit and $400 per year). A large majority of unions rejected this proposal, finding that the benefit did not justify the proposed cost (for example, $171.03 of premiums for eye care for each single employee to get $200 coverage for those who need glasses). There was also resistance expressed to increasing the administration (claims processing) costs by adding union options to the plan.

A second proposal was to add 80% coverage for preventative vaccinations with a medical referral. La Capitale is willing to add this coverage at a negligible additional cost ($0.01 to $0.03 per pay), at least for the first year. Questions were asked about what types of vaccinations would be covered (i.e. travel vaccinations?). A clarified proposal will be brought back to a meeting next semester.

A third proposal was to add coverage of the cost (up to a maximum of $75 per day) of semi-private rehabilitation and convalescent hospital care for up to 15 days, with no increased cost to the plan requested by La Capitale. This was approved.

Last fall, a request was made by one FNEEQ union to regroup together the different physical therapy professional fees (e.g. physiotherapists, acupuncturists, chiropractors, osteopaths, podiatrists, homeopaths, etc.). The FNEEQ insurance committee and La Capitale estimated that with 80% coverage, a $2000 annual and $30 per visit maximums, this would cost between $0.26 and $0.70 per pay period depending on the category of coverage. The committee was asked to provide next semester's meeting with an estimate of what annual maximum could be covered for these services with 80% coverage but no set per visit maximum and no premium increase.

A report was given on FNEEQ's long-term disability coverage. In 2003, FNEEQ changed its LTD plan so that disabled teachers can keep 50% of their QPP and RREGOP pension benefits on top of their LTD payments (until they turn 65). For the past four years, a retired FNEEQ teacher has been meeting with each teacher on LTD to look at the benefits of taking this option. To date, FNEEQ estimates that this effort (which will end in December 2008) has saved the plan $1.2 million dollars in LTD costs. All of these savings will be returned to FNEEQ in 2009.

It was also reaffirmed that there will be an LTD premium holiday this year during the summer vacation period. It was also decided to adjust life and LTD benefits to take into account the pay equity adjustments since 2003, but not to deduct retroactive LTD premiums from teachers. At John Abbott, this means there will be no deduction for life and LTD premiums (for the period starting on August 16, 2006 when we joined the FNEEQ plan) from the retroactive payments to be made on May 17, 2007).

Finally, a humanitarian request was approved to cover the costs of an experimental treatment not covered by Quebec medicare in a case involving a teacher with a rare, potentially fatal, cancerous form of acromegaly that has not responded to conventional treatments. The estimated cost per year is $90,000.

Pay Equity: May 17, 2007

The College plans to make the adjustments required to our salary scales due to the pay equity settlement, and to pay all applicable retroactive adjustments back to August 2003 on the May 17, 2007 pay (the latest date they can do so according to the agreement signed with FNEEQ is May 22). If you think that they have made an error, don't hesitate to contact the JACFA office (P-105, x5506, jacfa@johnabbott.qc.ca).

At this year's Colloque Gérard-Picard, held in Saint-Hyacinthe on February 1 and 2, 2007, the topic of discussion was arbitration.

Arbitration in the 21st century: towards a black hole? [1]

In 1961, to secure labour peace and prohibit strikes during the collective agreement, the government introduced mandatory arbitration as a means to settle disputes between the parties with dispatch.

But the recent expanding jurisdiction of the arbitrator now adds to the already unacceptable delays in arbitration hearings.

At the outset, an arbitrator was essentially a specialist in labour law and in the interpretation of collective agreements.[2]

Expanding the arbitrator's jurisdiction

Four recent decisions from the Supreme Court of Canada considerably increased the arbitrator's jurisdiction: *Weber, O'Leary, Parry Sound* and *Bisaillon*.[3] And with the considerably increased jurisdiction, the complexity (and duration) of arbitration cases has increased.

Weber, suffering from back pain, had been under covert surveillance by his employer. He filed grievances, which were settled. He also initiated concurrent court action under the Charter for violation of privacy. The Supreme Court of Canada, in a majority decision, struck down the court action - even if the violation of privacy involved the Charter. Such a Charter claim should have been brought before the arbitrator, according to the Court. *"The question in each case is whether the dispute, in its essential character, arises from the interpretation, application, administration or violation of the collective agreement,"* ruled the Court. A concurrent court action can not stand.

In *O'Leary*, the employer sued its employee O'Leary before the civil court for having caused unnecessary damages to its leased vehicle during his hours of work, driving it with a flat tire. O'Leary submitted that the civil court lacked jurisdiction, alleging the claim was a matter that should have been brought to arbitration. Applying *Weber*, the Court agreed: the employer should have sought redress against O'Leary by arbitration.

In *Parry Sound*, Joanne O'Brien was a probationary employee for the *District of Parry Sound Social Services Administration Board*. She left for a maternity leave before her probationary period was over. When she came back, she was dismissed. The collective agreement clearly stipulated that the employer had full discretion to dismiss probationary employees before the end of the probation period. Article 8.06(a) of the collective agreement read: *"a probationary employee may be discharged at the sole discretion of and for any reason satisfactory to the Employer and such action by the Employer is not subject to the grievance and arbitration procedures and does not constitute a difference between the parties."* This was inconsistent with the *Employment Standards Act* prohibiting an employer to discipline its employee intending to take a maternity leave. The Supreme Court held that the *Human Rights Code* and other employment-related statutes should be applied by the arbitrator as if they were part of the collective agreement: *"Accordingly, the Board's finding that the discriminatory discharge of a probationary employee is arbitrable is not patently unreasonable and should be upheld,"* added the Court.

Human Rights Codes and other employment-related statutes are part of the collective agreement

In the *Bisaillon* case, the Supreme Court of Canada held (a majority decision) that only an arbitrator had jurisdiction to hear a dispute over the management and use of the pension fund administered by the University, as the pension fund had been mentioned in the different collective agreements involving the University. Therefore, the recourse by class action before the civil court was not the appropriate recourse.

Unfair exclusion of specialised (and paid by the State) tribunals

Today, a collective agreement gives the arbitrator an exclusive jurisdiction on any problem. But arbitrators are recruited for their expertise in labour law, not for their expertise in human rights or access to personal information rights. Although arbitrators cannot avoid the Charter, they are not specialists in human rights. Why should we exclude specialists in human rights, such as the judges of the *Tribunal des droits de la personne* (Human Rights Tribunal) or specialists in the protection of personal information like the commissioners of the *Commission d'accès à l'information*, just because the unionised citizens happen to have access to arbitration?

Re-establish the concurrent jurisdiction of specialised tribunals

The CSN is lobbying to re-establish the concurrent jurisdiction of these specialised tribunals in order that unionised personnel may also opt for these public specialised tribunals, at no cost for them, like other non-unionised citizens.

---

[1] Adapted from Anne Pineau's (union counsel, CSN legal services) presentation at the 9th *Gérard-Picard Colloquia*, held on February 1 and 2, 2007), in Saint-Hyacinthe dealing with the reform of the present arbitration system. Ms Pineau's paper was entitled: "*Des pistes de solutions pour rétablir un véritable accès à la justice*."

[2] Judges were excluded from arbitration in 1969 to prevent the arbitration system from being bogged down with never-ending legalities: Rodrigue Blouin, in *La judiciairisation de l'arbitrage de grief*, Éditions Yvon Blais (1996) p.38, as cited by Anne Pineau.

[3] *Weber v. Ontario Hydro*, [1995] 2 S.C.R. 929; *New Brunswick v. O'Leary*, [1995] 2 S.C.R. 967; *Parry Sound (District) Social Services Administration* Board v. O.P.S.E.U., Local 324, [2003] 2 S.C.R. 157; *Bisaillon v. Concordia University*, [2006] 1 S.C.R. 666.

Arbitration in the 21st century

Increase time limit to 6 months for unions to file a grievance

Considering the new complexity of arbitration cases, it is urgent to modify the Labour Code as far as time limits are involved. In complex cases requiring careful investigation, the time limit of 15 or 30 working days to lodge a grievance is untenable. The employers already benefit from a six-month time limit according to the *Labour Code*. Unions should benefit from the same delay providing them with a sufficient delay to complete their investigation.

Mandatory disclosure of the evidence by the parties before a final decision on the procedure

Another suggestion by Ms Pineau is the mandatory disclosure of evidence (which already exits in criminal and in civil cases) that would enable the parties to make an enlightened decision at the outset.

"The question in each ease is whether the dispute, in its essential character, arises from the interpretation, appliation, administration or violation of the collective agreement."

Delays in Arbitration: Portrait of a Crisis

From the filing of a grievance to the actual decision of the arbitrator, the delays have significantly increased since 1970: a reform is in order. Arbitration was introduced to settle problems quickly during the collective agreement, not to drag problems on for years.

Gilles Ferland[4] presented statistics revealing the extent of the present crisis:

Mean number of days leading to a ruling by an arbitrator sitting alone

Year	From nominatioin to hearing (days)	From hearing to decision (days)	From nomination to ruling (days)
1976–1977	65 *	75 **	140 **
1986–1987	152 *	68 ***	220 ***
2005–2006	246 ***	53 ***	380 ***

* Maximum number of days

** Source: Rodrigue Blouin & al, *Le Code du travail du Québec, 15 ans après*, Département des relations industrielles, Les Presses de l'Université Laval, 1979, p. 193-4.

*** Source : *Liste annotée d'arbitres de grief 2006-2007*, p. 9 –11.

*The hidden portion of the iceberg: mean delay between the date of the filing of the grievance and the actual nomination of the arbitrator (2001-2006) **

	Days
Private sector	183 **
Public sector	414 **
All sectors	305 **

* Source: data obtained from the *Ministère du travail*

** Approximation based on data from 2004-2005 and 2005-2006

[4] Renowned arbitrator

John Abbott College Faculty Association
Penfield-105
P.O. Box 2000
Ste-Anne-de-Bellevue
(Québec) H9X 3L9

Phone:
(514) 457-6610
ext. 5506

Fax:
(514) 457-9799

Email:
jacfa@johnabbott.qc.ca

Website:
www.johnabbott.qc.ca/jacfa

CSN

fneeq

Fédération nationale des enseignantes et enseignants du Québec

2007 BBQ

Wednesday May 16th

at NOON, Casgrain Terrace

In case of rain, BBQ will be cancelled.

Check out our new and improved website at the following address:

http://www.johnabbott.qc.ca/jacfa

(If in doubt, check:
http://www.johnabbott.qc.ca/jacfa
OR
phone JACFA office, local 5506)

NEXT GENERAL ASSEMBLY IS ON THURSDAY MAY 10 AT 10:00 A.M. IN P-174

AGENDA: UNION DUES INCREASE, FINANCIAL MOTIONS, EVALUTION OF TEACHING, FPDC PRIORITIES.