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Staff Changes May 2010

By now, most of you will have read the recent announcement from Ken Roberts regarding further cuts to the staff complement. While we were relieved to learn that the staff in the remaining Circulation Clerk positions at Central was spared this year, our understanding is that these positions will eventually be eliminated through attrition.

Once again, there has been another cut to the full-time staff complement. Seven full-time positions, two of which were at the LT level and one LA, are being cut. While some new positions are being created, our net loss is four full-time positions and once again another increase in the part-time complement.

A comparison of the present staff complement with that of January 2007 indicates a 9% reduction in full-time positions. This is not reassuring for our younger members who have moved from one temporary position to another in an effort to get full-time work, or take on additional hours without the benefits that come with a full-time position. It is clear to us that the full-time former LT positions are being decimated. We will be able to provide more details on actual numbers soon.

This has been a very challenging year for all of us, but a very difficult year for those members who were informed for the third or fourth time that their positions were made redundant and/ or that they have been bumped.

We have been told that most of the redeployment will take place in October when the Central renovations are complete.

Staff Training Day

We will not say much about this year's training day other than what started out as, and should have remained a fun occasion for staff, ended on a sour note with Ken's closing remarks. With all the "hoopla" around new buildings, renovations, automation, etc., etc.,



Artist rendering of the almost extinct **Library Service Monkey** (*Simian Servicus Bibliothecus*).

there was no acknowledgement that a number of staff redundancies helped pay for these 2009/2010 highlights.

We were treated to a slide show of images of our renovated branches filled with bins and conveyor belts moving items slowly along one by one (is this what is meant by efficiencies?) What was entirely absent from these images was the human aspect, namely the staff and patrons. Of the four components Ken identified as being part of good library system, "good buildings" was mentioned first, while "good staff" was mentioned last. Even "service monkeys" received more attention than we did -- too bad there wasn't a bottle of "Scottish" (no less) gin for the rest of us, who after hearing that our negotiated retro pay will not be forthcoming until 2011, felt we could have used a stiff belt...or two.

On a more positive note however, the staff day workshops put on by our own union staff members were terrific. So here's to us...we're dedicated, resilient, professional, and good at doing our jobs!

After this month, there will be no union membership meetings until the fall. We wish you a good summer; hang in there and we'll "see you in September".

Your Executive.



Photograph of a troop of the highly prolific and invasive species *Apeus Dreamus Teamus*.

Personal Email at HPL

On April 22, the Library Management Committee approved the new Staff Technology Use Policy, which was presented to the Union at the May 19th Labour-Management Committee meeting. The new policy is much more than a mere incorporation of 7 former policies, as described by Management, but rather, the new policy represents a significant assault on the level of privacy in the workplace that library staff could and should expect.

Unfortunately, Canadian workplace privacy legislation is weak, at best. While there exists legislation that limits the collection of personal information about employees to that which would be considered appropriate by a 'reasonable person', as well as ensuring that such collection is done after the individuals' consent has been obtained; there is at present no legislation that prevents an employer from auditing an employee's use of company-owned equipment, in particular, email. Consequently, where such infringements of employee privacy were brought before the Privacy Commissioner, the cases were generally decided in favor of the employer.

Although the current Staff Technology Use Policy does permit "occasional and incidental personal use of Library equipment" staff should also be aware that the policy clearly allows for the Chief Librarian or designate to "request an audit of a users [*sic*] operation of the system if abuse or contravention" of the policy is suspected. Despite Management's insistence that past audits have only ever taken place as a result of a staff complaint, it is the Union's position that the word "suspect" allows Management far too much latitude in establishing grounds for invading a staff member's privacy. As such, it is not out of the realm of possibility that anecdotal information, conjecture or even a whim could be sufficient grounds for Management to "suspect" contravention of the policy and in turn request an audit of a staff member's account. Given that the policy also threatens "disciplinary action...up to and including dismissal" – of course it does, don't all of Management's HR policies include this *defacto post*

script nowadays? – we are asking that all staff abide by the following guidelines when using the library’s email system.

1. Limit your email activity to those items specified in the Staff Technology Use Policy.
2. Do not conduct personal conversations (*e.g.* jokes, pictures, chitchat, *etc.*) using your library email account. If you must send a personal message, do so using a private email account (*e.g.* Gmail, Hotmail, CUPE mail account, *etc.*), the content of which, cannot be accessed by Management.
3. No Union business is to be conducted using the library’s email system. As ludicrous and petty as it may sound, Management informed the Union at the May 19th Labor Management Committee meeting, that they consider a discussion between staff of what transpired at a union membership meeting as official union business. So, please use your private email accounts when contacting your union representatives or discussing any matter associated with the union. A list of your union representatives private email addresses can be found at <http://932.cupe.ca/Contact-Us>.

Medical Certificates and the Collection of Medical Information: Dealing With the Employer

It has been brought to the Union’s attention that staff on short-term sick leave is increasingly receiving, what in their opinion are, harassing and intrusive telephone calls from the employer requesting both medical documentation and status updates. As a means of addressing the undue stress being inflicted upon our members by the employer, the union has requested that the employer respect employee rights regarding the release of medical information, and also, that the employer try to adopt a more formal and professional approach in how it requests medical information by making such inquiries in writing. Unfortunately, the employer was resolute in their refusal to both our requests. Accordingly, the union has filed a grievance objecting to the employer’s actions. The grievance is

expected to be heard at arbitration in a few months. Unlike the current situation concerning employee privacy rights and the use of company email, there is a great deal of legislation in place governing what medical information an employer is entitled to, and when an employee must provide this information. This article attempts to spell out what your rights are according to the current legislation in place, and how to apply these rights when dealing with the employer.

Medical Information and Your Privacy

The union acknowledges that the employer requires certain information concerning sick employees in order to manage such aspects as pay, benefits and possible return-to-work accommodations. However, we wish to stress to our members that any discussion, either in writing or on the phone, with the employer should be limited only to the information that is indispensable to them (*i.e.* report of illness or non-occupational injury). Doctors and other health care professionals are well aware of the private and confidential nature of medical information, and generally limit any correspondence with a patient’s employer to an acknowledgement that the patient is indeed under their care. In fact, most medical professionals will generally ignore a request for medical information even if the employer has somehow managed to obtain a release form signed by the employee. Although employers are aware of doctor-patient confidentiality, as well as, the various pieces of privacy legislation currently in place, many employers still try to force their employees into providing medical information, to which these employer have no entitlement. Accordingly, and as a means of minimizing any infringement on an employee’s privacy, the Privacy Commissioner of Canada has ruled that any medical certificate and/or documentation requested by an employer need only specify that the employee be currently under the care of a physician because of illness or non-occupational injury. While there are instances where an employer may also be entitled to know the expected date of the employee’s return to work; an employer is **NOT** entitled to a specific diagnosis or prognosis until such a time that the employee is ready to return to work, and then, only when the employee requires some form of

accommodation. The Canadian Human Rights Commission makes this understanding clear, in a report entitled *Human Rights and the Return to Work: the State of the Issue*. It is stated in the report that,

The Privacy Commissioner of Canada has indicated that it is appropriate for an employer to request a medical certificate confirming an employee's disability and indicating the expected date of his or her return to work. An employer may also verify whether an employee returning to work after sick leave is fit to resume his or her duties, or whether workplace accommodation is required. An employer may refuse to allow an employee to return to work if the doctor's certificate is not clear on this point. However, this does not necessarily mean that an employer is entitled to know the specific diagnosis of an employee's illness. The obligation to include a diagnosis on the certificate is limited to cases where it is clearly and legitimately necessary¹.

It may also be of interest to staff to know that the Privacy Commissioner of Canada has specific language governing when an employer may request a medical examination by a company physician. Both the Privacy Commissioner and the Supreme Court of Canada are unwavering in their positions that undergoing a medical examination at the employer's insistence violates a person's right to physical integrity and privacy, and that "paramount importance must be given to physical integrity."² As such, limitations of that right are only allowed under very specific circumstances. For example, an employer may request that an employee undergo a medical examination by a company physician only if the employer has reason to believe that the employee is not fit for work, and that a return to work

might endanger his or her health or that of others³. However, such examinations are generally allowed only immediately before an employee returns to work after a serious illness or accident. An employer's apprehension that the employee may either experience a relapse, or that, by returning to work, an employee may aggravate a medical condition is not sufficient to refuse to accept the return of an employee who presents a doctor's note stating that he or she is fit for work. An employer must demonstrate a real, immediate and significant risk to the employee's health before they are justified to request an employee undergo a physical examination⁴.

What Does this Mean for HPL Staff?

Until such a time that a staff member on short-term sick leave is ready to return to work, a doctor's note indicating that the staff member is currently under the care of a physician is sufficient. Moreover, the Medical Certificate form (see Figures 1 and 2) issued by HPL's Human Resources department is not required until such a time that the staff member is ready to return to work. Clauses 1, 3 and 4 in both **APPENDIX C: Short Term Income Protection Plan: Full-time Employees** and **APPENDIX D: Short Term Income Protection Plan: Eligible Part-time Employees** of our contract contain language that supports these understandings.

- i. An employee shall, on the first day of illness/non-occupational injury, report or cause to report such illness/non-occupational injury to her Manager, as per Article 5.10⁵.

³ Chartier, Marie-Claude (April 28, 2006).

⁴ Chartier, Marie-Claude (April 28, 2006).

⁵ 5.10 Notice of Absence: Employees are required to attend work regularly. When unable to attend, the employee must contact her immediate Manager or the individual otherwise specified by the Manager, personally or by voice mail, as far in advance as possible of her scheduled starting time and on a Sunday, the Duty Librarian a minimum of thirty (30) minutes prior to the start of her shift, giving the reason she is unable to attend work, the date of her expected return, and the details as to where she can be contacted during her absence. If the employee cannot contact her Manager she must advise the Employer as soon as possible with an explanation for the delay that is acceptable to the Employer. If requested, an employee must substantiate the reasons for the absence.

¹ Chartier, Marie-Claude (April 28, 2006). Human Rights and the Return to Work: The State of the Issue.

(Research presented to the Canadian Human Rights Commission). Retrieved May 30, 2010 from http://www.chrc-ccdp.ca/research_program_recherche/RTW_RAT/toc_tdm-en.asp

² Chartier, Marie-Claude (April 28, 2006).

- Notify your Manager or the designate by phone or voicemail, as far in advance as possible, that you are “ill” or “suffering from a non-occupational injury.” On Sunday’s notify the Duty Librarian a minimum of 30 minutes prior to starting time.
- You do **NOT** need to supply specific details (diagnosis) of the illness or injury.
- You do **NOT** need to supply a prognosis (expected return to work date).
- Follow up your telephone call with an email documenting your telephone conversation.

iii. An employee who is off four (4) or more working days shall provide and pay for a Medical certificate stating that the employee had been absent due to illness or injury and unable to perform her normal duties for each period of absence and at regular intervals (e.g. every three weeks) where the certificate does not state a specific return to work date. Notwithstanding the foregoing, the Employer can request progress updates from the attending physician.

“...the union strongly discourages staff from signing any document that entails the relinquishment of their privacy rights.”

- The Doctor’s note is required on or after day 4, and throughout the period that you remain absent from work. Human Resources may request that you supply additional certificates at regular intervals throughout your absence. You are responsible for paying for these certificates (Doctor’s notes).
- You do **NOT** have to use the Medical Certificate issued by Human Resources. A medical certificate (Doctor’s note) stating that you are “ill” or “suffering from a non-occupational injury” is sufficient.
- The certificate does **NOT** need to specify specific details (diagnosis) of the illness or injury.

- The certificate does **NOT** need to specify a return to work date or prognosis of the illness or injury.
- Make a copy of the certificate(s) for your own records.

iv. Where an employee has been absent for ten (10) or more working days, the employee must provide a medical certificate in the form attached from the employee’s treating physician / physician specialist stating the employee is fit to return to work before the employee will be permitted to resume her duties /responsibilities. The employer shall pay the full cost of the certificate.

Where an employee is on modified duties and the Employer requires updated medical information in

the form prescribed by the Employer, the Employer shall pay for the cost of the completion of the form.

- The Medical Certificate form issued by Human Resources is required after a 10-day or longer absence due to illness or non-occupational injury, but **NOT** before you are ready to return to

work. The employer will pay the cost of having this form completed by your physician.

- The certificate does **NOT** require your physician to specify specific details (diagnosis) of the illness or injury.
- The certificate requires that your physician specify any physical restrictions that you may have because of your illness or non-occupational injury. The certificate will also require that you supply the dates of past and upcoming medical visits relating to your illness or non-occupational injury.
- Make a copy of the certificate(s) for your own records.

Employees of Hamilton Public Library - Medical Certificate

Instructions:
 1) Part 1 to be completed by employee (patient). Obtain copy of your Job Description to provide to your physician/physician specialist. Job Descriptions are available from Human Resources.
 2) Part 2 to be completed by physician/physician specialist.
 3) Where the absence is greater than 10 days, the Employer will pay for completion.
 4) A Medical Certificate must be completed as per Appendix D to the Collective Agreement.
 5) Both Part 1 and 2A must be completed in full and submitted to Human Resources before S.T.I.P.P. payments can be authorized.

Please Print:
Part 1: Employee Statement – to be completed by employee prior to submitting to physician.
 Name: _____ Department: _____ Employee Number: _____
 Position: _____ Is this a result of a workplace accident/incident? Y / N
 Signature: _____ Date: _____

Part 2: Attending Physician/Physician Specialist Statement (incomplete information will result in the employee's STIPP benefits being delayed or denied) – Your signature is required – see end of form

PART A:
 Date you first examined the patient respecting current condition (day/month/year): ____/____/____
 List all subsequent dates of examination respecting current condition (day/month/year): ____/____/____
 ____/____/____
 ____/____/____

Is condition due to an injury or sickness arising out of the patient's employment? Y / N
 Has the patient been suffering from an illness (i.e. physical/mental incapacity) or a non-occupational injury? Y / N
 Have you reviewed the patient's job description so that you are aware of the patient's normal duties? Y / N
 If yes, has such an illness/injury rendered the patient unable to perform her normal duties? Y / N

Is the patient absent from work due to an exposure to a contagious disease that the Medical Officer of Health has opined might endanger the health of others with whom the patient may come into contact? Y / N
 If so, when may the patient return to work? (day/month/year) ____/____/____

Indicate the period the patient has been unable to perform her normal duties due to such an illness or physical/mental incapacity.
 From (day/month/year) ____/____/____ To (day/month/year) ____/____/____
 Is the employee able to return to normal duties immediately? Y / N

May return to modified duties or hours immediately. Y / N
 If yes, please complete PART B
 If not, please provide date of next appointment. (day/month/year) ____/____/____

New – May 2006

Employees of Hamilton Public Library - Medical Certificate

PART B: Assessment of Ability to Return to Work And Patient Restrictions
 Please indicate the restrictions/ limitations by below. Additional space is provided to allow for further information.
 A Physical Demands Analysis or Cognitive Demands Analysis has been provided

LIFTING:
 Lifting not more than 10 lbs
 Lifting not more than 15 lbs
 Not above shoulder height

RESTRICTED MOBILITY:
 No bending, stooping, twisting of trunk
 Limited Walking
 Seated work with standing/seated breaks

RESTRICTED USE OF LIMBS:
 Limited reaching with left/right arm
 Limited carrying with left/right arm
 Limited use of left/right arm
 Limited repetitive movements
 Limited neck movements

OTHER RESTRICTIONS – For non physical impairment additional information may be required to accommodate the employee
 Must Attend regular therapy sessions for a period of ____ number of weeks
 Limited hours of work – Is able to work ____ hours per day, ____ days per week
 Will be able to progress in modified hours each week after the first ____ week
 Is ready to work evenings and weekends after ____ weeks of return to work
 Must take medications while at work, however, the medications are not expected to impede the employee in performance of job duties
 Other: _____

Estimated date when patient can return to normal duties. (day/month/year) ____/____/____
 Date of Next Appointment (day/month/year) ____/____/____

Please provide comments and further detail which you feel would be helpful.

If you have any questions regarding this form, please contact Janice Chong in Human Resources at 905-546-3200 x3216.

Name: _____ Specialty: _____
 Business Address: _____
 Telephone Number: _____
 I certify that the above information is accurate to the best of my knowledge.
 Signature: _____ Date: _____

New – May 2006

Figure 1: Front of current HPL-Medical Certificate Form

It should be noted that the union has recently been apprised by the employer that they are in the process of creating a simplified version of the current Medical Certificate form. It is the union's understanding that the new form will also be required for **all** absences due to illness or non-occupational injury. A significant benefit for staff is that the employer will assume the cost of having this form completed by the employee's attending physician (*i.e.* staff will no longer be responsible for paying for doctor's notes). Since the implementation of this new form entails a change in the current contract language, the union will have input in both the design of the form and the creation of any policy around its implementation. However, until such a time that a letter of understanding regarding the new form and/or procedures is appended to the contract, current contract language applies.

Figure 2: Reverse of current HPL-Medical Certificate Form

Important: Neither a doctor's note, nor the Medical Certificate form issued by the employer requires that the employee sign a "release of medical information" document issued by the employer. In fact, the union strongly discourages staff from signing any document that entails the relinquishment of their privacy rights.

Some Tips for HPL Employees

1. Whenever possible, staff should document any conversation with the employer relating to human resources issues (*e.g.* sick leaves, attendance, disciplinary issues, *etc.*). It is a good practice to always follow-up a telephone call or impromptu conversation with a brief email summarizing what was discussed, when the conversation took place and who was present.
2. Do not sign any document issued by the employer without reading it first and ensuring that you fully understand both the language and the implications of what it is that you are agreeing to. If you feel that the employer is pressuring or bullying you, or

you are unclear as to the ramifications or language of a particular document, you are strongly encouraged to contact a union representative.

3. Be proactive! Know what your privacy and employee rights are. Stay informed by regularly attending union membership meetings and by reading the bulletins posted on the union website.

We hope that the information presented in this article helps to shed some light on the issues of the employer's entitlement to medical certificates and the collection of medical information. Staff with questions is encouraged to contact their union representative.

Performance Appraisals

The Union is currently working on an article, which examines the validity of employee performance appraisals, as well as, suggests ways in which staff can defend themselves. Despite what our employer may believe, there is legal precedence in Ontario, which views the dismissal of employees based on unsubstantiated and unjustified negative performance evaluations as being tantamount to constructive dismissal. In these cases, employees were able to file claims against their employers for wrongful dismissal.

The Union would also like to conduct some statistical research based on the performance evaluations conducted by the employer to date. As such, we are requesting that staff members, who have been given a performance appraisal, forward a copy of their evaluation to the Union. We do not require your names, but we would like to know which position the evaluation pertains too (*e.g.* Librarian, Library Technician, *etc.*).

If you have any questions please do not hesitate to contact your Steward or a member of the Executive.

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The next issue of the Newsletter will be available in electronic format on the CUPE Local 932 website:

<http://932.cupe.ca>

If you have any suggestions for the newsletter or have an article to contribute, please send them to:

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