

TO: All MUNFA Members

FROM: The MUNFA Executive Committee


DATE: May 12, 2009

SUBJECT: PRIVACY OF ACADEMIC STAFF FILES, RECORDS AND DOCUMENTS

The Canadian Association of University Teachers (CAUT) recently distributed a memorandum regarding the privacy of academic staff files, records and documents. This memorandum is attached and should be reviewed by all Academic Staff Members.



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April 8, 2009

MEMORANDUM 09:17

TO: Presidents and Senior Administrative Officers
Local and Federated Associations

FROM: James L. Turk, Executive Director

RE: **Privacy of Academic Staff Files, Records and Documents**

Academic staff are facing a real threat to the long-standing tradition that documents, records, letters, emails and files they create are in *their* custody and control, not their employer's. The threat is coming from university and college administrations asserting, often in the context of freedom of information legislation, that the institution has custody and control of academic staff documents, files and records. It is essential that your association be clear about the situation so that you can block these inappropriate attempts to claim custody and control of your members' records and files.

Freedom of information and protection of privacy acts provide a right to request access *only* to records in the custody of or under the control of the institution. The terms "custody" and "control" are not defined in the acts. When an institution receives a request for access to a record, the *first* test is to determine whether the requested records are within the custody or under the control of that institution. Based on collective agreements, memorandum of agreements, faculty handbooks and on past practice in our sector, it is CAUT's position that virtually all records in the possession of academic staff are in the academic staff members' custody or under their control, *not* in the custody or under the control of the institution.

To be specific, all records, notes, documents, letters, emails and materials created by, or received by, academic staff members in relation to their work at the university/college are in their custody or under their control, not the university's or college's, except for:

- documents academic staff prepare in an official administrative capacity for the university/college. Even then, any personal notes or annotations on those documents are in the custody or control of the academic staff member and can be removed or blacked out before turning over the material.
- documents in their possession that they have received from the university/college in relation to official administrative duties, again excluding any personal notes or annotations the academic staff member may have written on or appended to the document.

That's it. Otherwise, documents, emails, letters, notes, drafts and other records that academic staff members create as well as documents they receive from colleagues or other sources are in their custody or under their control, not the institution's, except for the aforementioned official administrative documents.

Should your administration be claiming something different, please let us know immediately so we can provide you additional legal advice to stop an inappropriate claim to your members' materials. This is a very serious matter as an administration's claim to custody or control constitutes a serious threat to the academic freedom of your members to retain custody and control of their own records, files, emails, letters, notes, and other documents.

/mmp