
Academic Freedom and Tenure Committee

Unfair Dismissal at Lakehead

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Canadian Association of University Teachers
Association canadienne des professeures et professeurs d'université

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Introduction

The Academic Freedom and Tenure Committee has been trying for over a year to persuade Lakehead University to formally reconsider its decision to terminate the appointment of Professor David Irwin of the School of Forestry. In response to the unwillingness of President A.U. Booth to concede that Professor Irwin had been treated unfairly, the Academic Freedom and Tenure Committee appointed a Committee of Inquiry composed of Professor John McCamus (Osgoode Hall, York University), Professor Douglas Hoffman (Land Resource Science, Guelph) and Professor David Love (Forestry, Toronto) to advise the AF&T Committee whether or not CAUT intervention on Professor Irwin's behalf was appropriate and to prepare an account for possible publication of the circumstances surrounding his termination. Professor McCamus acted as chairman of the Committee of Inquiry.

The University Professor Irwin and the Lakehead University

While the Faculty Association were asked to comment on a draft version of the report. A final version was sent to the interested parties and efforts were renewed to persuade the university to formally reconsider the case. This suggestion was declined. The School of Forestry did, however, decide to determine by secret ballot whether or not the members of the school wished the case to be reopened. While the CAUT does not feel that important matters affecting the careers of faculty members should be decided by simple balloting procedures, it did not protest in this instance because it was clear that the university would go no further towards rectifying the situation. A majority of the members of the department have voted against a review of Professor Irwin's dismissal.

CAUT Committee of Inquiry Termination of the Appointment of David Irwin

Introduction

In June of 1974, Professor David Irwin was notified by Dr. A. D. Booth, the President of Lakehead University, that his contract of employment as an

Assistant Professor in the School of Forestry at Lakehead University had been terminated, effective June 30th, 1975. Professor Irwin was at that time serving his third year of a probationary appointment. The decision to terminate Professor Irwin was based on a secret ballot held within the School of Forestry some weeks prior to the official notification from President Booth. No meeting of the department was held in which the members of faculty could review the various factors which would be considered material in reaching a decision of this kind. No invitation was extended to Professor Irwin to circulate a curriculum vitae or in any other way to furnish information to those who were deciding his fate. No formal reasons for termination were ever given to Professor Irwin. Indeed it may be that none could be — those who voted for termination were not asked to indicate reasons for their negative vote. The grounds for termination, therefore, remain a matter of speculation. What is known however, is that Professor Irwin had no opportunity to respond to his critics or to clear the air of any misunderstandings or confusion concerning his performance at Lakehead, his qualifications or any other matter considered relevant by his colleagues.

Predictably, Professor Irwin fell aggrieved both by the nature of the decision and by the secrecy in which it was enshrouded. One would be hard pressed to devise a decision-making process which would be better suited to intensifying the frustrations of the terminated faculty member and of giving rise to suspicions that the decision was based on improper or irrelevant considerations. It should come as no surprise, therefore, that considerable pressure for a review of the decision to terminate Irwin has been mounted. Apart from Professor Irwin himself, three of his former colleagues in the School of Forestry asked that the termination be reconsidered by the members of the faculty. Ultimately, both the Lakehead University Faculty Association and the Canadian Association of University Teachers pressed for similar relief. Their collective efforts have been to no avail.

Accordingly, on July 29th, 1975, the Academic Freedom and Tenure Committee of the CAUT proposed to Dr. Booth that the CAUT and Lakehead

University appoint a joint Committee of Inquiry to examine the circumstances surrounding the decision not to renew Professor Irwin's appointment and to determine whether or not the concerns expressed by the CAUT were justified. This suggestion was rejected by Dr. Booth on behalf of the university. The AF&T Committee therefore unilaterally established this Committee to conduct such an inquiry.

Our terms of reference were the following:

"The Committee of Inquiry is instructed to inquire into the procedural and substantive circumstances surrounding the decision of Lakehead University to terminate the appointment of Professor J.D. Irwin in the School of Forestry; to provide a factual account of the events in the case and to advise the Academic Freedom and Tenure Committee whether or not the decision to terminate Professor Irwin's appointment was fairly taken and reasonable. In its consideration of the facts of the case the committee of inquiry is asked to consider both the existing procedures at Lakehead University governing the renewal of faculty appointments and the procedures contained in Section A (p.46) of the CAUT policy Statement on Academic Appointments and Tenure."

It is with much regret that we must report at the outset that the attempts of this Committee to conduct its investigation met with very little support or cooperation from the responsible parties at Lakehead University. The initial composition of the Committee was challenged by Dr. Booth who alleged that one of our number was "not impartial" but "biased against Lakehead University." While not agreeing that this charge of lack of objectivity was in any way meritorious, the AF&T Committee did appoint a substitute for the member in question who met with Dr. Booth's approval. Further, Dr. Booth advised the CAUT that Lakehead University would not cooperate with our Committee unless two conditions were met. First, an undertaking in writing from Mr. Irwin that he would not institute legal proceedings for any reason whatsoever against the university or any of its employees past or present was required.

Secondly, all documents obtained by our Committee in the course of our investigation were to be filed with

Dr. Booth. For obvious reasons, the AF&T Committee responded that it would not comply with either of these conditions.

Against this background, our Committee made preparations to visit the Lakehead University Campus in order to interview all interested parties.

On November 12th, 1975 our Chairman wrote to Dr. Booth and advised him of the Committee's intention to visit Thunder Bay for this purpose in December. On November 17th, 1975 Dr. Booth sent a memorandum in the following form to all members of the faculty of the School of Forestry.

"As you will know, CAUT has struck a Committee to examine the Irwin case. This Committee will be visiting our campus sometime during December.

The University Solicitor has asked me to remind you that you are under no obligation to testify before this Committee or to give oral or written evidence to them.

Our Solicitor advised us further that it would be unwise for members of the Faculty to give any testimony, both from their own point of view and from that of the University."

Upon learning of the circulation of this memorandum, the AF&T Committee took strong exception to its contents and communicated its concern to Dr. Booth. On November 27th, 1975, Dr. Booth circulated a further memorandum of clarification in the following terms:

"I would like to clarify the contents of my Memorandum of November 17th concerning the CAUT Committee which intends to examine the Irwin case. It seems that the advice in the Memorandum may have been misunderstood.

For legal reasons, the University is not cooperating with CAUT in its inquiries. The advice in my Memorandum was given because of the possibility of future legal proceedings being brought against the University and Faculty members.

However, this advice was not intended to direct your actions. You are, of course, free to decide individually

whether or not you wish to give evidence or information to the CAUT Committee."

In the event, very few members of the Faculty were prepared to exercise their freedom to meet with the Committee. Neither Dean Braun nor Professor Hearnden, the Chairman of the School of Forestry, were willing to meet with our Committee. Neither were the vast majority of the members of the faculty of the school. One member of faculty who did meet with us suggested that the major reason for the lack of cooperation which we encountered was "fear of law suits."

We do not, of course, question the good faith of Dr. Booth in issuing these memorandums. President Booth ultimately did meet with us and engaged in a frank exchange of views. With regard to his counselling of reticence his role was that of communicating to faculty members the advice of the University Solicitor. Further, of course, we do not make any attempt to assess the merits of the legal advice given by the University Solicitor. Such questions are clearly beyond our terms of reference.

We do feel, however, that there is a danger in cases such as the present that naive and fanciful notions of potential legal liability will be seized upon by the members of faculty as excuses for refusing to accord fair and humane treatment to their colleagues in making vital decisions of the kind at issue in this case. We were told, for example, by one member of faculty that the reason for proceeding by way of secret ballot and giving no reasons for negative decisions was to avoid any possibility of law suits. Further, it is regrettable that such notions may have the effect of precluding an accurate assessment of the facts of a particular case by a committee such as ours which is attempting in good faith to seek a constructive resolution of the dispute in question.

A posture of secrecy virtually forces the aggrieved party to turn to a court of law in order to obtain the information necessary to ascertain the merits of his position. Moreover, such a posture does little to ameliorate the anxieties and concerns of other members of the faculty in question. Parenthetically, it should be noted that in the present case there is no

evidence that Professor Irwin indicated that he might seek legal recourse until a very late stage in the chronology of events. Further, we might add that we are unaware of any attempt by members of the faculty to inform themselves of their legal position and ascertain whether their fears of potential law suits were in any sense realistic. We are inclined, therefore, to the view that the fear of litigation was over-dramatized by members of the faculty of the School of Forestry. More importantly, for present purposes, the reticence of members of the faculty rendered the work of our Committee much more difficult than it might otherwise have been. As a result, our access to material information was restricted. As will be seen, however, we are completely satisfied that on the basis of the facts as we understand them, the procedure followed in terminating Professor Irwin was inadequate and unfair. It is our view that the Irwin case provides a classic illustration of the necessity for established and fair-minded procedures which will have the effect of according due process to probationary members of faculty who are subject to termination and as well, will provide a forum which conduces to a responsible exercise of collegial decision-making powers.

We proceed by first giving an account of the facts in this case. We then consider the question of whether the procedures followed in terminating Professor Irwin comply with (i) CAUT guidelines and (ii) the Rules set out in the Lakehead University Faculty Handbook. Finally, we turn to the question of whether Professor Irwin's termination seems warranted by his performance as a member of faculty.

The Facts

Professor Irwin was approached in late August of 1971 by Professor K. W. Hearnden, the Chairman of the School of Forestry at Lakehead University, and asked to consider the possibility of a term appointment for one year at the school. The appointment would commence within a few weeks, on September 15th. The necessity for making an appointment at this time had arisen suddenly and tragically as a result of the death of a member of the faculty of the school. Professor Irwin was then employed in Ottawa at the Forests Products

Laboratory. Some years earlier he had been a tenured member of the faculty at the University of New Brunswick. Apparently, he had given some thought to the possibility of returning to full-time teaching. Irwin's response to Professor Hearnden was that he would only be interested in leaving his present employment if the appointment were to be probationary in nature with a long-term association with Lakehead University in mind. On August 27th, the appropriate discussions at Lakehead having taken place, Dean Braun wired an offer of a probationary appointment at the rank of Assistant Professor to commence on September 15th. Irwin accepted this offer and on September 17th, 1971 his appointment was confirmed by letter from the then President of Lakehead University, Mr. W. G. Tamblyn.

The nature of a probationary appointment at Lakehead is indicated, to some extent, in the Faculty Handbook with which Professor Irwin was furnished when he first joined the Lakehead faculty in early September, 1971. The following is the entry in the Faculty Handbook which purports to describe the nature of a probationary appointment.

Probationary Appointments: Appointments are normally made on a probationary basis for the first four years. Probationary appointments can be terminated at the end of any contract year. During the first or second contract year, the appointee shall be notified by December 1st whether or not his appointment is to terminate at the end of that contract year. During the third or fourth contract year, the appointee shall be notified by July 1st as to whether or not his appointment is to terminate at the end of that contract year.

By June 30th of the fourth probational year, the appointee shall be notified that:

- (a) he shall receive tenure effective July 1 of the 5th year; or*
- (b) his probationary period shall be extended for a fifth year; or*
- (c) his contract shall not be made permanent and consequently shall terminate on June 30th of the fifth*

year. If the appointee's probationary period is extended for a fifth year, then he shall be notified by June 30th of the fifth year whether (a) he shall receive tenure effective July 1 of the sixth year; or (b) his contract shall not be made permanent and consequently shall terminate on June 30th of the sixth year. Time spent on Special Leave shall not be considered as part of the probationary period.

All such notifications shall be made in writing and shall be made by the President or by the Acting President.

The only additional passage of the Faculty Handbook which appears to be material is a paragraph from the job description of the position of Department Chairman.

This paragraph reads as follows:

"The Chairman shall ascertain the opinions of his departmental colleagues with respect to all major policy implementations such as: the recruitment of staff, the renewal and non-renewal of probationary contracts; dismissals; request for promotion and tenure.

The opinions shall be ascertained by a formal procedure established by the Department and shall be transmitted by the Chairman along with his own to the Dean and/or other appropriate bodies."

Although no criterion for the decision to renew a probationary contract is stated in the Faculty Handbook, it is at least made clear that such decisions are considered to be "major policy implementations" and that opinions are to be gathered by a "formal procedure established by the department."

The probationary at Lakehead University is thus clearly seen to be "probationary" in the sense in which that term is employed in the CAUT handbook.

As is stated in the Handbook:

"The purpose of a probationary appointment is to provide a period of mutual appraisal for the university and the candidate. Probation does not imply inevitable appointment with tenure. It should imply that the

university will give very serious consideration to such an appointment."

At Lakehead, this "serious consideration" for a tenured appointment would normally be given during the fourth year of the probationary appointment.

Having attained the objective of a probationary appointment, Professor Irwin took up his new post in September of 1971. As is often the case in relatively new and consequently understaffed departments, Irwin was obliged to assume a heavy teaching load, the nature of which was then common in the School of Forestry. If his teaching load was of the common weight, however, his time for preparation was uncommonly short. Despite this handicap, Irwin was able to obtain a very favourable response to his courses and his teaching from his students. There can be little doubt that Professor Irwin committed himself with great enthusiasm to his new responsibilities at Lakehead. With a positive response from his students and an absence of negative feedback from his chairman and colleagues, Irwin assumed, not unrealistically in our view, that his contribution to the work of the school was respected and considered at the very least, adequate. During the next two years, Irwin's probationary appointment was twice renewed.

Some of Irwin's supporters in the school have suggested that occasionally Irwin ruffled feathers by expressing forcefully his views about such issues as the "future direction of the school." Apart from honest disagreements on issues of this kind, however, and minor disagreements about space utilization (all of which appear to have been satisfactorily resolved with Irwin's concurrence), there was nothing to sour Irwin's perception that his return to academic life had met with success and that he was functioning effectively in his new job. So confident was Irwin of his position that he resolved to apply early for promotion to Associate Professor during his third year at Lakehead. Although he was advised by some colleagues that first applications for promotion, especially early applications, were likely to be turned down, Irwin felt that his prior experience when coupled with his performance at Lakehead would give him a reasonable prospect for success. Moreover, he felt that if first applications were frequently turned

down, it would be preferable to endure the first unsuccessful application and prepare the way for a second and, hopefully, successful application, in the relatively near future.

Irwin made his application for promotion to Associate Professor in the Fall of 1973 and indeed, it was ultimately unsuccessful. Although it might appear that the matter of Irwin's application for promotion is immaterial to our deliberations concerning the decision not to renew his contract, there did appear to be some connection between these two matters — at least in Dr. Booth's view. For this reason, a short account of the events concerning that application must be given. Irwin's application was considered by the Faculty of University Schools Promotion and Tenure Committee on November 21st 1973 and was rejected. On November 22nd, Dr. Booth communicated this decision to Irwin by letter and indicated the reasons for the decision in the following terms:

"The reasons given were various but included lack of publications, minimal involvement in outside professional activities, and lack of cooperation with other members of your Department."

Irwin has since stated that he viewed these remarks as indicating that the decision of the Committee had been made on the basis of allegations of incompetence which were quite unwarranted. Further, he considered this judgement to be a serious attack on his professional reputation. He felt that it could not go unanswered. Irwin determined to invoke the procedure set forth in the Faculty Handbook for the taking of appeals from decisions on questions of tenure and promotion. Irwin consulted a lawyer and obtained assistance in the drafting of a document outlining the grounds for appeal which was forwarded by the solicitor on December 13th, 1973.

The appeal machinery for tenure and promotion cases at Lakehead involves the appointment of an Ad Hoc Committee of colleagues from other universities and may involve, as it did in the Irwin case, the convening of the committee on campus to review the evidence and hear submissions. The implementation of these arrangements proceeded at a somewhat leisurely pace

in Irwin's case and indeed by June of 1974, not a great deal had been accomplished.

This, of course, was the month in which Irwin's contract of employment was terminated. Nevertheless, the promotion appeal continued. Irwin assumed that if his appeal were successful, the university would instigate a reconsideration of the decision to terminate his contract of employment. While no undertaking of this kind was ever given by Dr. Booth nor, so far as we can determine, anyone else, this does not seem to be an unreasonable assumption on Irwin's part. In any event, the appeal process did continue and was finally concluded late in the Fall of 1974. President Booth advised Irwin on December 16th, 1974 that his appeal had not been successful. Although a number of points of criticism of a due process nature have been taken with regard to the proceedings of the Appeals Committee, we see no reason to pursue these matters for present purposes. It may be noted, however, that regardless of what may have been the reasoning underlying the decision of Appeals Committee, one of the obvious effects of its conclusion was to save the university the embarrassment of being advised to promote someone whose contract of employment had been terminated.

The events surrounding the decision to terminate, of course, are central to the issues before this committee. Of primary concern, are the steps by which the School of Forestry purported to discharge its responsibility to establish what is vaguely described in the Faculty Handbook as a "formal procedure" for ascertaining opinions to be transmitted by the Chairman along with his own recommendation with respect to renewal and non-renewal of probationary contracts. The question of procedures for reviewing probationary appointments was considered at a meeting of the department held on May 2nd, 1974. The individual who normally acted as secretary at such meetings was absent on this occasion and for this reason, perhaps, no minutes of the meeting were ever presented for ratification at a subsequent meeting of the School of Forestry. Professor Hearnden, in conversation with representatives of the Lakehead University Faculty Association in March of 1975, apparently referred to this meeting as being an

"unofficial" departmental meeting held to discuss (among other things, presumably) these procedures. For whatever reason, however, Professor Hearnden did keep his own handwritten minutes of this meeting which he subsequently showed to members of the faculty who were present at the meeting for purposes of authentication.

We have no idea why these minutes were not submitted to a subsequent meeting for ratification. Perhaps it was indeed felt that the meeting was "unofficial" in some sense. In any event, the handwritten minutes do indicate that at that meeting one of the members of faculty proposed that secret ballots with a simple "yes or no" be used as the formal procedure. Those faculty members who wished to discuss the merits of individual cases with the chairman could do so on a private and confidential basis. As no objection was taken to this suggestion, it was assumed that all present agreed to this proposal.

Ten of a possible thirteen faculty members were present for the May 2nd meeting. One of the absentees was Irwin himself who had left on Monday, April 29th, with Dr. Booth's approval, for a six week holiday. Irwin did not appreciate that the matter of his appointment would be reviewed during this period. Nor did he appreciate that procedures would be established during his absence. The notice of the meeting called to discuss evaluation procedures was circulated late on April 29th after Irwin had left for his vacation. It is, of course, fair to point out that a reading of the Faculty Handbook would indicate that the matter of his appointment would have to be reviewed at some time prior to the end of June.

There was apparently some urgency with respect to these matters. Rapid progress was made in reaching a decision. On May 3rd, a ballot in the agreed form was circulated to the members of the faculty. The votes were tallied on May 10th, the vote being against Irwin by seven votes to three with one abstention. By the time Irwin returned from his vacation on June 12th, notice of a registered letter had arrived at his home and a copy of the same letter advising him of his termination was to be found in his mail at the office.

This development came as a shock to Irwin. There was no annual review of his performance, for example, in which general dissatisfaction with Irwin's work had been indicated. There had been a few disagreements over administrative matters but these had been resolved, Irwin assumed, on a mutually satisfactory basis after conversations with the Chairman. Moreover, although he was obviously aware of the difficulties encountered with his promotion application, it was Irwin's assumption that the issues raised by the annual renewal of a probationary contract were very different from these considered pertinent to a decision to promote.

In Irwin's view, a probationary contract would be more or less automatically renewed unless the probationer demonstrated incompetence. In the fourth year, however, an "up or out" decision would be made on the basis of a higher standard of competence. Irwin conceded to our committee that he did not receive a specific undertaking to this effect from the chairman or, indeed, anyone else. This did however, appear to be the general practice at Lakehead.

A detailed account of the many subsequent attempts made by Irwin and others to obtain a reconsideration of the decision to not renew is not necessary for our purpose. Suffice it to say that on a number of occasions, Irwin himself, three members of the faculty of the School of Forestry, a rather large group of Irwin's students, the Lakehead University Faculty Association and the AF&T Committee of the CAUT all made representations to Professor Hearnden or Dr. Booth with a view to reopening the matter of Irwin's termination. As previously indicated, all of these attempts met with failure and resulted ultimately in the appointment of this Committee.

Question 1

Were the CAUT guidelines on renewal of faculty appointments followed in this case?

A reading of the above facts and of the CAUT guidelines leaves one in little doubt on this first question. It is abundantly clear that no attempt has been made at Lakehead to comply with the CAUT guidelines nor indeed, to ensure procedural justice at any level in the decision-making process relating to

renewal of probationary appointments. To list the main features of the process envisaged by the CAUT guidelines is to list the major defects and omissions in the arrangements obtaining at Lakehead. The CAUT guidelines (as interpreted in the policy statement in the CAUT Bulletin of June 22, 1974 No. 6 at pp: 39-40) require the following:

1. Written notice of the conditions of employment: faculty members are to be made aware of the criteria by which they will be evaluated.
2. Proper consideration of the decision to renew: a thorough and deliberate evaluation of material information which the department should seek out from all relevant sources, including the candidate himself.
3. Clearly defined and well publicized procedures.
4. Systematic consultation within the department.
5. The faculty member should be given an opportunity to present written or oral evidence to the committee charged with making the decision.
6. Reasons in writing if the faculty member requests them.
7. Suitable provision for appeal.

None of these elements were present in the decision-making process at Lakehead University. What is even more surprising, in our view, is that there appears to be very little appreciation of the fairness and indeed, the administrative desirability of smoothly functioning procedures of this kind. Subsequent to the Irwin case, the only change effected in the procedures in place in the School of Forestry appears to be that space has been allocated on the secret ballots for the making of anonymous comments. No steps have been taken to prevent a recurrence of the problems which developed in the Irwin case.

At the risk of belabouring the point, we wish to indicate more specifically some of the problems which have arisen here as a result of the failure to adopt fair procedures.

In the first place, it is clear, for example, that members of the department had not reached any agreement as to what the objective criterion on which to base their judgment to renew or not renew should be. A number of different criteria for such cases are possible. The annual decision might be, in effect, dismissal only with cause. Alternatively, it might be viewed as a preliminary review of the tenure decision — will this person be suitable for tenure in X years?" It might be considered as falling somewhere in between these two standards. The evidence before us, however, is that no standard had been articulated in the Faculty Handbook or elsewhere.

In the absence of (a) an agreed criterion, (b) proper techniques of information gathering, (c) a consultative process, (d) communication with the candidate and (e) an articulation of reasons for the decision, it is not surprising that some parties have raised suspicions that immaterial factors were considered by various faculty members of the school in reaching their individual decisions.

Certainly it appears to be the case that much misinformation concerning Irwin circulated within the department. It was apparently widely believed, for example, that Irwin had been refused tenure at U.N.B. and that his initial appointment at Lakehead was not probationary in nature. Further, we were advised of a number of incidents — invariably trivial in nature — which were put forward as evidence of an uncooperative attitude on Irwin's part. We questioned Irwin and others thoroughly on these and on other matters raised in discussions of this kind.

We are satisfied that at least some faculty members laboured under distorted or false impressions of the facts pertinent to these incidents and as to various matters relating to Irwin's background. It is impossible to assess the impact of such misinformation on the casting of individual ballots. We do, however, share the suspicions of others that false information may

have had a negative effect on the consideration given to Irwin by his colleagues.

In any event, it is clear that the absence of any communication with Irwin precluded the possibility of erroneous impression of this kind being corrected by him. More than this, there was no attempt by the department to gather material information and place it before individual members of faculty prior to the casting of ballots. Indeed, as will be seen, we are not at all convinced that a reasonable reading of the material facts would lead to a decision not to renew.

Question 2

Were the existing procedures at Lakehead University governing the renewal of faculty appointments followed in this case?

On this question some very narrow points of interpretation of the rather vague prescriptions in the Faculty Handbook have been presented to us by the representatives of the Lakehead Faculty Association on the one hand and by those representing Lakehead University on the other. Representatives of the university have pressed us with the view that the secret ballot agreed upon at the meeting of May 2nd, 1974 complies with the requirement of the Handbook that a formal procedure be established by the department to gather opinion on these matters. The Faculty Association have argued that this balloting procedure cannot be seriously considered a "formal procedure" for gathering "opinion." Moreover, it is suggested, it was not duly agreed to by all members of faculty at a properly constituted meeting, as evidenced by the fact that proper minutes were not kept. Such arguments raise questions of Aristotelian subtlety.

When is procedure so woefully inadequate that it can no longer be called a "formal procedure?" What formalities relating to departmental meetings must be followed before it can be said that something has been "established by the department?" Is the mere request for an affirmative or negative secret vote an attempt to "ascertain the opinions of (the Chairman's) departmental colleagues?"

Such questions require us to turn rather fine points of interpretation on the various provisions of the Faculty

Handbook. It is patently a document ill designed to withstand a heavy analytical barrage of this kind. A careful parsing of the pertinent passages yields little insight into the intentions of the original draftsman or of those who initially approved the document with respect to questions of the kind raised here.

If, however, one looks to the spirit rather than to the letter of this document, we are persuaded that however well motivated individual members of the School of Forestry may have been, the secret ballot device which they adopted cannot be considered to be a meaningful compliance with the requirement that there be formal procedures established for ascertaining collegial opinion.

What sources should a Committee such as ours turn to in making a determination of this kind? First, one might look to local practice at Lakehead. Thus, we draw some support from the fact that we are advised that the decision-making procedures of many of the faculties and departments at Lakehead University are substantially more just than those in place at the School of Forestry. Further, in interpreting a vaguely worded document of this kind, it is appropriate for us to ascertain its meaning against the background of the academic culture in which notions of collegial decision-making have developed. It is not the case, of course, that all university campuses dutifully comply with the CAUT guidelines. Yet, it is a common place of the collegial decision-making process which has become a recognized component of the internal processes of governance of Canadian universities (and which has been so dearly purchased in some contexts) that colleagues engage in frank and vigorous debate and bring their collective judgment to bear on the difficult issues before them. A department which adopted the practice of requesting their chairman to submit all difficult issues to them on the basis of a secret "yes or no" ballot would not be engaging in such a process as it has come to be understood on Canadian university campuses.

In our view, therefore, a document which requires, as does the Lakehead Faculty Handbook a consultative process and the formal transmittal of departmental recommendations and opinions is not complied with by a department which refuses to do more than collect

anonymous ballots. On this basis, then, we are prepared to answer the second question negatively.

For the reasons we have indicated, we are not enamoured of the task of choosing between the overly technical and finely-tuned interpretations of the various passages of the Faculty Handbook which have been presented to us. We are being asked to give meaning to a document which is so vaguely worded that no clear meaning can be drawn from it. If pressed to a conclusion on these matters, however, we are inclined to view that the formal inadequacies of the May 2nd departmental meeting should not be considered to be a significant problem. On the other hand we feel that the secret ballot should not be considered to be formal "procedure" for ascertaining collegial "opinion" in the requisite sense. A reasonable reading of the intent of the document must involve a more adequate procedure than that established by the School of Forestry.

Question 3

Was the decision to terminate Professor Irwin's appointment reasonable?

We encounter some difficulty in attempting to answer this question in the absence of a stipulated criterion against which the evidence concerning Professor Irwin's performance should be assessed. For purposes of considering this question, we assume that the appropriate standard of performance is something greater than merely that the candidate must avoid creating grounds for dismissal by cause. At the other end of the spectrum, we assume that it is not necessary to demonstrate performance which would be adequate to provide a basis for either tenure or promotion. That is the standard which must be met during the fourth or fifth year of one's appointment under the Lakehead rules when the decision to promote or grant tenure would normally be made. An appropriate guideline, we suggest, is to attempt to determine whether Professor Irwin's performance could be deemed as satisfactory in the light of the three criteria usually associated with decisions to grant tenure or promotion teaching, research and other professional activities and service to the university. These criteria are reflected in the Lakehead University rules relating to tenure and promotion.

A further difficulty which we encounter, of course, is in attempting to ascertain the basis on which the decision was originally made. Some guidance, perhaps, can be taken from the November 22nd, letter of Dr. Booth which indicated the grounds for refusal of promotion. As well, we were given some indication of the thinking of at least some members of the faculty in the course of the hearings held by this committee at Lakehead University. After reviewing Irwin's performance with respect to the three criteria for tenure and promotion we will give some consideration to the possible grounds for the decision not to renew which are suggested by these sources.

Professor Irwin's strongest contribution to the work of the School of Forestry would appear to be his teaching. The Committee who met with us and spoke at length about the merits of Irwin's performance as a classroom teacher and as a member of faculty who made himself accessible to students. Lengthy petitions were prepared by an overwhelming majority of the students in Irwin's classes when it was learned that his contract for employment would not be renewed. We are not unaware, of course, that delicate distinction can and indeed, should be made between a popularity which results from good teaching and a popularity which is more closely linked to personality factors. Our assessment, based on the evidence presented to us, is that Irwin's popularity with his students is of the former variety. The conduct of the students in protesting Irwin's termination, in gathering information and in presenting their information to our Committee exhibited a desire to respond to the situation responsibly and constructively. We think they accomplished these objectives quite admirably. We would add that Professor Irwin's colleagues appear to have conceded that there was no problem with his teaching.

Irwin's contributions as a scholar during his first three years at Lakehead in terms of research and scholarly publication are not substantial. This, indeed, was a point taken by the committees considering the possibility of promotion. When considered with regard to a decision not to renew, however, two important points must not be overlooked. In the first place, it is clear that the very heavy teaching load

assumed by Irwin virtually precluded sustained work on projects of this kind.

Secondly, it was conceded by Irwin's colleagues that his performance in this regard had not been less noteworthy than that of the majority of his colleagues. We do not wish to be taken as being critical of the performance of faculty members of the school. It is quite apparent that they were necessarily preoccupied with the tasks of building a new school and discharging the burdens imposed by heavy teaching loads. However, it is clear that a case for non-renewal could not be based on a deficiency in this category on Irwin's part.

There is no evidence before us to suggest that Irwin's contribution under the general heading of service to the university was anything less than that to be expected of a member of the faculty. No one has suggested that his performance in this category was deficient in any respect and we conclude that there is no evidence in this category which could be considered a basis for non-renewal.

In sum, a review of available information under the pertinent criteria suggests that a reasoned basis for non-renewal of Irwin's probationary appointment cannot be sustained. What then was the basis for the decision? There has been some suggestion that Irwin's lack of enthusiasm for professional organizations of foresters was a possible basis for a negative assessment of his work. This is presumably what Dr. Booth was referring to in his letter of November 22, 1973 when he used the phrase "minimal involvement in outside professional activities." We are surprised that such factors should be considered material. It is not embraced by the criteria outlined in the Lakehead University Faculty Handbook nor, in our opinion, is it a factor which should properly be considered in decisions of this kind. Moreover, in Irwin's case, whatever lack of interest he may have exhibited in professional organizations, there is quite a bit of evidence in his file to suggest an interest in the practical activities of the forest industries and substantial contact with industry which redounded to the benefit of his students in terms of research projects, practical applications of the skills acquired in the Lakehead programme, and so on. Further, there is

a suggestion in Dr. Booth 's letter that a lac k of cooperation with other members of the department was considered to be a problem. Some support for concern in this regard was voiced by other faculty members of the school. It would appear, however, that whatever interpersonal tensions did exist between Professor Irwin and one or more other members of the faculty, a case cannot be made on the evidence before us for the view that such tensions interfered with Professor Irwin's ability to contribute effectively to the work of the department.

As we have already mentioned, the incidents relied on as evidence of an uncooperative spirit were invariably too trivial to be seriously considered as a basis for an allegation of this kind. Moreover, these appeared to be matters on which Irwin's explanations for what might have appeared to have been counterproductive conduct did not receive a sufficient airing within the department. The heart of the matter, we suspect, is that Irwin was not well-liked by some of his colleagues. Dean Braun is alleged to have advised Irwin on the occasion of informing him that his contract of employment would not be renewed that he did not "fit in" with his colleagues. The position taken by the CAUT is that questions of personal compatibility of this kind are simply immaterial. We quite agree.

Further, there is some basis for concern in this case that individual members of faculty and perhaps some administrative personnel were of the view that the decision to terminate would follow quite naturally from the decision to deny the application for promotion. Further, it is possible that Dr. Booth's unwillingness to direct a reconsideration of the decision was linked to the failure of Irwin's promotion appeal. Our view is that these two issues should have been considered as separate problems involving different criteria and requiring different judgments from those involved in making these decisions.

Apart from the foregoing, there have been suggestions that some of Professor Irwin's colleagues operated on the basis of misunderstandings of the general nature referred to in our discussion of the first question before us. To the extent that this may be true, it is

obvious that such matters ought not to have been considered.

In sum, it is our view that a case for non-renewal of Irwin's contract of employment has not been established.

Conclusion

We conclude that the procedures employed in the decision to terminate Professor Irwin were unfair and that they failed to comply with the standards set forth in the Lakehead University Faculty Handbook and in the CAUT Guidelines. More than this, it is our view that the lack of adequate procedure for gathering material information and applying to them appropriate criteria led to a decision which was not reasonable in all the circumstances.

It follows that we support the position taken by the Lakehead University Faculty Association and the AF&T Committee of the CAUT in seeking a reconsideration of the decision to terminate. It is our view that the merits of the case, especially in terms of the absence of any sort of due process for the candidate, should have led the university to refrain from relying on narrow points of interpretation of the Faculty Handbook to stave off the pressure for review. Professor Irwin was to be on campus for another year in any event. The decision to terminate could have been very easily reviewed in accordance with proper procedures during the following year. This, we submit would have been a most appropriate solution for the problems raised in this case.

All of which is respectfully submitted.

May 31, 1976

Professor John D. McCamus, Chairman
Professor Douglas Hoffman
Professor David Love

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This report has been redesigned.*