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# Academic Freedom and Tenure Committee

# Simon Fraser University Dispute II

Autumn 1970



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

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## Simon Fraser University Dispute II<sup>1</sup>

The first report on the Simon Fraser University dispute with members of the P.S.A. Department was dated 10 December 1969, and was published in the Winter, 1970 C.A.U.T. Bulletin. At that time eight P.S.A. faculty members had been suspended, and dismissal procedures had been initiated against them. A number of problems seem to have beset the dismissal procedures which were very slow in getting underway. So slow, in fact, that at its meeting on 18 June 1970, the Executive Committee of the C.A.U.T. adopted the following resolution:

*In light of the lengthy delays in appeals on tenure and renewal and in dismissal procedures for a large number of faculty in the P.S.A. Department at Simon Fraser University, and in light of the urgent concern on these matters expressed by the Canadian Sociology and Anthropology Association, the American Anthropological Association and the Committee of Enquiry of the American Sociology Association, the C.A.U.T. hereby establishes a Committee of Enquiry, of three members, to investigate and report on the present status of suspensions, dismissal procedures, and appeals of faculty in the P.S.A. Department at Simon Fraser University, and in particular to report on the circumstances which have contributed to the failure to complete dismissal procedures instituted on 3 October 1969.*

That committee was formed with Professor A. E. Malloch (Chairman of the Academic Freedom and Tenure Committee) as chairman; Professor Leo Kristjanson (University of Saskatchewan), a member of the Executive Committee of C.A.U.T.; and Professor I. D. Pal (University of Victoria), a member of the A.F. & T. Committee. The preliminary work of the committee was done by correspondence, and this was followed by a visit to the Simon Fraser campus on 20-22 July. Before the committee had time to

complete its enquiry, however, a major controversy developed around the Palmer Committee.

The Palmer Committee was established under the provisions of the Statement on Academic Freedom and Tenure of Simon Fraser University to determine whether there was cause for dismissal of six<sup>2</sup> faculty members of the P.S.A. Department against whom Dr. Kenneth Strand, President of Simon Fraser, had instituted dismissal procedures (together with suspension) in October 1969.

In keeping with the provisions of the A.F. & T. Statement, the faculty named one member: Professor William Livant, University of Saskatchewan, Regina; and the University named one member: Professor J. S. Dupre, University of Toronto. Because those two failed to reach agreement within the stipulated time period, the Chief Justice of the Supreme Court of British Columbia, in keeping with the A.F. & T. Statement, was asked to name the chairman. He selected Professor E. E. Palmer, Associate Dean of Law, University of Western Ontario. The section of the A.F. & T. Statement on dismissals is reproduced here as Appendix I.

The Committee had one meeting on 15 May 1970, primarily on procedural matters. It adjourned until a judgment should be handed down in a civil court case being heard before the Supreme Court of British Columbia (Wheeldon v. S.F.U.) on the legal status of the A.F. & T. Statement. The essential question in that case was whether the Statement constituted a term of faculty contract. The Court decision, dated 18 June 1970, was that the Statement "forms no part of the contract of employment."

The Palmer Committee met again on the 21 and 22 July; at this time, in the language of the Palmer Committee Report, "procedural matters concerning

1. This report was written on the basis of documentation received. It was then submitted to the A.F.&T. Committee on 17 September who ratified the Executive Secretary's action. A resolution was then passed to the Executive to bring this case before Council at the fall meeting.
2. Eight faculty members were involved in dismissal procedures and suspension; two Dr. (Kathleen Aberle and Professor Nathan Popkin) chose separate arbitrations, while six (Professors Ahmad, Briemberg, Feldhammer, Leggett, Patter, and Wheeldon) chose a joint hearing. The hearings involving

Professor Popkin have gone forward before a committee chaired by Professor Gideon Rosenbluth (University of British Columbia) Dr. Kathleen Aberle, after many months of delay and dispute in the formation of her hearing committee, joined the six whose cases were before the Palmer Committee,

the conduct of these hearings were considered and at the conclusion of which the Committee adjourned to consider certain points raised."

As a result of that consideration the Committee came to a unanimous decision dated 24 July 1970. The Committee, having recognized and reported its obligation as one of extreme importance, requiring that "this Committee ensure that a just and equitable decision be reached by the use of procedures which are themselves just, equitable, and in accord with the Statement on Academic Freedom and Tenure which brought us into being," announced its decision that "there is no cause for dismissal," and that "therefore, the President may not recommend dismissal to the Board of Governors." (See Appendix II.) The grounds for this decision will be discussed in Section II of this report.

The Palmer Committee judgment was challenged by President Strand on 26 July. Dr. Strand had already distributed copies of the Decision to the seven faculty members affected. Widespread publicity on the Decision was rapid; a special edition of *The Peak*, the S.F.U. student newspaper, appeared on 27 July containing the text of the Palmer Committee Decision and Dr. Strand's statement of position dated 26 July. (See Appendix III.)

The A.F. & T. Statement provides that "the President may ask the committee to reconsider its decision if he questions the procedures." This President Strand did on 28 July. On 29 July the Palmer Committee's telegrammed response was issued. The Committee unanimously affirmed that its original decision was correct. (See Appendix IV.)

The S.F.U. Faculty Association Executive requested from Dr. Strand the complete transcript of the hearings, and urged C.A.U.T. to do the same, so that both groups might satisfy themselves as to the propriety of the Palmer Decision. The Chairman of the C.A.U.T. Committee on Academic Freedom and Tenure declined this proposal in the following telegram (29 July 1970):

*I am sorry but I cannot accept your suggestion that the C.A.U.T. Academic Freedom and Tenure Committee*

*examine the transcript of the Palmer hearings. Your local A.F. & T. document contemplates no further review of a negative decision from a duly constituted hearing committee, neither by S.F.U. Faculty Association, nor by joint faculty, nor by A.U.C.C., nor by C.A.U.T., nor by any other body. The A.F. & T. Statement can of course be revised by joint agreement of your Faculty Association and Board of Governors, but it cannot be altered in the middle of a dismissal case simply because the agreed procedures have yielded results that are disappointing to one of the disputing parties.*

*A.E. Malloch  
Chairman  
A.F. & T. Committee  
C.A.U.T.*

On the same day, the Chairman of the A.F. & T. Committee communicated to Dr. Strand and the Chairman of the Board of Governors the following message by Telex:

*I understand that you have requested the Palmer Committee to reconsider its report, that the Palmer Committee has unanimously reaffirmed its report of 24 July. I urge you now to accept that report, however unpalatable it may be, and to lift immediately the suspensions of the seven P.S.A. faculty members. The local A.F. & T. document contemplates no further review of a negative decision from a duly constituted hearing committee, neither by S.F.U. Faculty Association, nor by joint faculty, nor by A.U.C.C., nor by C.A.U.T., nor by any other body. In my judgment you will be taking the University of which you are chief executive through a long and unnecessary episode of bitter controversy if you choose to disregard the final Palmer Report. Copies by day letter through Thursday to Mackauer and P.S.A. group.*

*A.E. Malloch  
Chairman  
A.F. & T. Committee  
C.A.U.T.*

And in response to a Telex communication of Dr. Strand's position sent personally to Professor J. Gordin Kaplan, President of C.A.U.T., President Kaplan sent the following Telex reply, with a copy to the Chairman of the Board of Governors, on 30 July 1970:

*Further consultation on Palmer Committee Report convinces me to urge you to accept as binding their judgment in the case of the seven PSA Faculty members. The Palmer Committee was duly constituted in accordance with the Simon Fraser Academic Freedom and Tenure document and in the spirit of the C.A.U.T. Guidelines. We clearly cannot admit rejection of the findings of such a committee by either party. I further urge you to lift the suspensions of the seven now, consistent with your undertaking so to do following decision of tribunal. I recognize the personal difficulties which such an action would cause you but I plead with you to do so nevertheless for the sake of Simon Fraser University.*

*J.G. Kaplan  
President, C.A.U.T.*

On the same date, 30 July, Dr. Strand issued the following public statement:

*In view of the failure of a three-member committee to reach any valid decision regarding the dismissal of seven members of the Department of Political Science, Sociology and Anthropology, I am proposing that another committee be set up to conduct a proper hearing at which evidence will be taken and grounds for dismissal considered. Only in this way can a decision be reached that properly reflects the due processes implicit in the Statement on Academic Freedom and Tenure which protects Simon Fraser faculty members from wrongful dismissal.*

*In effect, the first committee disqualified itself by failing to hear evidence and by concluding, as stated in its report, that no fair and just hearing was possible. Any judgment it offered in these circumstances could only be ludicrous, not because of what the judgment was, but rather because of the process by which it was reached.*

*So, I am offering a hearing by a new three-man committee. As previously, each side to the dispute is to have the opportunity of naming one committee member, with a chairman mutually acceptable or named by the Chief Justice of the Supreme Court of B.C. This offer is being hand-delivered today to those within easy distance and telegraphed to those now outside of Canada.*

*The recipients have been asked to respond by next Tuesday, August 4th. Failure to do so will be taken as rejection of the right to a hearing.*

The S.F.U. Faculty Association Executive issued a memorandum (undated) to all S.F.U. faculty members which in effect supports Dr. Strand's position. This statement appears as Appendix V to this report.<sup>3</sup>

## Section II

In rejection of the decision of the Palmer Committee Dr. Strand has repeatedly emphasized that as President of the University he is custodian of the Statement on Academic Freedom and Tenure. He alleges that the Committee did not follow its provisions and has therefore invalidated any decision it might make.

In his public statements the example Dr. Strand cites most consistently of procedural rulings upon which he was entitled to insist for the defense of the A.F. & T. Statement is that the hearings not be open (the S.F.U., A.F. & T. Statement explicitly calls for closed hearings). But the Committee takes no issue with Dr. Strand on the question of openness. Since there is no evidence that the Hearing Committee wished to contravene the provisions of the Statement in this regard, Dr. Strand's raising it as an issue after the fact can only be regarded as misleading.

However, the examples cited by the Palmer Committee in its two decisions are not in areas explicitly covered by the Statement. The Committee cites Dr. Strand's interpretation that he has the power to discontinue the activities of the Committee by not appearing at a hearing; and his insistence that no decision on Dr. John Leggett will have force after August 31, 1970, the date of expiry of Dr. Leggett's present contract.<sup>4</sup>

Two points seem important here, before coming to the main issue of the Palmer decision. Neither example cited above is explicitly covered by the

3. In the course of the next week or so, the President of the Canadian Sociology and Anthropology Association (CSAA) sent a telegram to Dr. Strand (9 August) urging that he abide by the report of the Hearing Committee. A similar message was sent to Dr. Strand by the President of the Canadian Political Science Association, and by the Executive Board of the American Anthropological Association. These messages

appear as Appendix VI to this report. The text of the CSAA resolutions following the dismissal of Drs Aberle and Potter also appears in Appendix VI.

4. These instances are cited as examples, rather than as an exhaustive listing.

A.F.&T. Statement; therefore by definition both are subject to interpretation and ruling. It is quite extraordinary that the President should regard himself as the final authority in interpreting the Statement where its provisions allow room for alternate readings. The Statement itself definitely does not give the President this authority, virtually that of a Supreme Court judge ruling on the procedures of a lower court before which at the same time he is appearing as the prosecutor.

On the interpretation that a decision on Dr. Leggett after 31 August will not be accepted because Dr. Leggett will no longer be a "member of faculty," there is certainly much room for argument. It does not appear clear how in defending his interpretation the President was protecting the integrity of the Statement. The issue here is whether the President's authority to impose his interpretation on a properly constituted Hearing Committee in this matter can be supported. If the President insists on his right to impose his interpretation in this instance, where the Statement allows of more than one possible ruling, what assurance can there be that similar impositions might not be forced on other matters? And indeed if the President can accept or reject interpretations at the same time that he is one of two parties to a dispute, how can an impartial hearing be assured?

The Statement gives the President the right, cited above, to "ask the committee to reconsider its decision if he questions the procedures." The provision which follows immediately thereafter in the Statement reads: "The President will not recommend dismissal to the Board of Governors if the Hearing Committee finds there is no cause for dismissal." The President did question the procedures, and did ask the Committee to reconsider. The Committee reconsidered, and reaffirmed its original decision. The President then rejected the second decision. His rejection is based on the argument that the A.F. & T. Statement was not followed because no hearing of evidence on the charges took place.

Here we come to the main issue arising from the Palmer Committee decision. On basic principle the A.F. & T. Statement is clear: the President may not dismiss a faculty member except for cause. The

President can recommend dismissal to the Board of Governors only if the hearing committee finds there is cause for dismissal. On this point the Statement is totally unambiguous. Section 4.1.g. reads: "Unless and until the Hearing Committee recommends that the faculty member involved be dismissed, and the Board of Governors acts upon such recommendation from the President, the faculty member shall retain his position in the University at his full salary ... " Clearly the task of a hearing committee is to determine whether such cause has been proven by those who lay charges for dismissal.

The Palmer Committee judgment affirms as axiomatic that "a fair and just decision can only be reached by fair and just means." That is, they asserted that they could only determine cause following a fair and just hearing. The Committee then reached its "unanimous and unalterable conclusion that the faculty members involved cannot be insured a just and equitable hearing." A fair and just hearing had been precluded by the acts of the President which had contradicted the proper separation of the roles of prosecutor and judge - a separation which requires that the Committee and not the President interpret the A.F.&T. Statement. "It follows," in the words of the Committee Decision, "that he cannot prove such just cause."

The response of the Committee to Dr. Strand's request that it reconsider its judgment stated that the objections brought by Dr. Strand to the original decision "reinforce the validity of this decision." The Committee stated its "continued unanimous and unaltered opinion" that the A.F. & T. Statement vests the obligation to make final interpretations in the hearing committee. It considers itself bound by the Statement on Academic Freedom and Tenure, but insists that the President is not the final arbiter of its provisions. The Committee stated, "we cannot accept that under the Statement on Academic Freedom and Tenure a party can be both prosecutor and judge," and asserts that the President is "totally confusing the executive and judicial functions."

The thrust of the C.A.U.T. Policy Statement on Academic Appointments and Tenure is to assure that a duly constituted committee of peers shall be

empowered to determine, through fair and impartial procedures, whether cause for dismissal exists. Such committees are vested, in the C.A.U.T. Guidelines, with the power to make decisions that shall be binding on both parties. The careful attention which the Guidelines give to the composition of the hearing committee, and to its procedures, is clearly a reflection of the basic assumption that fair decisions can be reached only through fair means. Were that not the case, it would be easy to argue for - and more economical to implement - an arbitrary power of dismissal in the President and Board of Governors, allowing for some possibility of appeal only in cases of obvious and manifest injustice. That is, to establish a procedure in which only the demonstrably innocent are entitled to a fair trial.

C.A.U.T. has rejected that approach. It must now deal with the rejection by a University President of the decision of a duly constituted hearing committee which has decided that cause for dismissal cannot be proven because the same President, who initiated the procedures, has not allowed a fair trial to take place.

The logic of the Palmer Committee Decision seems clear.<sup>5</sup> It may be summarized in a series of six propositions;

- 1) The President can only recommend dismissal if the Hearing Committee finds there is cause.
- 2) The Hearing Committee can find there is cause only through a fair and just hearing.
- 3) A fair and just hearing requires the separation of the roles of prosecutor and judge.
- 4) That separation requires that the Hearing Committee have the power to interpret the A.F. & T. Statement where it speaks, and to make its own rulings where the Statement is silent.
- 5) Because the President has refused to accept that separation, a fair hearing is impossible;

therefore the Hearing Committee cannot find there is cause for dismissal.

- 6) Because the Hearing Committee has not found that there is cause for dismissal, the President cannot recommend dismissal.

### Section III

The results of President Strand's ultimatum that the seven P.S.A. faculty members must agree to a second hearing or face dismissal were strangely mixed. Four faculty members - Professors Ahmad, Briemberg, Feldhammer and Wheeldon - agreed to a second hearing under protest. They claimed that they did so only because otherwise they would be "fired outright;" at the same time they reaffirmed their conviction that the decision of the Palmer Committee ought to be regarded as binding and unchallengeable.

In the case of a fifth faculty member, Dr. Leggett, the President lifted suspension and rescinded dismissal charges, on the ground that Dr. Leggett's present contract expires on 31 August 1970. No acknowledgement appears to have been made of the fact that Dr. Leggett was still protesting the irregularity of the decision of the University Tenure Committee not to renew his contract or grant tenure, irregularities that have convinced the S.F.U. Faculty Association Executive that Dr. Leggett might be entitled to a one-year extension of contract so that appropriate reconsideration of the original tenure decision can take place.

The Executive Secretary wrote to Dr. Strand on 7 August pointing out Dr. Leggett's right to an appeal against the decision of the University Tenure Committee of 25 August 1969. To date, no clear information has been received.

Two faculty members, Drs. Kathleen Aberle and David Potter, refused the proposal for a second hearing committee. Dr. Aberle's letter to Dr. Strand of 3 August appears as Appendix VII.

The Central Office of C.A.U.T. was notified late on Friday, 14 August, that a meeting of the S.F.U. Board

5. The first draft of this report reads "clear and unassailable." This is technically incorrect, since it has been assailed, by Dr. Strand among others. His comments appear on p. 23 of this issue.

of Governors had been called for Sunday, 16 August to consider the recommendation of the President for the dismissal of Drs. Aberle and Potter. The Executive Secretary sent the following telegram to Dr. Strand and to Mr. Richard Lester, Chairman of the Board of Governors:

*Urge once again that Palmer Committee decision be regarded as final. Convinced that setting aside decision not required to uphold S.F.U. A.F. & T. Statement. Convinced further that dismissal of Dr. Kathleen Aberle and Dr. David Potter in serious violation of C.A.U.T. Guidelines which can lead only to most serious sanctions of C.A.U.T. against President and Board of S.F.U. If amplification of C.A.U.T. judgment requested most happy to comply.*

The Board did meet on 17 August, and formally dismissed Drs. Aberle and Potter, effective that date, and with three months' salary to 17 November 1970.<sup>6</sup>

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### 26 August 1970

A. Berland  
Executive Secretary  
C.A.U.T.

*Originally published in the CAUT Bulletin  
(Autumn 1970 edition, pages 65 to 85).*

*This report has been redesigned.*

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6. Dr. Mackauer's letter to Dr. Strand on the dismissal of Drs. Aberle and Potter appears as Appendix VIII.



## Appendix 1

### S.F.U. Statement of Academic Freedom and Tenure

#### Section IV - Dismissal Procedures

- 4.1 No faculty member shall be dismissed except for cause. Before dismissal procedures are formally instituted, the faculty member's Department Head or Chairman shall discuss the matter with him. If agreement is not reached the faculty member shall have the right to a formal hearing, conducted according to the following procedures:
- a. Formal dismissal procedures can only be initiated by the Dean of the Faculty, Vice-President, Academic, or by the President. The faculty member involved shall be informed in writing by the Dean, the Academic Vice-President, or by the President of the grounds for dismissal and any charges upon which those grounds are based.
  - b. If formal procedures are necessary the President will set up a Hearing Committee to determine whether there is cause for dismissal. The faculty member will be given a reasonable period of time to prepare his defence.
  - c. The Hearing Committee shall be composed of three members who are faculty members with tenure at a university. One member shall be named by the aggrieved faculty member, a second member shall be named by the President, and the two nominees shall then select a mutually acceptable third member who shall be Chairman of the Committee. If any impasse in selecting a Chairman is not resolved within three weeks, the power of appointment of the Chairman shall be vested in the Chief Justice of the Supreme Court of British Columbia or by his designate if the Chief Justice is a member of the Board of Governors of any university.
  - d.
    - i. The faculty member involved may appear in person at his Hearing and may be represented by counsel, who may be a practising lawyer or some other representative chosen by the faculty member. All parties and their counsel have the right to cross-examine.
    - ii. All parties involved are permitted to appear with counsel at all hearings of the Hearing Committee.
    - iii. Only the grounds for dismissal and evidence relevant thereto shall be considered by the Hearing Committee. The originators of the charges shall be present.
    - iv. At least two weeks' notice of the time and place of the Hearing should be given to all persons concerned.
    - v. The hearings shall be held in camera and the evidence kept confidential.
    - vi. The decision shall be by majority vote.
  - e. The Hearing Committee shall report its decision to the President. The President may ask the committee to reconsider its decision if he questions the procedures. The President will not recommend dismissal to the Board of Governors if the Hearing Committee finds there is no cause for dismissal.
  - f. Within one week of the termination of the Hearing, the President shall send to the faculty member involved a statement of the findings of the Hearing Committee. Access to the transcript must be provided to the faculty member or his counsel if such is requested.



- g. Unless and until the Hearing Committee recommends that the faculty member involved be dismissed, and the Board of Governors acts upon such recommendation from the President, the faculty member shall retain his position in the University at his full salary. He may be temporarily relieved of his duties at his own request, or he may be suspended temporarily from teaching by the President. Suspension does not mean loss of pay.

4.2 If dismissed, a faculty member shall continue to receive full salary for not less than three months from the date of notification of dismissal.

## Appendix 2

### The Palmer Committee Report

*In the matter of a hearing relating to dismissal charges brought by Dr. K. Strand, President of Simon Fraser University, against Professors K. Aberle, S. Ahmad, M. Briemberg, L. Feldhammer, J. Leggett, D. Potter and P. Wheeldon.*

#### DECISION

Pursuant to Article IV (1) (c) of the Statement on Academic Freedom and Tenure, approved as amended by the Faculty Association and Board of Governors of Simon Fraser University and dated 23 July 1969, the present Hearing Committee was constituted to determine whether certain charges initiated by Dr. K. Strand, President of Simon Fraser University, and sent by letters dated 17 October 1969 to Professors K. Aberle, S. Ahmad, M. Briemberg, L. Feldhammer, J. Leggett, D. Potter and P. Wheeldon, faculty members at that University, constituted cause for their dismissal. Hearings concerning this matter were held at the University on the 15th of May 1970 and the 21st and 22nd of July of the same year, during which procedural matters concerning the conduct of these hearings were considered and at the conclusion of which the Committee adjourned to consider certain points raised. The following constitutes the unanimous opinion of the Committee.

Initially, the Committee wishes to point out what it conceives to be its obligations, status and power under the Statement on Academic Freedom and Tenure mentioned above. Quite clearly, the obligation imposed upon us is, in the words of the Statement, "to determine whether there is cause for dismissal" of the faculty members involved [Art. IV (1)(b)]. Such an obligation is one of extreme importance and requires that this Committee ensure that a just and equitable decision be reached by the use of procedures which are themselves just, equitable and in accord with the Statement on Academic Freedom and Tenure which brought us into being. The importance and difficulty of this task are heightened by a decision of the Supreme Court of British Columbia whose effect is to render the Statement on Academic Freedom and Tenure one which will not be interpreted by judicial bodies, and one for which the normal processes of law will not be available to assist those who are so doing. As the Committee is unable to compel persons to act, it follows that the greatest degree of cooperation of all parties to this investigation is essential to ensure that a just and equitable outcome results.

During the course of this hearing this Committee has come to the unanimous and unalterable conclusion that the faculty members involved cannot be insured a just and equitable hearing. The basic reason for this conclusion is that Dr. Strand, through his counsel, has informed this Committee that he will only be bound by those Committee interpretations of the Statement on Academic Freedom and Tenure that he wishes to obey. This general statement has been confirmed by several explicit assertions. Dr. Strand, through his counsel, has declared that his interpretation of the Statement on Academic Freedom and Tenure is that this Committee cannot further consider the case of any faculty member involved whose contract terminates during the hearing. He has stated unequivocally that he will not accept any contrary interpretation by this Committee.

In the case of Professor Leggett, whose contract terminates on 31 August 1970, a date which all parties recognize will come before all evidence has been heard, Dr. Strand, through his counsel, has again unequivocally and repeatedly informed this Committee that, even though this Committee may make a contrary interpretation, he will regard this Committee as having no capacity to deal with Professor Leggett after 31 August 1970.

Similarly, Dr. Strand has unequivocally and repeatedly informed this Committee that, because the statement stipulates that the originator of the charges "shall be present" at committee meetings [Art. IV (1)(d)(iv)], he, rather than incur an obligation to the Committee to be present, can extinguish the life of the Committee through his absence at any time. He has made it plain that he is not open to a contrary interpretation.

It is evident that President Strand takes the position that he can determine the existence of the Committee by unilateral and personal interpretation. This view was clearly articulated by the characterization of this Committee at the hearing as an administrative arm of the University. The arrogance of this characterization is appalling. If this position were accepted by this Committee, the President of Simon Fraser University could treat it as a toy, whose rulings he could observe or violate as it suits him. The President's attitude that this Committee is a plaything is also evident from the fact that he agreed, together with the faculty, to allow this Committee to retire in order to make certain rulings of interpretation. However, if some of these rulings were to be decided by the Committee in a certain way, the President had stated he would reject the findings.

On all the above grounds, we therefore conclude that the faculty members cannot be assured that any ruling of ours will be implemented by the other party. As well, we cannot guarantee these faculty members complete procedural protection. As noted earlier, we are empowered and obligated by the Statement on Academic Freedom and Tenure to determine whether there is just cause for dismissal. It is President Strand's obligation, as the originator of the dismissal charges, to prove such cause. It is trite law and the common understanding of all involved in the university community that a fair and just decision can only be reached by fair and just means. As a fair and just hearing has been precluded by the acts of President Strand, mentioned above, it follows that he cannot prove such just cause. Therefore we find unanimously that there is no cause for dismissal of the faculty members involved and that, therefore, the President may not recommend dismissal to the Board of Governors [Art. IV (1)(e)].

Dated at Vancouver this twenty-fourth day of July, 1970.

E. E. Palmer, Chairman  
J. S. Dupre  
W. Livant

## Appendix 3

### Statement by the President on the Palmer decision

On July 24, 1970, the Hearing Committee, under Section IV of the Statement on Academic Freedom and Tenure, met to hear the dismissal charges brought against seven faculty members. It has issued what purports to be a decision on the merits of the case. It is not a decision on the merits of the case and I reject it as such. Due process has not been followed.

In its opinion, the panel comes to what it describes as a "unanimous and unalterable conclusion that the faculty members involved cannot be insured a just and equitable hearing." In support of this conclusion, it chooses to represent incorrectly my position before the hearing panel. For details, please see the attached comment on the Hearing Committee Decision.

The Hearing Committee came into being under Section IV of the Statement on Academic Freedom and Tenure and the faculty members were entitled to a hearing under the procedures stated. It was my position that the faculty members were not entitled to a hearing under procedures that they might demand, or under substitute procedures that the panel might prefer, or under procedures that I might prefer. My position was that the due process to which they were entitled was a hearing under the Academic Freedom and Tenure provisions adopted by this University. As President, I could not responsibly take any other position.

Through counsel, I stated that on procedural questions where the Statement on Academic Freedom and Tenure is silent, I would be bound by the panel's procedural ruling. However, I indicated that the hearing could not be conducted under procedures which were contrary to those contained in the Statement on Academic Freedom and Tenure. Under the Statement on Academic Freedom and Tenure, the President is responsible to see that its procedures are observed. Section 4.1 e., for example, provides that the Hearing Committee shall report its decision to the President and the President may ask the Committee to reconsider its decision if he questions the procedures. So that I could be witness to the procedures, I elected to be the "originator of the charge" under Section 4.1 d. (iv) which provides that "Only the grounds for dismissal and the evidence relevant thereto shall be considered by the Hearing Committee." I realized that by electing to be the originator of the charge I had undertaken a commitment that bound me to be present. At no time did I fail to appear or threaten not to appear.

I have said that I am morally obligated to follow the document on Academic Freedom and Tenure. My moral obligation is not one-sided, nor are the moral obligations to the Statement on Academic Freedom and Tenure one-sided. When I pledged myself to be bound by the Statement on Academic Freedom and Tenure, I obligated myself to observe the procedures and to see that others observed the procedures. The first, I have done by my actions. The second, I have attempted to do both by argument and by action.

Since its appointment, the Committee has met for only two days. It heard only procedural arguments. It recessed, ostensibly to rule on procedural matters. It reconvened and without hearing any evidence on the charges, it rendered its verdict. It chose to deliver a final decision which impunes my motives for making procedural arguments, arguments I was bound by the Statement on Academic Freedom and Tenure to make (i.e. against openness, etc.). The Committee leaped from hearing procedural questions as to how evidence should be heard, to a conclusion on the merits of the dispute without hearing either evidence or argument on the charges from either party. I find this behaviour incomprehensible.

The Committee arrived at "... the unanimous and unalterable conclusion that the faculty members involved cannot be insured a just and equitable hearing." Why? In my opinion, when the Committee was confronted with the faculty members' arguments that certain of the Academic Freedom and Tenure dismissal procedures should be unilaterally

changed by the panel, the panel failed to make the obvious decision it had to make, namely, that it was morally bound to follow the procedures under the Statement on Academic Freedom and Tenure. Each member knew of these procedures before accepting appointment to the Committee.

Decisions on the merits of a case are to be made after the panel has considered "only the grounds for dismissal and the evidence relevant thereto." This panel has not only failed to make a decision on the merits in this case, but it has brought unwarranted discredit upon the Statement on Academic Freedom and Tenure.

There are two questions which members of the University community must consider. The first is the charge that by my insistence on the procedural rules of the Statement on Academic Freedom and Tenure I was "unjust and unfair". As the President of the University, I cannot violate Academic Freedom and Tenure procedures. As a Committee formed under this document, the hearing panel is obliged to follow the rules in the document. The best judge as to whether I am at fault or whether the Committee shirked its responsibility is the Executive of the Faculty Association who are responsible, along with me, in preserving the due process of the Academic Freedom and Tenure document. The Executive of the Faculty Association has requested access to a copy of the transcript. I intend to make it available.

The second and larger question is whether due process has been served by the Committee. A charge against seven faculty members was laid by me. A Committee was charged to hear the evidence and come to a verdict. This Committee chose to make a decision without hearing any evidence. Members of the University community will have to judge whether a trial where no evidence is heard constitutes due process. My position is that it does not.

July 26, 1970

K. Strand, President,  
Simon Fraser University

## Appendix 4

### Telegram

29 July 1970  
9.00 a.m.

Dear Dr. Strand

We wish to acknowledge your telegram dated July 28th 1970 augmented by supporting material made available to us by telephone from your office. The faculty members involved upon being contacted by us have preferred to let your arguments stand on their merit. After carefully reconsidering our decision dated July 24th 1970 we now inform you that in our unanimous opinion that our original decision was correct.

Indeed we hold the view that the points you have brought to our attention reinforce the validity of this decision. Specifically and simply the issue appears to be whether the requirements of the Statement on Academic Freedom and Tenure for the purpose of this hearing should be finally interpreted by yourself or this Hearing Committee. It is our continued unanimous and unaltered opinion that this Statement vests the obligation to make final interpretation in the Hearing Committee.

You have asserted that we purported to reach a decision on the merits of the case. It is our view that this is inaccurate. Our decision makes it clear that we were precluded from reaching such a result by your own actions. This is because you stated that you would refuse to abide by certain decisions of the Hearing Committee on the meaning of the Statement on Academic Freedom and Tenure with which you disagreed. Therefore because we could not ensure that you would obey Hearing Committee interpretations of the Statement it follows that we could not conduct a hearing in accordance with our understanding of this Statement that accordingly you could not show cause for dismissal and that hence the faculty members could not be dismissed. Any other decision would be illogical and in our opinion abdication of our responsibility under the Statement on Academic Freedom and Tenure. If it is of any assistance we are pleased to place in perspective the general attitude which leaves the Hearing Committee to take issue with you by citing a concrete example. You have explicitly interpreted the Statement on Academic Freedom and Tenure to mean that once an employee's contract has terminated there is no longer reason to consider the grounds for his dismissal. We take the view that while you are fully entitled to make a case for this interpretation you have no right whatsoever to preclude a contrary interpretation by this Committee. Indeed it is entirely possible to reach a contrary interpretation if the stance you take in another context is adopted namely that hearing all the evidence is a necessary prelude to a just decision. Your interpretation of the disposition of Professor Leggett's case for instance would result in interpretation of his hearing after only partial evidence had been heard.

Clearly we consider ourselves bound by the Statement on Academic Freedom and Tenure as you also profess to be. We do not agree however that you are the final arbiter of the provisions of this document. The divergence between you and the Committee is vast. We cannot accept that under the Statement on Academic Freedom and Tenure a party can be both prosecutor and judge to the extent that you take the contrary position and attempt to justify it by saying that the Committee as an administrative arm of the University is in any way subject to you as the University's Chief Executive Officer. You are in our view totally confusing the executive and judicial functions.

Given this fundamental divergence on the meaning of the Statement on Academic Freedom and Tenure and its requirements for a fair and just hearing we reaffirm our decision in this matter.

Letter follows with text of telegram.

E. E. Palmer  
J. S. Dupre  
W. Livant

## Appendix 5

To: All S.F.U. Faculty Members

From: Faculty Association Executive Committee

On 30 July 1970, the Executive of the Faculty Association rejected the decision of the Palmer Committee regarding dismissal charges against Professors Aberle, Ahmad, Briemberg, Feldhammer, Leggett, Potter and Wheeldon, of the P.S.A. Department. The motion to reject was passed by a majority of 7-1.

At the same time, the Executive asked President Strand to offer the seven affected faculty members a hearing under Section 4 of the Statement on Academic Freedom and Tenure.

The decision of the Executive is in conflict with the position taken by Professor Malloch, chairman of C.A.U.T.'s Committee on Academic Freedom and Tenure. Professor Malloch's position basically is that the decision of a duly constituted committee is binding on both parties and must be accepted. Professor Malloch also stated that the local A.F. & T. documents do not contemplate further review of a negative decision, either by the S.F.U. Faculty Association or by other bodies.

Because the issues at stake are of such paramount importance and may have potentially far-reaching consequences, the Executive wishes to inform all faculty members of the grounds for its decision.

In our view, the decision of the Palmer Hearing Committee raises two points of almost equal importance.

The first and, in our view, the overriding issue is the need to protect the Statement on Academic Freedom and Tenure and to safeguard the rights of faculty on campus.

The second issue is the need to protect the independence of a duly constituted committee.

We considered the following factors in arriving at our decision.

- 1) The Statement on Academic Freedom and Tenure has no status under law ( Decision of Mr. Justice Hinkson in Prudence Wheeldon v. Simon Fraser University, 19 June 1970).  
It follows from the court's decision that the Statement is only morally binding, i.e. it is binding only on those parties of the university community that voluntarily agree to abide by it.
- 2) The Palmer Hearing Committee came into being under the Statement on Academic Freedom and Tenure (Decision, p. 2. 11).
- 3) The Palmer Hearing Committee was duly constituted according to Section 4.1 c of the Statement.
- 4) The Palmer Hearing Committee heard only arguments on "procedural matters concerning the conduct of these hearings" ( Decision, p. 1. 2).
- 5) The Palmer Hearing Committee recognized its obligation to "determine whether there is cause for dismissal" (Decision, p. 2. 3).
- 6) The Palmer Hearing Committee found that "the faculty members involved cannot be ensured a just and equitable hearing" (Decision, p. 2. 25), because of President Strand's attitude to be found only "by those Committee interpretations of the Statement on Academic Freedom and Tenure that he wishes to obey" (Decision, p. 2. 29).



The last point is brought more sharply into focus in Professors Palmer, Dupre and Livant's reply to President Strand's request to reconsider their decision. In its reply, which was published in *The Peak* (Vol. 15 (12): 1), the committee declares to be of the "unanimous and unalterable opinion that this Statement (on Academic Freedom and Tenure) vests the obligation to make final interpretation in the Hearing Committee".

Even if one were prepared to accept the Palmer Committee's opinion in this regard, the Committee, by its own admission, heard only procedural arguments. The Committee did not rule on which procedures to follow, nor did it indicate which procedures it preferred to follow if those of the A.F. & T. Statement were not acceptable of it. Thus, in our view, the Committee's contention is not proved that it was prevented from conducting a just and equitable hearing. In fact, the transcript of the hearing verifies President Strand's claim that he followed procedures as specified in the Statement to the letter and, in addition, insisted that others including the hearing panel accept those procedures as binding. (We want to emphasize here that the Executive would not necessarily agree with all of President Strand's arguments.)

The position taken by Professor Malloch, of C.A.U.T., rests on the firm belief that a decision rendered by a duly constituted committee which acts under the Statement on Academic Freedom and Tenure in a dismissal hearing, is inviolable. The Executive agrees with Professor Malloch on this point but with the proviso that such a committee must accept the procedures of the Statement to ensure all parties of due process.

The Executive cannot disagree with President Strand that, as a consequence of *Wheeldon v. Simon Fraser University*, the President and the Board of Governors are only morally obligated to follow the Statement on Academic Freedom and Tenure. Faculty members, if they so chose, are entitled to due process under the provisions of the Statement - but, if they do not so chose, must accept the - decision of the Board of Governors acting under the powers given to it under the Universities Act.

Although the Palmer Hearing Committee was constituted in accordance with Section 4.1 c of the Statement on Academic Freedom and Tenure it clearly did not base its decision on evidence relevant to the grounds for dismissal, as demanded in Section 4.1 d (iv) of the Statement. Therefore, the Palmer Committee, in our view, did not conduct a hearing in accordance with our Statement on Academic Freedom and Tenure.

Further, the seven affected faculty members must now be given the opportunity of a hearing so that the charges may be impartially assessed that were brought against them by President Strand.

It is the understanding of the Executive that any new hearing is to be conducted strictly in accordance with both the letter and the spirit of the Statement on Academic Freedom and Tenure and that the decision of the Hearing Committee is binding on all parties.

## Appendix 6

### Telegram

6 August 1970

4.24 P.M.

President Strand

We are very distressed to hear you do not intend to accept the recommendations of the Palmer Committee. We consider that Simon Fraser University is morally if not legally bound to accept the unanimous conclusions of this properly constituted independent investigation committee. Faculty-administration relations cannot be carried out in haphazard fashion without regard for due process. We therefore strongly urge you to abide by the judgement of the Palmer Committee without further delay.

Gilles Lalande, President,  
John Trent, Secretary Treasurer,  
Canadian Political Science Association.

### Telegram

9 August 1970

President Strand

In the strongest possible terms I wish to urge you to abide by the Report of the Hearing Committee by lifting the suspensions and reinstating to their full rights and duties all seven of the faculty involved. We fully support the position of the C.A.U.T. as stated in telegram to you by Professors Malloch and Kaplan. Any action taken by you contrary to the decisions of this properly constituted tribunal will be a most serious blow to widely accepted orderly procedures in the Canadian academic community. No action of the faculty involved or any other group could be more destructive of Simon Fraser University than failure on your part to accept the findings of the Committee and the C.A.U.T.'s judgement. I wish to reaffirm the C.S.A.A. resolutions sent to you on May 31 calling for suspension of dismissal proceedings, reinstatement of the faculty involved, an independent inquiry and regular appeal procedures in which we are willing to assist. Acceptance of such procedures will do much to restore the moral integrity of Simon Fraser University and its respectability in the community of scholars.

Jan J. Loubser, President,  
Canadian Sociology and Anthropology Association.

### Telegram

15 August 1970

The Executive Board of the American Anthropological Association releases herewith the recommendations contained in the report of its special committee of inquiry into the violations of academic freedom and tenure at Simon Fraser University alleged by Professor Kathleen Gough Aberle, and particularly draws these to the attention of Simon Fraser University, the Canadian Association of University Teachers and the Canadian Sociology and Anthropology Association.

The recommendations by the ad hoc committee regarding Dr. Kathleen Gough Aberle are as follows:

- (a) That the dismissal procedures instituted against her be withdrawn now that all relevant investigations regarding her case have been completed. And that any lack of compliance by Simon Fraser University with the decisions of appropriate hearing and investigatory committees be subject to censure by the Canadian Association of University Teachers and other appropriate bodies. We strongly urge the Canadian Association of University Teachers to censure Simon Fraser University for failing to accept the decision of the Palmer Committee.
- (b) That the Canadian Association of University Teachers and the Canadian Sociology and Anthropology Association set up a commission of inquiry into all aspects of the organization of Simon Fraser University in the interest of the academic community in general. Both the data and the situations we have analyzed demonstrate the inevitability of social disjunction at Simon Fraser University, whether the Department of Psychology, English, Chemistry, Political Science, Sociology and Anthropology, or any other Department. Our research reveals, for instance, that from its inception in 1965 Simon Fraser University has experienced difficulties in administering its faculty and its students. It is our contention, moreover, that such an inquiry will help place Simon Fraser University in the context of the community for which it was created. This perspective will not merely give the administration of the University the opportunity to reformulate policy but will also enable the faculty to take stock of its present structural and ideological position.
- (c) Through our experience we had a chance to learn some of the difficulties of an anthropological association that is identified with one country reviewing the academic cases arising in another. We urge that ways be explored either to set up international anthropological committees which may be able to operate across national boundaries without offending concerned parties, or to strengthen local bodies which may deal with problems as they arise.
- (d) We recommend that the ethnographic and comparative study of universities be treated as urgent research by anthropologists. Two crucial issues which have appeared throughout our study of Professor Aberle's case would appear to be central to urgent anthropological research of universities. First, the patterns of authority within universities, and between universities and the wider community. Second, the development of new processes which will allow universities to mature and develop, indeed to continue to exist as institutions of discovery and learning in the context of healthy controversy.

This statement is being released simultaneously to other interested parties.

E. J. Lehman, Executive Director  
American Anthropological Association.

### **Resolution of the Executive of the C.S.A.A.**

September 3, 1970

The Executive Committee has received no reply from President Strand of Simon Fraser University in response to the resolution passed by the Annual General Meeting of the Association on May 30th 1970 in Winnipeg and afterward distributed to all members.

Subsequent developments have been most disturbing and distressing. President Strand has rejected the findings of the Hearing Committee consisting of a Chairman appointed by the Chief Justice of the Supreme Court of British Columbia (Professor Palmer), his own appointee (Professor Dupre) and an appointee of the faculty (Professor Livant).

This Committee was duly constituted according to the Simon Fraser University Academic Freedom and Tenure Statement. It concluded that it was impossible to secure an impartial hearing for the faculty, that dismissal procedures should, therefore be voided and the faculty reinstated. According to the Academic Freedom and Tenure Statement, the President does not have the right to reject the findings of the Hearing Committee. In spite of the judgement of the C.A.U.T. and appeals from them and others, including the President of the C.S.A.A., that he should abide by the

Palmer Committee decision, President Strand rejected the decision, imposed another Hearing Committee on the faculty, dismissed Kathleen Aberle and David Potter who refused to accept another Hearing Committee and, with incredible cynicism reinstated John Leggett to allow his contract to expire August 31st 1970 with no further recourse or access to appeal. Accepting the decision would have permitted orderly appeals under due process of the contractual and tenure decisions under dispute.

The Executive Committee does not presume to judge the merits of the individual cases as such. We only insist that they be heard and settled under due process as represented by C.A.U.T. and Simon Fraser University procedures.

We regard these developments at Simon Fraser University with great concern for academic freedom and tenure in Canada. We deplore the absolute intransigence with which Simon Fraser University has met all demands in appeal that proper procedure be followed and due process be available to the faculty involved. In rejecting the decision of the Palmer Committee, President Strand has violated due process in the most arbitrary manner. In dismissing faculty counter to this decision, and imposing another Hearing Committee on the others in the face of the objections from the C.A.U.T., C.S.A.A., C.P.S.A., and committees of the A.S.A. and A.A.A., he has shown the most flagrant disregard for the scholarly community ever displayed by a university president in Canada in recent history. It is inconceivable that this type of conduct should be tolerated in the academic community today.

We appeal to the C.A.U.T. to impose the strongest possible censure measures on President Strand and the Board of Governors of Simon Fraser University. We also repeat the request of the Annual General Meeting that the C.A.U.T. institute an independent inquiry into the administration of Simon Fraser University. The Executive Committee hereby strongly advises members of the C.S.A.A. against accepting positions at Simon Fraser University until such time as it has resolved its present crisis and shows a firm commitment to due process in academic freedom and tenure decisions. We take this step pursuant of the resolution of the Annual General Meeting because we see in these developments a clear and present danger for the discipline at Simon Fraser University.

Under present circumstances we do not believe that the independent inquiry which we have requested all along will be effective in establishing the facts in the dispute over the contract and tenure decisions, since President Strand is clearly not willing to accept such an inquiry or to cooperate with it. We do not see how professional activities in the discipline can be properly carried out under such appalling conditions. The position of the discipline in Canadian universities can only be weakened by reinforcing the present state of affairs at Simon Fraser University. Hence our appeal to all members to avoid and, if possible, to leave that University's employment.

We appeal to departments of Sociology and Anthropology at other Canadian universities and abroad to offer positions to faculty wishing to leave. The Executive of the Association will assist as much as possible in the placement of such faculty. We also appeal to sociologists and anthropologists who are not members of the Association to observe this boycott of Simon Fraser University. We urge the C.P.S.A., A.S.A., A.A.A., British Sociology and Anthropology Association and other national associations to bring this appeal to the attention of their membership and to recommend that they observe the boycott. We also appeal to all sociologists and anthropologists not to accept positions on the second Hearing Committee imposed by President Strand on the faculty, four of whom accepted it under protest. Members are invited to write to the President expressing their opinion and asking any questions they may have. The Fall Bulletin of the Association will contain further information on the events.

Sincerely yours,  
Jan Loubser, President,  
Canadian Sociology and Anthropology Association.

## Appendix 7

August 3rd, 1970.

Dr. Kenneth Strand,  
President, Simon Fraser University.

Dear Dr. Strand:

When I entered the Palmer committee hearing I implicitly bound myself to accept its decision, short of possible appeal to a court of law. You bound yourself explicitly. I could not foresee that my abiding by the committee's favourable judgment would incur your recommendation for dismissal. However, I think I must not allow that to distract me now.

I have said and believe that the committee made a just judgment consonant with its terms of reference under the Academic Freedom and Tenure Statement. Neither you nor the Faculty Association Executive has the right to overturn or appeal the judgment or disqualify the committee. In doing so, and in providing the Faculty Association Executive with the transcript, you have violated Sections 4.1 d (vi), 4.1 e, and 4.1 f, and you appear to be about to violate 4.1 g as well. I am appealing to C.A.U.T. to censure these actions.

I do not accept your argument that the committee disqualified itself by failing to hear evidence. I would argue that its attempts to set up procedural rules led it into the substance of the dispute and that it heard considerable evidence. Neither you nor I, however, have the prerogative of interpreting that. Under the A.F. & T. Statement (4.1 e) "the President may ask the committee to reconsider its decision if he questions the procedures." This you have done. The committee has restated its verdict. All that properly remains is for you to reinstate all the suspended faculty. You have, again, acted completely arbitrarily and cynically by reinstating only one, Professor Leggett, whose contract runs out on August 31st.

Because I uphold the integrity, procedures and judgment of the Palmer committee, I can only regard your proposed further hearing as invalid and a travesty of justice. I therefore reject your offer. Instead of accepting it, I urge C.A.U.T. and Simon Fraser faculty to shoulder the responsibility of defending and implementing the Academic Freedom and Tenure Statement.

Yours sincerely,  
Kathleen Gough Aberle.

P.S. Please do not interpret this letter as a resignation. I wish to be reinstated and to return to teaching.

## Appendix 8

August 19, 1970.

Dr. K. Strand,  
President, Simon Fraser University

Dear Dr. Strand:

I am urged by members of the Faculty Association Executive to reiterate in writing our position regarding dismissal procedures involving Professors Aberle and Potter, of the P.S.A. Department.

As explained in my letter of 6 August, no action should be taken concerning the two professors until such time as there is a clear resolution of the procedures followed by the Palmer Committee.

While we as an Executive have tendered an opinion regarding the Committee's decision, we have also requested that our opinion and the grounds for our opinion, be examined by C.A.U.T.

We still believe that a mechanism should be sought to obtain an independent opinion in this case, whether through the courts, C.A.U.T., or from some other external source.

Yours sincerely,

K. Mackauer, Acting President,  
Simon Fraser University Faculty Association.

### President Strand's Comment on Simon Fraser University Dispute II

Given the time available, these comments are limited to Professor Berland's version of the "simple and unassailable" logic of the Palmer Committee Decision which appears at the end of Section II of his report. His logic is simple but hardly unassailable. What is assailable is the relevance of certain propositions and the factual accuracy of others. It is sufficient to examine only Professor Berland's first three propositions.

Professor Berland's first proposition,

"The President can only recommend dismissal if the Hearing Committee finds there is cause,"

is a paraphrase of Section IV of the last sentence of Section 4.1 (e) of the Simon Fraser University Academic Freedom and Tenure Statement which reads:

"The Hearing Committee shall report its decision to the President. The President may ask the Committee to reconsider its decision if he questions the procedures. The President will not recommend dismissal to the Board of Governors if the Hearing Committee finds there is no cause for dismissal."

Professor Berland's second proposition,

"The Hearing Committee can find there is cause only through a fair and just hearing."

is not to be found in the Academic Freedom and Tenure Statement of Simon Fraser University. What is to be found is Section 4.1 (d)(iv) which establishes the nature of a "fair and just" hearing. This section reads *inter alia*:

"Only the grounds for dismissal and evidence relevant thereto shall be considered by the Hearing Committee."

Consequently, Berland's second proposition is inadequate. It should read:

"A fair and just hearing requires the Hearing Committee to consider only the grounds for dismissal and the evidence relevant thereto before making its decision."

Professor Berland's third proposition shows a misunderstanding of Simon Fraser University's Academic Freedom and Tenure Statement which explicitly provides that the President is one of three University officials empowered to initiate dismissals as well as charging the President with responsibility for ensuring that Academic Freedom and Tenure procedures are followed. Instead of this confusing proposition, there should be substituted a factually correct proposition which he has chosen to ignore. It is:

The Palmer Committee heard no evidence. (It heard only procedural arguments. It recessed, ostensibly to rule on procedure matters. Procedural rulings were never made, instead the Committee issued a "decision" on the merits of the case.)

If this proposition had been included in Dr. Berland's analysis, then these two conclusions would immediately follow, rather than the ones he gives.

1. The Palmer Committee failed to conduct a fair and just hearing, and
2. The Palmer Committee's decision is a nullity.

What does the above reveal as the major flaw in Professor Berland's reasoning? It is that he regards what is a necessary condition as also being a sufficient condition. Certainly it is necessary that a Hearing Committee be properly chosen ("duly constituted", in Professor Berland's words) but that is not sufficient for a "fair and just" hearing. Hearing where properly chosen committees refuse to hear evidence are not "fair and just".

Therefore, the following conclusion warrants serious consideration by C.A.U.T. members. The Palmer Committee's decision would create a precedent dangerous to the Canadian university community as a whole, since it would establish that "duly constituted" hearing committees could recommend dismissal of faculty members without hearing evidence. Accordingly, the C.A.U.T. should reject the decision of the Palmer Committee.

K. Strand,  
Professor of Economics and  
President, Simon Fraser University.

October 13, 1970