

## **REPORT OF THE ACADEMIC FREEDOM AND TENURE COMMITTEE INTO THE COMPLAINT OF PROFESSOR KEN WESTHUES**

On September 16, 1995, the CAUT Academic Freedom and Tenure Committee (the "CAUT AF&T Committee") considered a recommendation from Don Savage, Executive Director of CAUT that a Committee of Inquiry be established to investigate Professor Westhues' complaint that he had been treated unfairly by the Chair of his Department, (the Sociology Department) two internal University committees, and the University of Waterloo ("UW") administration. After long debate, the committee instead decided to prepare its own report from the documentation on hand. In coming to this decision, the committee was influenced by the consideration that it was unlikely that any new information would emerge to inform the work of a Committee of Inquiry, given the vast amount of material already available. Moreover, it seemed likely that a Committee of Inquiry would itself take considerable time to conclude its investigations — extending the already protracted period of time that had been consumed in this matter — and that the process would involve the many parties to the dispute in time-consuming and distressing, but ultimately redundant repetitions of the claims and counter claims, defences and rebuttals which were amply evidenced in the growing files of the committee.

The AF&T Committee's investigations are complaint driven; the scope of any inquiries by the Committee is defined by matters raised by the complainant. Thus, this report presents only the results of an investigation of whether or not Professor Westhues was treated fairly in the course of disciplinary actions taken against him at the University of Waterloo.

The Academic Freedom and Tenure Committee believes that disputes of the kind described in this report are best resolved through a fair internal grievance procedure, through an agreed upon process of binding arbitration, or by mediation between the parties. For various reasons, none of these processes was followed at UW in this case. We have tried to write a balanced account of the dispute, but our report must be seen as a poor substitute for the fair and binding resolution procedures found in most Canadian universities, and so strikingly absent at UW.

In writing this report, we have not referred to or employed any of the oral evidence given to the fact-finding committee which visited Waterloo in February 22-23, 1995, nor to the report itself. Those who spoke to the fact-finding committee were given the assurance that their comments were not for public distribution, and that the report of the fact-finding committee was intended solely for the information of the CAUT AF&T Committee.

After the various parties to this dispute were informed of the CAUT AF&T Committee's intention to write its own report, Professor Adie Nelson wrote to express concern that her views might very well be overlooked, since she had not submitted anything in writing to the committee. Professor Nelson enclosed several documents for the information of the committee. Except for her covering letter and one other document, all of the items she enclosed had previously been seen by the CAUT AF&T Committee, and had found their way in due course into its collection. Nelson's additional documentation was included in the file and considered in preparing this report.

Unless it is absolutely necessary to an understanding of the case, we have avoided identifying anyone in this report except the principal parties in the dispute and those officers of the faculty association and the UW administration who have played a direct role in this affair.

This report is divided into the following sections:

- I. The Framework for the Resolution of Disputes at the University of Waterloo: Policy 33 (Ethical Behaviour) and Policy 63 (Faculty Grievances)
- II. The Important Events Surrounding Professor Westhues' Complaint
- III. Commentary
- IV. Recommendations

Necessarily, given the sheer mass of the material in the file, this account of the affair is compressed in

a way that some are bound to feel neglects important issues and events. The Committee apologizes in advance to those who feel that their concerns have not been sufficiently addressed.

## **I. THE FRAMEWORK FOR THE RESOLUTION OF DISPUTES AT THE UNIVERSITY OF WATERLOO: POLICY 33 (ETHICAL BEHAVIOUR) AND POLICY 63 (FACULTY GRIEVANCES)**

It is critical to an understanding of this case to appreciate that discipline and faculty grievances are managed at the University of Waterloo using procedures that seem to be unique in Canadian universities. Provisions that many are accustomed to seeing in their collective agreements with respect to discipline and grievances are strikingly absent at UW. Instead, these matters are dealt with under two policies established by the Senate, both of which have proven to be problematic in the present case and in other disputes. None of this should be news to the faculty or administration at UW. At the request of the faculty association (FAUW) in 1984, CAUT established a two-person task force to review the various policies affecting faculty at UW. That report<sup>1</sup> was sharply critical of the procedures in place at UW and made a number of recommendations for improved policies and practices. A review of UW's revised policies<sup>2</sup> in 1990 noted significant improvements but again pointed out serious deficiencies in the procedures in place. As will become obvious from a consideration of the present case, Policy 33 and Policy 63 are still so severely flawed that they serve as very real impediments to the fair resolution of grievances.

### **Policy 33 (Ethical Behaviour)**

This policy (approved June 5, 1990) aims to promote "an environment of tolerance and respect" in which the "right of individuals to advance their views openly" is supported throughout the university. The policy appears to apply to everybody — students, faculty, staff, and administrators.

Several general principles are enunciated: the responsibility of members of the university community to contribute to a just and supportive community based on equality and respect for individual differences; support for the responsible and ethical exercise of academic freedom; the principle that there should not be undue interference in the study, work or working environment of other members of the university; the principle that all the benefits and services of the university should be available to those qualified without regard to personal characteristics or beliefs; and the view that supervisory authority should be used only to promote the proper purposes of the university. Without limiting the generality of these principles, the policy specifically incorporates definitions of sexual harassment, discrimination, and the abuse of supervisory authority.

Policy 33 establishes an Ethics Committee, advisory to the Vice-President Academic & Provost (the "VPA"). The Committee consists of six members — two students, two staff and two faculty. The VPA & Provost determines who acts as chair. In addition to its aims of promoting education, training, reviews of policy, and so on, the Ethics Committee has the task of dealing with specific complaints.

The chair or individual committee members can give advice or assist individuals informally in the resolution of their complaints and can also advise complainants of other means of resolving their disputes through other avenues of appeal. Informal attempts at resolving complaints can be terminated after reasonable time and effort if the committee member giving advice or assistance believes that the complaint is frivolous, if informal resolution is "inappropriate", or if one of the parties to the complaint refuses such resolution.

The formal process is initiated upon the receipt by the chair of a written complaint setting out the alleged violation of the policy, the remedy sought and the names of the respondents. Respondents are duly informed and given a copy of the complaint. A three-person Hearing Committee is established (the policy doesn't say quite how) to review the complaint, to establish jurisdiction, and to meet with the principals. Both at the informal and formal stages there can be discussions with, e.g. the chair of the Faculty Grievance Panel established under Policy 63 (see below) to work out questions of jurisdiction. The specific procedures to be followed in reviewing the complaint are left in the hands of the Hearing Committee, but it is supposed to consult with the parties about that procedure and to observe the principles of natural justice. Specifically, the committee has to permit each of the principals to be accompanied by another member of the university community as an advisor or representative; it has to

allow each principal access to relevant evidence; it has to allow principals the opportunity to present evidence and argument and to rebut contrary evidence and argument. It was once the case, we are told, that the committee used to hear serial, independent testimony from those appearing at a hearing, with no opportunity for cross-examination, but it now permits cross-examination.

At the conclusion of its deliberations, the Hearing Committee delivers a formal report to the VPA & Provost and to each of the principals. This report contains a recommendation for the appropriate disposition of the complaint, indicating the nature and relevant circumstances of the complaint, in what ways the principles in the policy have been violated, and the specific remedies the Committee proposes. The Committee can recommend that disciplinary action be initiated, in which case the report of the committee can be adduced as evidence in that action.

The VPA & Provost determines whether he/she accepts the recommendation, implements the recommendation if he/she agrees with it, and informs the parties of the action taken in response to the committee's recommendations.

Within three weeks of receipt of the report of the Ethics Hearing Committee, a formal written appeal can be made to the President of the University, who is supposed to meet as soon as possible with the two parties concerned. Within a week thereafter, the President is supposed to issue a written reply to the appeal to the parties involved and to the Hearing Committee.

### **Policy 63 (Faculty Grievances)**

This policy (approved on June 4, 1985) is meant to provide "appropriate remedies for situations in which a faculty member has been treated in violation of policies or established practices, or, in some substantive sense has been treated differently from others in his/her situation." Who is a faculty member is defined — and there are some academics at UW who are not incorporated in the definition. There are also many exclusions in the kinds of disputes that can be grieved under this policy: promotion and tenure disputes (unless the relevant policy or procedure has been violated), other matters covered by non-administrative appeal procedures including student discipline, dismissal for cause, animal or human research, parking, adjustments to salary scale — and ethical behaviour. This last area falls under the jurisdiction of the Ethics Committee operating under Policy 33.

Under Policy 63, a Faculty Grievance Panel composed of a chair and six faculty members is established by agreement of the presidents of the university and of the faculty association. After a grievance has been submitted to the chair, two members of the panel are appointed to act as Grievance Counsellors for the case. The task of the Grievance Counsellors is to attempt to work out an informal resolution of the grievance or complaint before there is recourse to a formal hearing.

If the dispute is not resolved informally, the grievor files a written grievance, a Hearing Committee is established (consisting of the chair of the Grievance Panel and two other members of the panel drawn by lot). The Hearing Committee is charged with deciding at the outset whether the grievance falls within the policy or whether the grievor has a case. If it declines the case, the Hearing Committee notifies the grievor in writing.

The Hearing Committee is charged with making a complete investigation of the petitioner's grievance and with arriving at a unanimous judgement.

According to the published policy, the Hearing Committee conducts its hearings informally but *in camera* and "with regard for principles of natural justice". It determines its own procedures, except that at all hearings the grievor is entitled to be accompanied by a faculty colleague; the formal process is one of independent, serial testimony (which rules out the presentation of information by agents, such as grievance officers or legal counsel, and eliminates cross-examination); and there are to be no minority reports issued.

When it arrives at a decision, the Hearing Committee issues a preliminary confidential report to the grievor and to the President. The purpose of the preliminary report is for the Committee to comment on the validity of the grievance, on the remedy requested by the grievor and on what the Hearing Committee is

proposing, and to allow the President and the grievor to respond to the proposed remedy. After receiving the written comments of the President and the grievor, the Hearing Committee then considers whether to adjust the proposed remedy, and it prepares a final report. The final report then goes to the President and the grievor. The President is responsible for implementing the decision.

There is some background documentation to the policy itself, which informs the policy but is not actually incorporated in it. In this material, it is stated that the grievance procedure "is concerned with unreasonable or unfair administrative practice" (though the policy itself doesn't actually include these as grounds for a grievance); there is a heavy emphasis on the importance of the informal stages of the process — with the suggestion that the Grievance Counsellors should pursue informal discussions of the grievance up through the administrative chain in a quest for a resolution of the dispute; and the approach is seen to be one in which the Hearing Committee makes a "decision", as opposed to a "recommendation".

We are struck, throughout, by the emphasis on collegiality. The model itself is "viewed as a more visible form of collegiality" than relying on a formal review of grievances through administrative channels. There is concern about preserving and maintaining a collegial atmosphere in the university, encouraging reasonable behaviour, using remedial and non-punitive approaches, providing for impartial assistance with resolving disputes, and so on. The whole theme of the policy is that relying on reasonable, sincere and disinterested colleagues should provide ways of dealing with disputes using informal procedures and non-adversarial approaches.

## Comments

There are a number of things wrong with these policies.

First of all, they seem to be based on the supposition that it is possible to decide if a complaint or grievance involves ethical or non-ethical components, and on the basis of this determination to send the complaint off to separate committees who have special charge of "ethics" issues and "non-ethics" issues respectively. On the face of it, such a division looks problematic, and in practice, as will become abundantly clear in the present case, the problem of jurisdiction and the need to dice and slice a complaint into its ethical and non-ethical parts is a very real impediment to the resolution of conflicts. (Besides being noted in both reviews of the policies by CAUT, this criticism has more recently been made in an internal UW review of the policies in question<sup>3</sup>.)

It has become the practice, we understand, for the two committees to hold joint hearings, but there are no formal written guidelines that say how this is to be done. It does seem that the agreement of all the parties to a dispute has to be obtained before a joint hearing can be arranged, but this is not reflected in the published policies. Even if it were properly encoded in the written policies, requiring that the parties agree to a joint tribunal introduces the possibility that a fair procedure could be blocked by one side or the other for some supposed advantage. This does not seem fair or reasonable.

Secondly, each committee is left to develop its own procedures in each case, with little guidance from the Policies. While there is the requirement that the committees be guided by the principles of natural justice and observe certain basic procedural rules, nevertheless in our view there are very real dangers in requiring people to develop *ad hoc* procedures in the middle of complex and emotion-laden disputes. Even reasonable, fair-minded, and intelligent people can do the strangest things when they or their colleagues are in turmoil, and the most well-intentioned actions (actions that seemed reasonable at the time) can turn out in retrospect to have been muddled, wrong-headed and unfair. That is why collective agreements at other Canadian universities take such care to specify the exact steps that are to be taken in the resolution of grievances, and it is why those procedures are guided by the body of legislation and arbitral jurisprudence that has arisen on these matters. Paradoxically, the policy at UW that deals with student appeals provides for the application of the procedural standards of Ontario's *Statutory Powers Procedure Act* — but these procedural safeguards do not apply to proceedings under Policies 33 or 63, even though proceedings under these latter policies can have extremely serious consequences for the careers of those individuals affected by them. We are unable to see any reasons to justify the University's failure to provide faculty grievors with the same level of procedural protection afforded student grievors.

Thirdly, there are significant restrictions on a complainant's right to counsel. In the Faculty Grievance procedure the complainant can be assisted by a "faculty colleague"; in the Ethics procedure, by an "advisor or representative". The roles of these persons are very unclear, and it is also quite unclear what rights parties have to seek advice. In the present case, we shall see how this lack of clarity served to frustrate the process. From a natural justice perspective, it is very problematic that an appeal body reviewing a serious disciplinary matter can restrict a party's right to use whatever assistance and advice that person deems necessary.

Fourthly, there is great confusion with respect to appeals and how a final decision is arrived at. In the Faculty Grievance policy, a report goes to the President and the grievor, who can comment on the report and the proposed remedies. The policy is imprecise about what happens if the President does not accept the decision of the Grievance Committee, and there do not appear to be any provisions for the grievor to appeal the decision and subsequent actions of the President. The policy itself says it is the responsibility of the President to "implement the decision" of the Hearing Committee, but a recent Provost's Committee says that "faculty grievance hearing committees make recommendations to the President of the University"<sup>4</sup>, and in the present case, a letter from the President James Downey to Professor Westhues seemed to imply that the grievance could be sent back for a consideration by a new Hearing Committee after the Faculty Grievance Hearing Committee that dealt with the grievance had already reported its "decision"<sup>5</sup>.

In Policy 33, the Ethics Committee is advisory to the VPA & Provost, and the report of the Ethics Committee goes to that officer, but any appeal is to the President. One wonders what happens if the Committee's recommendation, the VPA's recommendation, or the President's decision on appeal is unsatisfactory to the grievor. While a Policy 33 grievor at UW has the right of appeal to the President of the University, there is no provision for final, independent resolution of disputes if the grievor finds the President's response to his or her appeal unsatisfactory. Equally troubling is the fact that Policy 33 does not appear to specify on what grounds the President must exercise his or her discretion to deny or uphold an appeal. Nor does Policy 33 specify any due-process safeguards in the event of an appeal to the President. The Savage & Mullan report recommended that "the decisions of the tribunal should be final and binding themselves or, as at Queen's University, they should be subject to final and binding arbitration...." (p. 45). That UW continues to sidestep the clear need for a mechanism for the unambiguous and definitive resolution of grievances is simply unacceptable and should be a matter of acute embarrassment to the University. There is nothing in the unique culture of the University of Waterloo that justifies its failure to establish the fair procedures for the resolution of grievances that have found acceptance in the vast majority of Canadian universities, unionized and non-unionized alike.

All of these deficiencies (and others) have been brought to the attention of the faculty and administration at Waterloo on previous occasions. Now again, as we shall see, a case has arisen that demonstrates how far these policies have failed to provide proper and fair procedures for the redress of a grievance — with significant damage to the careers and reputations of a number of parties involved, wittingly or unwittingly, in the dispute, and to the reputation of the University of Waterloo itself.

## **II. THE IMPORTANT EVENTS SURROUNDING PROFESSOR WESTHUES' COMPLAINT-1993**

On November 11, 1993, an oral comprehensive methods examination was held in the Department of Sociology at UW to examine a Ph.D. student under the supervision of Professor Westhues. This was the student's second attempt at the examination, and it is important to an understanding of the case that some background be provided about the first examination.

Two years previously, the student had attempted a written comprehensive methods examination and had been failed by a three-person departmental committee. Some time after having been told of his failure, the student complained that an article that was supposed to have accompanied one of the questions on the examination had not been provided to him, even after he had twice asked a secretary in the department about it. Rather than make a fuss about the missing article, the student attempted an alternate question — a question that he and Professor Westhues maintain was badly worded -- and failed the examination. Westhues and the student contested the failure on the grounds of this irregularity, and a great deal of discussion ensued in the department and at the faculty level about what, if anything, could

be done. These were not easy negotiations. Professor Westhues and the student argued that the student ought to have been exempted from the examination on the grounds that he already had a doctorate and had written and edited several books, thus demonstrating his competence in sociological methods. His colleagues in the department insisted that this amounted to *ad hoc* special pleading, and that the student should be required to meet the same tests as others in the program. Eventually, it was decided that the student's failure would stand, but that he would be given an opportunity for an oral examination, and that for the next examination, one of the examiners would be an academic from outside the department (referred to in the relevant correspondence as an "adjunct professor", and hereinafter referred to as the "adjunct examiner"), who had been nominated by the student and who was acceptable to the department.

There was some to-ing and fro-ing on the selection of the adjunct examiner but finally an examiner satisfactory to the student was selected. Later, both Professor Westhues and the chair of the examination committee, Professor Adie Nelson, reported that the student had told each of them that the student was very pleased by the selection of the adjunct examiner. Not only did the person named share the same qualitative methodological approach favoured by the student, but the student further (apparently) believed that the adjunct professor was a person who once favoured his candidacy in a job competition at another university. That Westhues and the student were also pleased with the selection of Professor Nelson as chair a member of the examination committee also appears to be a matter of record; Professor Westhues is reported to have asked her to serve on the committee "as a favour to him" if she were asked by the department; he notes in his February 18, 1994 statement of grievances that he "had encouraged (the student) in his choice of Nelson for the committee." The student reportedly told Nelson just before the examination that she had been his "first choice" for the committee. The third member of the committee named by the department doesn't seem to have attracted much in the way of comment.

On the day of the oral, the student did not seem to be especially worried about the examination. The examination itself seemed to go fairly uneventfully. Three hours later, at its conclusion, when he was asked by one of the examiners, the student stated that the examination had been fair. He then reported to Westhues that he thought the examination had gone well, the questions had seemed fair and he thought he had answered them well. Westhues went off to a meeting and the student returned to the examination room to hear the news that the committee had, in fact, failed him — and by a unanimous vote.

After learning that his student had been failed, Westhues angrily confronted Nelson. Westhues' and Nelson's accounts of what was said at this time and in a telephone conversation the following day differ a little. In his statement of grievances Westhues describes these interactions. With regard to the first conversation he says:

"I believe I phrased the question: 'What the hell happened?' Nelson simply said that (the student) had failed the examination and that the vote was unanimous.

I did not raise my voice nor call Nelson names nor even express any particular hostility to her. I was, however, overcome with shock and anguish. With the intense emotion I quite honestly felt. I told Nelson the system was evil: 'I'm not saying you're evil, Adie, but the system is.' I told her that she herself with her qualitative orientation to research, would not have gotten through the Ph.D. program here. I do not remember exactly what Nelson said in response. Whatever it was, it let me know that she had followed (the adjunct examiner's) lead in arriving at the decision to fail. I said that somebody must have gotten to him. I had the clear impression from Nelson that she would not have voted to fail the examination had it not been for the way (the adjunct examiner) had structured the decision-making process afterwards. 'But you made it unanimous, Adie,' I said. She looked at me kind of helplessly...."

Nelson's account of these events is in her letter of November 14 to the department chair. Nelson says of the first argument:

"I was extremely upset by Professor Westhues' comments and with the intensity with which they were delivered. As you might expect given that I am a junior, non-tenured member of the department, it was intimidating to be yelled at and accused, by a full professor and former chair of the department, of contributing to 'evil', to hear Professor Westhues voice his opinion that I never would have gotten my Ph.D. by the criteria used to evaluate (the student), and state his belief that the failure on the examination attested most fundamentally to my inadequacies as chair of the committee and the department's hostility towards (the

student). At no time did Professor Westhues entertain the idea that (the student's) performance on the examination could have been responsible for the decision of the committee...."

The following day, Professors Westhues and Nelson talked on the telephone. Professor Westhues reports:

"... I wanted to speak with her, but after simply walking away from her the day before, I wanted time for a long enough conversation to reach at least some kind of understanding, despite our different positions and attitudes with respect to (the student). But here she was on the phone, so I told her I was sorry for yesterday's upset. Then she said, 'How is (the student)?' The accent was on the how in her question, and her voice seemed to have a tone of condescension and self-righteousness. I lost my temper. Nelson would later report what I said more precisely than I can even now, so I quote from her report: 'How the hell do you think the man is? What do you want me to tell you, Adie? That the man is okay? Well, the man isn't fucking okay. Do you want me to tell you that I'm afraid the man is going to have a fucking heart attack?'"

"My outburst provoked Nelson into an angry defense of having failed (the student).... Nelson called herself a 'good Catholic girl', and insisted that she had done nothing more or less than apply the four criteria stated in the department's study guide for the methods comp. In reply, I asked her if she had seen the Paul Newman movie, in which he, as a lawyer, tells a jury, 'You are the law.' My point was that as an examiner in a Ph.D. program, one should not mechanically apply any criteria, but instead those high elusive, intellectual standards that enable one to recognize excellence.... My most regrettable comment in that telephone exchange was that she herself ought not to feel overly secure in the department whose rules she had applied so faithfully. It was an insensitive thing to say to a junior, as yet untenured colleague, and I realized that instantly by her reaction. She eagerly began asking exactly what I meant, as if she was terrified at the prospect of losing her job.... I told Nelson, nonetheless, that her stock in the department had probably risen as a result of her having failed (the student)...."

Of this discussion, Nelson says:

"I was extremely upset by Professor Westhues comments and by his tone of voice; it has been over ten years since I received my Ph.D. and began teaching and I have previously taught at two universities and one community college. During this entire time I have never been spoken to in such an unequivocally rude and hostile way by a colleague.... I did not feel that being (the student's) supervisor in any way entitled Westhues to adopt this abusive bullying manner. I became enraged and yelled back at him that I did not deserve to be screamed at and told him 'how dare you speak to me in that way'. I informed him that I resented being blamed for (the student's) failure on the examination.... I told Professor Westhues that whether or not (the student) personally favoured quantitative methods and statistics, he still had to demonstrate his competency in these areas even if he chose never to utilize these methods after he graduated...."

"...Professor Westhues did see fit to inform me that while he 'respected' me as a colleague, I was ill-regarded and viewed as marginal by the rest of the department. In short he suggested that the department regarded me in much the same manner in which (the student) was supposedly viewed — with dislike and hostility — although, he commented, the intensity of the department's negativity towards me had probably been dissipated somewhat by my serving as chair of the committee that had failed (the student) in his second attempt. I asked Professor Westhues to tell me on what basis I was so disliked. He responded that it was the opinion of the department that I was 'not professional'...."

Almost immediately following the examination, Professor Westhues and the student began a number of actions to contest the result. The department chair, Professor Ron Lambert, made a number of unsuccessful attempts to meet with Westhues and his student. Westhues wrote Nelson a letter, seeking explanations for several of the actions which the student alleged to have occurred, sending similar letters to the adjunct examiner and to the department chair. He did not write the third member of the examination committee. Westhues and the student made several requests for the audiotapes of the examination. (The examination was audiotaped, apparently so that the tape could be made available to the student in case of a formal appeal — but this rationale for taping the examination was disputed by some of those involved in the examination process soon after its completion.) These requests for the audiotapes were either ignored or refused until mid-January 1994, by which time the student had left the program — his request for a formal review of the exam having been denied by the Dean of Arts, his request to register as an inactive student having been denied by Graduate Studies, and his funding having been cut off when he did not register. The student could have continued his registration as an active student, and he could have appealed the Dean of Art's ruling on his request for a review, but he chose not to do so.

Nelson was distressed by her exchanges with Westhues: not only was her handling of the examination challenged in an aggressive and dramatic way, but she was told by Westhues, a senior member of her department, that she ought to feel "overly secure" about her tenure prospects. This was especially disturbing to her because she believed that Westhues' support had been critical when she had applied for her position in the department; she believed that losing his support would seriously compromise her chances of receiving tenure. She discussed these events with her husband and subsequently with the chair of the department. The chair requested that she put her account of these events into writing, and she did so on November 24 in a lengthy report that described her view of the circumstances leading up to the examination, the conduct of the examination itself and the interchanges between herself and Westhues.

Westhues learned of Nelson's report on December 6, in a conversation with Professor Roman Dubinski (chair of the FAUW Academic Freedom and Tenure Committee) whom Westhues had asked to intercede with Lambert with a view to obtaining the tapes of the examination. Dubinski also reported to Westhues that Lambert was contemplating disciplinary action. Lambert declined to meet with Westhues and Dubinski, stating that he intended to call Westhues before the department's Graduate Committee.

Only on December 10, after requesting the Dean of Arts to exert some influence on Lambert to release Nelson's report, did Westhues obtain a copy of Nelson's letter from Lambert. In the accompanying letter from Lambert, Westhues found that new allegations had been made about him — that he improperly attempted to influence the outcome of the examination by having contact with the adjunct examiner, and that he had exerted pressure on Nelson a week prior to the examination by contacting her and inquiring whether the examination was going to be a "set-up job". In this letter, Lambert required Westhues to attend a meeting, now with the members of the department's Promotion and Tenure Committee, and informed him that if he refused to attend, Lambert would ask the committee to proceed in his absence.

In his reply to Lambert on December 13, Westhues declined to meet with the members of the Promotion and Tenure Committee, giving as reasons his belief that the meeting was improper and not sanctioned under the policies of the university. In his letter he offered an explanation of his contact with the adjunct examiner, and an explanation and apology to Nelson for his actions towards her:

"... I did indeed address her angrily, reproachfully, and offensively. That was in the initial shock of my discovery not only that (the student) had been failed on the examination, but that she, as chair of the examination committee, had shown less breadth, strength, and independence of judgment than I had expected. I do not recall screaming at her, in the sense of raising my voice, and I believe I blamed the 'system' and myself rather more than her, but there was intense anger and anguish in my voice and manner, and she is justified in having taken offense. Being aware of my offense to her, and thinking my anger had subsided, I telephoned Nelson the next day to apologize, as she notes in her report, but when she inquired about (the student) in what seemed to me a patronizing tone of voice, I am afraid I lost my temper all over again and shouted at her over the phone, using the expletives she attributes to me, and provoking her into shouting back. I had not realized the extent to which she is, in her words, 'a good Catholic girl.' I did not intend to intimidate Nelson, and anyway I lack resources with which to do so.... But I am guilty of misjudgment, insensitivity, and rude behaviour to a colleague, especially in the exchange over the telephone. Adie Nelson deserves an apology from me, and I am pleased to set it down in writing."

Westhues sent copies of this letter, along with Lambert's letter to him, to Nelson, the four members of the department's Promotion and Tenure Committee, to Dubinski, and to the Dean of Arts, the Associate Provost for Academic Affairs, and the President of the University.

On that same day, he also sent a letter to Nelson. It reads in part:

"I received last Friday afternoon a copy of your report to Ron, along with a letter describing the actions he intends to take. That letter is enclosed, along with a copy of my reply."

"The apology I offer you in that letter is sincere. I had no right to speak so angrily to you. I think the reason I did so is that somehow or other I had formed a wrong impression of the kind of sociologist and professor you are. It never occurred to me that, in the kinds of questions you would raise and the judgments you would make in (the student's) methods examination, you would simply follow the criteria of evaluation that have been commonly applied in our department for the methods comp. I thought you would apply higher and broader standards.... The reason I expressed anger at you, but would probably not do so at (the third member of the examination committee) is that I have never gotten the impression that (he) has a feel for 'higher and broader



standards' anyway, so his action at the... examination didn't really surprise me.... I suppose that in those two conversations, I still imagined that we were, so to speak, on the same wave length, and thus spoke more freely than I would, say, with Ron (Lambert) or with (the third member of the committee)....”

“... Adie, once again, I am truly sorry for the grief I've caused you.”

Westhues closed with the comment that he hadn't sent copies of this letter to anyone, but indicated that Nelson might wish to do so.

These attempts at an apology did not sit well with Nelson or Lambert since they cast further aspersions on Nelson's competence and integrity and added criticism of the chair of the department and the third member of the examination committee. Nelson did in fact show Westhues' letter to Lambert, and, in time, to others in the department. She also wrote to Lambert, stating that she found Westhues' letter "extremely insulting", and that it provided another example of "the type of sanctimonious bullying, and uncollegial behaviour" that she had previously complained of. She stated that she would no longer "view any apology tendered by Professor Westhues to be meaningful", and asked Lambert to inform Westhues that in future she would communicate with him only through Lambert's office.

Under some pressure from Dubinski, Lambert agreed not to convene the meeting he had contemplated. He did, however, protest to Dubinski that university policies required him to "consult" on these matters, and that he was not quite sure how to proceed.

On December 17, Westhues received a six-page letter from Lambert which reiterated the charges contained in his letter of December 10, and added another one, that Westhues "has created in the department the 'chilly climate' that women academics sometimes deplore." Lambert also reported to Westhues Nelson's reactions to his apology.

The next day, Dubinski reported to Westhues that Nelson's letter to Lambert was circulating around the department, along with other correspondence on the matter. Dubinski, Westhues and Lambert met on December 20 but failed to resolve anything. At this meeting Lambert let it be known that he was thinking of suspending Westhues from graduate work responsibilities.

At this point, we have Westhues (a full Professor) who is extremely angry about the failure of one of his students and has expressed his upset in no uncertain terms to Nelson (an untenured Assistant Professor). He has attacked her competence, and given her reason to believe that her tenure is in jeopardy. She has complained to the chair, who has asked her for a written report. Westhues has written apologies which only give further offense. Everyone is furious; they've written it all down and circulated it around the department (with bits of it reported up the administrative ladder). The department chair, who himself has come in for a few unflattering comments in Westhues' letters, is contemplating disciplinary action. He knows that he's supposed to consult about this, since university policy tells him so, but isn't sure quite whom to consult. The Faculty Association has been invited into the fray by Westhues, and has initiated several actions on his behalf — to the annoyance of the other parties, who feel that it is improper for the Association to represent the interests of one member of the Association over another.

The dispute worsened significantly in the New Year.

## 1994

The evidence that something serious had happened was in Westhues' mailbox when he returned to campus following the Christmas break. This was in the form of a letter, dated December 20, and signed by four of his colleagues, addressed to Lambert (with copies to Westhues, Nelson, the FAUW, and five officers of the University). The letter made a series of allegations concerning the propriety of Westhues' conduct as a Department member extending back in time.

The letter reads in part:

“... (We) recommend that Ken Westhues immediately be removed from all duties and obligations associated with the graduate program and that this condition remain in effect for a period of 5 (five) years. We do not propose that this ban be automatically lifted after a five year period, but rather insist that Ken Westhues not

be eligible for reconsideration of these duties until at least five years have passed, during which time he would have the opportunity to show members of this department (the people who have to work with him on a day to day basis and who have to face these problems in a direct personal manner) that he is endeavouring to become a good departmental citizen...."

Three days later, a copy of another letter to Lambert arrived in Westhues' mailbox — this one signed by a further seven members of the department. The second letter was copied only to Nelson and Westhues, and he received his copy on the day it was written.

The letter focussed exclusively on complaints about Westhues' treatment of Nelson in regard to the examination and his activities on behalf of his student, but in unequivocal terms called his behaviour "exceedingly offensive breaches of the university's norms directed at making this an environment where faculty can exercise their duties, including academic judgments without interference, intimidation and abuse from other faculty." Some of the correspondence between Nelson, Westhues and Lambert is discussed:

".... Nelson's memorandum describes behaviours of abuse and intimidation Westhues directed toward her and indicates how he tried to interfere with her performing her duties before and after the recent comprehensive examination.... Westhues' letter to Nelson acknowledges the abusive and interfering behaviours, attempts to excuse them in terms of Nelson's failings, and directs still further abuse at Nelson...."

"We are appalled to see that Westhues' letter clearly shows that, with some time for reflection since the last two episodes of misconduct, he does not see his behaviours as particularly serious and that he continues to abuse Nelson..."

The letter concluded with another call for "substantial" sanctions, including the recommendation that his duties in the graduate program be cut back for a significant period.

Now, all but one of the members of Westhues' department are in print condemning his behaviour in extremely strong terms, and eleven have recommended severe sanctions. The first group has placed its call for discipline in a context where it alleges a pattern of misconduct extending back in time and towards others besides Nelson; but the second group has restricted its condemnation of Westhues to the interactions around the examination and his disagreements with Nelson.

Professor James Brox, president of the FAUW, in a letter written to the first four petitioners on December 22, criticized their action in condemning Westhues without giving him a chance to defend himself, and urged that it would have been appropriate for them to call on the chair of the department to "relieve the frictions" in the department, or if they were dissatisfied with this, to resort to Policy 63. They replied that they were disappointed that he had not "exhibited" more concern with the problems they alleged that Westhues had generated, and that they failed to see how their letter was improper.

What Westhues and the FAUW did not know (they were not to find out until late March) was that on December 17, a meeting was held outside of the department attended by a number of his colleagues. Lambert wasn't there, but Nelson was. At that meeting, the correspondence between Westhues, Nelson and Lambert was discussed. It was out of this meeting that the two letters to Lambert arose.

## **Disciplinary Action**

On February 14 Lambert took formal action. He wrote a lengthy letter to Westhues, reviewing three complaints about his conduct: first, that he improperly contacted the adjunct examiner; second, that he attempted to influence the outcome of the student's examination by subjecting Nelson to undue pressure both before and after the examination; and third, that his behaviour towards Nelson had been demonstrably uncollegial.

Three sanctions were imposed on Westhues:

- the letter of reprimand was to be placed on his personnel file, "to serve as a warning that more severe sanctions may be required, should there be a recurrence of the offending behaviour."
- he was told he would not be assigned any further graduate responsibilities in the department until July 1, 1998, at which time he could reapply for resumption of these duties.

- his unsatisfactory conduct would be reflected in his performance review in the areas of teaching and service for 1993.

Westhues was told that he could continue to work with the students whose dissertations he was currently supervising, but he chose to resign from these responsibilities, explaining to the students that he did not feel it was in their interest for him to continue working with them, given the lack of support there was for him in the department.

For the record, it is important to state that nowhere in the documentation that we have received at CAUT is there any indication that Westhues had previously been subject to disciplinary action or even formally accused of any misbehaviour.

### **Westhues Files a Grievance under Policy 63**

On January 24, Westhues filed a grievance against Lambert and the eleven others who had signed the letters to the chair.

Following the disciplinary letter, this statement of grievances was modified to reflect Lambert's action. Westhues charged that the respondents had acted outside of university policy and that they had "conspired, without due process and without just cause, over a period of roughly two and a half months, to do serious damage to my work and career, by expelling me from our Department's graduate programs and in general subjecting me to their collective degradation."

Westhues does "acknowledge (his) own misconduct", "his intemperance in... words and manner", and in "in crossing the line... between desirable argument and reprehensible personal attack," but he asserts that this kind of thing "happens all the time." He points to a furious argument in the presence of the Dean of Graduate Studies, where Westhues alleges he was "lambasted at length in a most hateful way" by Lambert and another colleague, without either one of them being penalized in any way.

This second statement of grievances was acknowledged on February 24 by the chair of the Faculty Grievance Committee, who stated that "the investigation of the concerns raised by your latest set of documents may properly begin under Policy 63" and noted that he had "consulted with (the chair) of the Ethics Committee, since I have to consider the possibility that our Panel may need advice or assistance from that Committee." Two Grievance Counsellors were appointed and began the work of contacting the respondents and attempting to facilitate an informal resolution of the grievance.

The next month was taken up in this activity and in further discussions and correspondence with the chair of the Grievance Committee. Even though Nelson was not formally named as a respondent in Westhues' grievance, she was extensively discussed in the grievance documents, and Westhues agreed with the chair that she should be informed and sent a copy of his grievance.

### **The "Dear Gail" Letter...**

While all this was going on, Westhues had a conversation about his situation with a former student, now a faculty member at another Ontario university. They agreed on a course of action, which would expand the dispute outside of the university's walls.

On March 15, Westhues wrote her what has come to be known as the "Dear Gail" letter. In this carefully constructed document (six pages, single-spaced, complete with headings on the various sections) Westhues describes his view of the events of the past few months. In the letter, Nelson is thinly disguised as "a young feminist woman (I will call her Jane Jones) whose appointment I had strongly supported in 1990". The adjunct examiner is called the "senior member" of the committee. Westhues reviews his attempts to apologize, admittedly in a "qualified" way. He says that he was "led to conclude that it had been unfair not only to the student but to Jones that she, an inexperienced, untenured Assistant Professor, had been appointed to chair the examination." He asserts that "(t)he fact remains that apart from my rudeness to Jones over the telephone, I have not done anything outside of university policy or standard academic practice. And for the rudeness I have apologized."

He refers to "conspiracy", "lynch mobs", "mob actions", "herd instincts" and "witch hunts". All of it is placed in a context where the department's actions against Westhues are defined as a "pretext for purging the department's graduate programs" of Westhues because his theoretical orientation is at odds with the approach of his colleagues, who do not define sociology as "broadly" as he does.

"Gail" sent this letter to "Colleagues and Friends of Ken Westhues", along with her own covering letter, expressing her view that the penalties imposed on Westhues were "draconian", and urging her readers to express their support of Westhues in letters to the President of UW, with copies to Westhues as a "morale-booster". Later, in evidence given to the Ethics Committee, Westhues acknowledged that he fully expected that "Gail" would disseminate this letter to a list of Westhues' colleagues outside the university.

A few people at UW were included in this mailing but the other parties directly involved in the dispute only learned about it second hand.

Westhues' complaint was picked up, too, by John Fekete who devoted a chapter to it in *Moral Panic: Biopolitics Rising*. In Fekete's book, Nelson is directly named and — among other less flattering characterizations — she is described as a "feminist powerhouse" who "rushed" to the attack when Westhues criticized her. Fekete's description of this dispute seems to be based entirely on Westhues' accounts; Nelson and Lambert have stated that no other member of the department was contacted by Fekete in preparing his account of the events at UW.

### **Nelson Files an Ethics Complaint**

As the Grievance Counsellors wound down their unsuccessful efforts to resolve the dispute, and just as Westhues was preparing to move to the formal process, he was informed at the end of March that Nelson had filed a complaint under Policy 33:

"My complaint is that Professor Westhues attacked my personal integrity beginning with my work as chair of a Ph.D. comprehensive examination committee, which evaluated the competence in sociological methods of one student.... Professor Westhues' conduct towards me, which has included verbal and written assaults upon my personal integrity, my status as a scholar, and my role within the department, has gone far beyond the bounds of proper and allowable behaviour."

"... In Professor Westhues' Statement of Grievances...(he) acknowledges his earlier misconduct towards me... he also continues to impugn my character in this document intended for receipt by most members of my department, among others..."

By way of remedy, Nelson sought:

- (1) that the ethics committee order that Westhues should cease his attacks on my competence and character immediately, and inform him that he must not interfere with the exercise of my academic duties again;
- (2) that the original sanctions put forward by Professor Lambert be ordered to stand;
- (3) that the grievances laid against my eleven departmental colleagues and my chair by Professor Westhues, be set aside as vexatious;
- (4) that these matters be expedited as quickly as possible and forever more laid to rest.

In an extraordinary case, we have yet another extraordinary development. It's extraordinary — not because of what Nelson says, which is pretty much what might be expected — but because it appears in the forum of the Ethics Committee.

Why is it here? Why isn't this before the Faculty Grievance Committee, where it could be entered quite properly as evidence by Lambert in defence of his disciplinary action? Why is Nelson asking the Ethics Committee to quash Westhues' grievance?

Part of the answer appears to lie in a letter that Nelson wrote, on March 2, to the chair of the *Faculty Grievance Committee*. In the first paragraph of her submission, she says, "Further to our conversations of February 25, please allow this... to serve as a formal statement of grievance... *under University of Waterloo Policy No. 63.*" (Emphasis added.) (February 25 is one day after the chair of the Faculty Grievance Committee has acknowledged receipt of Westhues' second statement of grievance and begun

processing it.)

What happened subsequently is somewhat unclear. It appears that the chair of the Grievance Committee, either alone, or with the concurrence of the chair of the Ethics Committee, had taken the decision to refer Nelson's complaint to the Ethics Committee. It does not, however, seem that either chair acknowledged in print that this re-routing of Nelson's complaint had occurred.

The Ethics Committee informed Nelson they could not do anything about quashing Westhues' grievance or maintaining Lambert's discipline of him — since those matters were before the Faculty Grievance Committee. But they did say that they might be able to do something about the first remedy she had requested.

Having made the decision to accept Nelson's complaint, the Committee had to draw careful distinctions in order to review the matter within the confines of Policy 33. In its final report, the Committee said that its enquiry "was about the professional relationship between the Complainant and the Respondent. It did not extend into an enquiry of the oral examination itself, nor did it involve a review of what might have happened in recent months between other faculty members... and Dr. Westhues, or between his Department Chair and Dr. Westhues. While the Committee considered it relevant to consider some evidence of motive for actions, it was not prepared to extend the enquiry to matters beyond its jurisdiction."

Thus, the fact that Westhues had already been severely punished was set aside because the Committee decided that it could consider only the ethics of Westhues' behaviour in isolation.

The Ethics Committee then proceeded to assess the question of whether Westhues' behaviour was unethical. After examining the various versions of Nelson and Westhues' arguments, reviewing Westhues' statement of grievances, and considering the "Dear Gail" letter — which had now become known and incorporated in the complaint — the Committee arrived ineluctably at the conclusion that Westhues "was in violation of Policy 33. His behaviour constituted an attack on the Complainant's competence and character... an attack on (her) security (amounting to) interference with her ability to perform her academic duties."

Having come to this conclusion, the Committee, in conformity with its mandate, had to make a determination about what might be an appropriate remedy — and added a further and onerous penalty to the severe punishment already imposed. The Committee's principal recommendations were that Westhues be required to accept the Committee's findings and that he be required to write an apology. This apology, to be vetted by the Committee, should be published in the *UW Gazette*, and sent to the recipients of the "Dear Gail" letter. Westhues had to "cease — privately and publicly — from making any further attacks, directly or indirectly, upon Professor Nelson." But he could still present his case "in a legitimate and truthful way" to the Faculty Grievance Hearing Committee. Finally, the letter of apology should be published on the Internet.

Whatever one makes of the Ethics Committee requiring Westhues to apologize — when he had already attempted to do so, and when Nelson had categorically stated that no further apology would be accepted — it has to be recognized that a coerced public apology is a very severe sanction that is extremely rare in labour law. The additional requirement that the apology be broadcast on the Internet makes this an extraordinarily onerous punishment — a punishment that is unparalleled in the experience of the Academic Freedom and Tenure Committee. Adding new sanctions, without considering the appropriateness of the administrative sanctions already imposed, also seems to the Academic Freedom and Tenure Committee to be peculiar and unfair.

While it is not entirely clear what the Ethics Committee had in mind, the requirement that Westhues "accept" the Committee's findings and that he cease, publicly and privately, from any further attacks on Nelson, also seem to go far beyond the range of discipline usually seen in such cases. While it might be appropriate for such a Committee to attempt to control public attacks against a faculty member, it seems that the Ethics Committee was infringing on purely private matters (though this might not have been their intent) that in normal circumstances surely should remain beyond the control of the University. In extreme cases, for example a pattern of continuous and persistent harassment, such remedial action might be

appropriate. However, the facts of this case do not appear to meet that description. In any case, these matters soon became moot, given what happened next.

### **Westhues Complies with the Committee's Recommendations**

After the VPA & Provost (Professor Jim Kalbfleisch) wrote to Westhues, saying that he accepted the recommendations of the Ethics Committee, Westhues replied that "out of respect for the university" he would comply to the best of his abilities, "notwithstanding (his) most grievous objections to the proceedings recently concluded under Policy 33", thereby in effect waiving his right to appeal the VPA's decision to the President.

Westhues enclosed a statement of apology and gave an undertaking to "conduct (his) relations with Professor Nelson in accordance with university policy and standard norms of civility and collegiality." Westhues further agreed to send a copy of the apology to everyone he knew to have received the "Dear Gail" mailing. He indicated that he was aware of the time limits governing a possible appeal to the President of the University.

Kalbfleisch agreed that that would be acceptable, but asked Westhues to give him a list of all those to whom the letter of apology was to be written.

Draft letters of apology went back and forth between Westhues and Kalbfleisch and the Ethics Committee. Nelson was not consulted by the Ethics Committee about the wording of the apology. Finally a draft was agreed to and Kalbfleisch said that he would have it published in the *Gazette* and posted on the Internet. "It is my understanding that you will send a signed copy to everyone whom you know to have received your letter of March 15. A listing of those individuals will be sent to me."

### **The Letter of Apology**

Westhues sent out the letter of apology that he had been required to write, as agreed. But he accompanied it with a two-page cover letter thanking his colleagues and friends for all their letters and other gestures of support, complaining at length and passionately about the ethics process, and reviewing his objections to the findings of the committee (at least some of which had been modified by Kalbfleisch). He asked his readers to indicate whether he could turn their names over to Kalbfleisch. He reiterated his claim that "the fact remains that except for speaking harshly to a colleague, I have done nothing contrary to university policy or standard academic norms, certainly nothing to warrant the disbarment from graduate teaching officially imposed on me."

### **Kalbfleisch's Response**

Kalbfleisch discovered from a third party how Westhues had distributed his letter. Kalbfleisch phoned Westhues and told him that he had violated his agreement and had spread further misinformation about the case. After consulting with the chair of the Ethics Committee and briefly informing Nelson, Kalbfleisch wrote an open letter to the UW community reporting his view of the case and the findings of the Ethics Committee. The open letter and the report of the Ethics Committee were subsequently published in the *UW Gazette* and on the Internet.

In response, Westhues wrote a letter to Kalbfleisch on June 12 which angrily criticized Kalbfleisch's actions, reiterated his view of his interactions with Nelson, and objected to the requirement that he give Kalbfleisch a list of the recipients of the "Dear Gail" mailing.

"I cannot imagine a more total form of capitulation you could demand in the present case than a mailing list of my colleagues and friends, for the purposes of sending them a false and defamatory report of the Ethics Committee. To accede to your request would make me a party to libel against myself. By your open letter to the *Gazette* and by publishing the Ethics Committee report, you have already done me unspeakable injury. Your action is without precedent in the history of our university, possibly without precedent in Canadian academic life."

Whatever one makes of these objections, it must be noted that Westhues had indicated through his actions that he was willing to comply with Kalbfleisch's requirements, and he did not exercise his right to

appeal the judgment of the Ethics Committee.

### **The Grievance Hearing Committee Resumes**

Once the proceedings of the Ethics Committee had come to an end, the Grievance Hearing Committee took up its work.

The Committee held a couple of hearings, which were preoccupied with matters of procedure. The substance of Westhues' grievance was never considered by the Committee.

The first procedural issue to occupy the Committee's attention arose when Lambert insisted on the right to call Dubinski as a witness. Dubinski and Westhues argued that Dubinski should not be required to appear as Lambert's witness, since he had only ever acted as Westhues' "colleague/advisor" in the case. The Committee agreed with Lambert and ruled that Dubinski should make himself available in this way.

In response, the President of the FAUW, Professor James Brox and the VPA & Provost held a meeting, and asked the chair of the Hearing Committee to meet with them. The chair defended the Committee's ruling, but Brox offered a contrary legal opinion from the CAUT that supported Dubinski's and Westhues' view of the matter. The Committee then reversed its ruling. However, Lambert continued to insist on his position.

The Committee also had to deal with issues of confidentiality. The Committee took the position that each party ought to be able to discuss the case with legal counsel and with their colleague, but with nobody else. Lambert indicated that he was willing to abide by this ruling. Westhues and Dubinski stated that while they would agree not to publicize material from the hearings, they reserved the right to consult as they saw fit. Lambert objected that permitting the possibility of wider consultation might impair his ability to make his case, because witnesses might be reluctant to appear. (He had by this time consulted with the Associate Dean and the Dean of Graduate Studies, the Dean of Arts, the Associate Provost, the University Secretariat, the university's legal counsel, the FAUW, and a retired member of the department, as well as receiving the submissions from his eleven colleagues.) To the end, the Grievance Hearing Committee insisted that Westhues and Dubinski agree to abide by a statement on restricted consultation that the Committee had developed.

There was a further disagreement over the statement of grievances. Following discussions with FAUW and the chair of the Grievance Committee, Westhues had agreed to remove his eleven colleagues as respondents. His grievance, nonetheless, still contained references to a conspiracy between Lambert and the eleven members of the Department who had signed letters to Lambert. One of those members had threatened legal action unless these references were withdrawn. In addition, the Committee — even though it had accepted that Westhues had a valid grievance under Policy 63 — requested that Westhues specify in writing, before anything was discussed at the hearings, how each and every one of his specific allegations or charges related to the possible grounds for bringing a grievance under Policy 63. Westhues' position was that he could not understand what further clarification the Committee really needed in advance of discussing his allegations at a hearing.

The CAUT Academic Freedom and Tenure Committee believes that this dispute marks a critical failure of the process; in our view the Faculty Grievance Committee should have heard the grievance. Even if the Committee believed that certain parts of the grievance were not well founded or were beyond its jurisdiction, it should nevertheless have heard submissions on these issues. Even if it declined to proceed further with those parts of the grievance, it should not have refused to hear and rule on the remaining portions of the grievance that were within its mandate.

Finally, on July 18, Westhues wrote the committee to say that they could treat his grievance in any way that they thought appropriate, but that he would no longer attend hearings unless requested to do so to answer questions or to give "serial and independent" testimony in strict accordance with the published terms of Policy 63.

The Committee decided that Westhues' response made it impossible for them to proceed, and on July 21, they wrote the parties indicating their intention to stand down.

Again, the Committee's refusal to proceed was, in our view, in error. In discipline cases, the onus of proof is on the administration to make its case. Thus, the Committee could have proceeded to hear the grievance, calling upon the administration to make its case against Westhues, and leaving Westhues to reply within the formal procedures of the Committee as they were published at the time. At least the merits of the administration's case would have been heard and Westhues would have had the opportunity to address their case against him. He might not have been satisfied with the outcome, but he could not have argued that the Committee refused to grant him a hearing, nor that he was deprived of an opportunity to address the administration's arguments.

A month of efforts to restart the hearings followed. The Committee outlined seven conditions, agreement with which was made a precondition for the resumption of hearings (including the requirement for restricted consultation and the requirement for further clarification of the written grievances). The Committee noted that when they expressed concern that several of Westhues' complaints appeared to involve questions of ethical behaviour, Westhues replied that every single one of them could be viewed in this way. The Committee "wondered" whether Westhues wished to re-position his grievance before the Ethics Committee. No agreement was reached on anything and on September 6 the Committee *formally* stood down.

A preliminary report from the Committee was issued on November 7. Westhues objected that the report had no standing since the Committee had not considered the substance of his grievance. The Committee disagreed and filed a final report on November 25. Four "recommendations" were included:

- that no action be taken on Westhues' grievance until he clarified the grounds for them as specified by the Hearing Committee,
- that no action be taken under Policy 63 until Westhues rewrote his grievance to include only Lambert,
- that no action be taken until Westhues' and his "academic colleague" agreed to the Committee's rulings on confidentiality (i.e. the ruling restricting their right to consult), and
- that those responsible for any continuation of the case be provided with a copy of the report.

Finally, on November 29, 1994, President James Downey wrote to Westhues to say that he accepted the recommendations of the Grievance Committee and indicated that Lambert's disciplinary measures would stand.

Downey stated that he believed that the conditions set down by the Grievance Hearing Committee were reasonable, and that he saw no reason for another Hearing Committee to consider the case.

Downey did however offer to engage a mediator to assist Westhues and his departmental colleagues to effect a reconciliation. Westhues pronounced himself ready to accept mediation.

### **Attempts to Introduce a Mediator Fail**

There followed a year of efforts to obtain the agreement of the department to engage in a process of mediation. Don Savage, on the instructions of the CAUT AF&T Committee, was an active participant in this process. None of these efforts met with success.

At least part of the reason that attempts to bring about mediation failed has to be traced to Westhues' request, on December 14, 1994, that the Senate Executive investigate complaints from former students and faculty about the past treatment of women in the department. These complaints, "contained in letters from seven respected female professors" were actually drawn from Westhues' copies of letters sent to President Downey in response to the "Dear Gail" mailing.

President Downey asked Westhues to withdraw his request for an investigation because Downey was concerned about the effect that moving ahead with his request would have on efforts to resolve Westhues' complaint, and Westhues did so. However, President Downey then provided assurances to the Senate Executive that the matter *would* be investigated and asked the Dean of Arts to implement such an investigation. A committee was established to review "only the current opportunities and impediments



for women in the department of sociology" using procedures that would keep "all conversations and written submissions... in strictest confidence." The committee surveyed all the women sociology majors, interviewed all the women in the department who were willing to talk to them, and reviewed written submissions from anybody who wanted to write in. The committee submitted its report to the Dean of Arts on May 9, 1995.

The report was supposed to "clarify matters" for Westhues, the department and the Senate, but Westhues did not see a copy of the report for a month after it was filed, the department did not get to review the report until the end of September, and Westhues' requests for a personal copy of the report were also denied until then.

These delays in releasing the report can be largely attributed to the fact that the authors of the report apparently by themselves decided that the *entire* report should be treated as confidential. When the report was given limited release within the department, it was seen that the authors had cleared the department of suspicion. The authors also passed along in their report some criticisms of Westhues they had picked up in their investigation for his continuing to press his case.

It is clear that Westhues' request for an investigation sparked resentment in the department and provoked at least some administrators to the view that Westhues was not really interested in mediation. In any case, no one apart from Westhues, at any level of the University, was willing to have a mediator discuss the disciplinary measures that had been taken against Westhues, and with that subject ruled out of discussion, there appeared to be little that mediation might accomplish. Only a few members of the department were willing to meet with a mediator, while most appeared to believe that achieving Westhues' "reconciliation" with the department could be achieved without the services of a mediator. Some, indeed, believed that too much time and energy had been consumed by the matter already: they said that they were quite prepared to treat Westhues in a collegial fashion, and in their view, it was up to Westhues to reciprocate these efforts. President Downey knew of these objections to mediation in June, but there was no subsequent discussion of the mediation proposal until September 6, 1995, when he wrote to Westhues to indicate that he would not appoint a mediator given the lack of support in the department.

### III. COMMENTARY

#### Summary of Findings

We have concluded that Westhues was not fairly treated in the course of the disciplinary action taken against him at the University of Waterloo. In particular, we believe that the process of handling his grievance was flawed, as a result of which his case was not properly heard or resolved. We also believe that the University's resort to the use of publicity against Westhues was unfair and inappropriate.

#### The Process of Handling Westhues' Grievance

We see little practical point in detailing every error in the procedures used to handle Westhues' grievance. Suffice it to say that the CAUT AF&T Committee believes that the evidence in this report points to a seriously flawed process, *the effect of which was to deny Westhues a considered, fair hearing of his grievance.*

From the very beginning of this affair — from Lambert's uncertainty about how he was supposed to consult about disciplining Westhues, to the report on the treatment of women in Sociology — a recurring theme has been that nobody knew what they were supposed to do, how they were supposed to do it, or what the rules were supposed to be.

The process followed by the chair of the department in imposing disciplinary sanctions was very badly flawed. In very great measure, this was due to the unclear procedures the chair had to work with. The delay in imposing discipline allowed matters to escalate out of control, with no one having any clear idea what, if anything, should or might happen in a situation that clearly was provoking considerable discussion in the department. Neither Nelson's report nor Westhues' replies should have been distributed to the department; that they were broadly distributed and discussed ensured that the controversy would get out of hand. With clear, fair procedures in place Lambert and everyone else would have known what

consultative mechanism should have been employed, and what further processes should then have followed.

In this dispute, Policies 63 and 33 set the stage for the enactment of a process in which a principal concern was how the dispute or parts of the dispute should be categorized, and who should deal with which bits. Nobody would — or perhaps could — tackle the whole problem. So it didn't matter which door the actors went through, it was always the Wrong Door. Only part of the issue was aired — Nelson's complaints against Westhues — but the severe sanctions imposed on him were left in place, indeed added to, without his side of the case being ever being fully addressed.

The University's failure to deal with the issues involved in this dispute has resulted in serious damage for the parties involved. Westhues, Nelson, Lambert and the rest of the department have all suffered a great deal — and not just because of the attacks of other parties in various forums — but because the University of Waterloo has in place a set of mechanisms that are so radically flawed that a fair, clear and binding resolution of the dispute was unlikely from the very beginning.

While we have made several criticisms of the decisions made by various members of the UW community in dealing with Westhues' complaint, *none of this should be construed as implying that we doubt their sincerity or goodwill in trying to make the process work.* Any group of intelligent, fair-minded and well-intentioned people would have had extreme difficulty in implementing Policies 33 and 63 fairly in this dispute. The fault lies in the procedures themselves.

Unless the academic staff and the administration of the University of Waterloo want further disasters of this order, it is absolutely imperative that Policy 63 and 33 be replaced by a comprehensive agreement between the FAUW and the administration that clearly lays out a fair and detailed grievance process, establishing procedural protections for all parties in a dispute, and providing for the final and binding resolution of these matters. There is no justification whatsoever for the University of Waterloo community to accept or ignore the deficiencies in its procedures that have been pointed out at various times in the last twelve years. Practically any faculty collective agreement in the country can serve as a guide-- the vast majority provide far superior procedures for dealing with grievances than those at the University of Waterloo.

Protests that grievance procedures in collective agreements are too "adversarial" and that they are damaging to "collegial" governance are simply beside the point. It would be difficult to imagine a process that was, in practice, less collegial and more adversarial than what we have seen in the present case. The parties to a grievance are necessarily, to a lesser or greater extent, in an adversarial relationship that in some cases assumes the intensity of a pitched battle, but they *all* deserve the opportunity to be dealt with according to minimal standards of fairness and due process. Collegial problem-solving and informal resolution of difficulties are to be encouraged, of course, but this is much easier in a context that provides for fair and binding resolution of disputes, should informal processes fail. Policies 33 and 63 can easily lead to a situation, as we have seen, in which *ad hoc* decision making can undermine procedural fairness and effective conflict resolution, making a proper hearing of both sides of a dispute impossible.

All of this is essential too, just so the women and men who try to serve the interests of their colleagues through the FAUW have clearer guidelines about how they can best do that. Disputes involving several members of the faculty are notoriously difficult to deal with even at universities that have sensible procedures in place, but at the University of Waterloo they do not even have a clear process for representing the interests of one faculty member involved in a dispute with administrative officers of the university. The procedures at present are so confused, internally contradictory and imprecise that a proper role for the Faculty Association is very hard to make out in any particular instance. A clear, sensible, well-understood and accessible grievance procedure would, in future cases, eliminate much of the confusion and controversy that attended the FAUW's actions in this case.

### **Were the Allegations against Westhues Proper Subjects for Discipline?**

Lambert alleged that Westhues attempted to influence the student's examination and acted in an uncollegial and intimidating manner towards Nelson. Allegations such as these are proper subjects for disciplinary proceedings.

## **Was he Properly Disciplined?**

The answer is no.

Discipline can only be said to be fairly imposed if both the truth of the allegations in question and the appropriateness of the penalty imposed are subject to independent and fair review. The onus of proving just cause for discipline must lie with the University. Westhues denied many if not all of the allegations against him, and of course contested the penalties imposed upon him. For the reasons stated at the outset of our commentary and throughout this report, we believe that the process of handling Westhues' grievance was flawed in many respects, and the effect of this was to deny him a considered fair hearing of his grievance.

Our concerns about the process of handling this case are sharpened by the type and severity of sanctions imposed upon Westhues. The lengthy suspension from responsibilities in the graduate program was a particularly onerous penalty, especially in view of the fact that Westhues had never before been subject to discipline in his 25 year career at the University of Waterloo. The Ethics Committee then added to this penalty a forced public apology, an unusual penalty generally avoided in labour law because of its humiliating consequences. Natural justice requires that the imposition of such sanctions, even if they were appropriate, be subject to a proper, thorough and independent third party review.

It does seem clear that Westhues' behaviour towards Nelson after the examination was improper. In spite of his protestations that he had been guilty of nothing more than getting angry at Nelson, he acknowledges his "misconduct" in his initial statement of grievances: "I have acknowledged and apologized for crossing the line, in my conversations with Nelson, between desirable argument and reprehensible personal attack". His apologies did not mitigate this. They simply added insult to injury, repeated his offenses, and attempted to justify them in terms of Nelson's alleged failings. Thus, it was probably appropriate that this aspect of Westhues' behaviour should have resulted in *some* form of disciplinary action.

Nonetheless, while we conclude that a reprimand and warning were probably warranted, and that it might be appropriate that there be some impact on Westhues' annual merit increment for actions which he himself has acknowledged, we cannot agree with the University Administration that a proper case for further disciplinary action was made out.

## **Do Westhues and His Colleagues Have the Right to Criticize Each Other?**

Of course they do.

Academic freedom protects the right to make such criticisms if they are not defamatory, harassing or directly intimidating. The University has a duty to defend frank and free speech, which can sometimes be negative.

## **What About the Meeting in the Department?**

One of Westhues' principal complaints about his treatment in the department was that his colleagues engaged in a "conspiracy" to punish him by holding their meeting in December 1993 without his knowledge and without giving him a chance to defend himself. It was out of this meeting that the two petitions to the department chair arose. His colleagues have several times defended themselves in holding this meeting in terms of their rights of free speech and free association. They say that they should not be faulted because faculty must enjoy the freedom to engage in criticism of each other, and they must be free to meet with each other with respect to any matter of importance.

Of course, they are correct in these assertions. However, the Academic Freedom and Tenure Committee wishes to underscore the risks in such informal proceedings. These risks are, in fact, a primary reason for the development of formal grievance and discipline procedures in universities that give a central place to protecting fairness and due process. That the meeting took place at all, again, fundamentally attests to the failure of the university to have in place clear, fair, and well-understood procedures for handling allegations of misconduct.

### What About Use of Publicity by Certain Parties?

We believe that the University Administration's resort to publicity, even if it was in response to Westhues' own use of publicity, was inappropriate and unfair. Moreover, after reviewing the file, the CAUT AF&T Committee was overwhelmingly of the opinion that resorting to publicity (in the mails, on the Internet, in the UW Gazette and the FAUW Forum, and elsewhere) served no one's interests and was damaging to the general reputation of the University itself. Specifically, the Committee makes the following observations:

- While the Committee believes that Westhues had a right to comment publicly on his case, within the limits of the law of defamation, it feels that he should have been much more sensitive to the power difference between himself and Nelson, and conducted himself accordingly. While he did not name Nelson in the "Dear Gail" letter, given his years in the university environment he should have been aware that Nelson's identity would very likely become public as a result of this letter, sooner rather than later. Given this likelihood, and Nelson's untenured status, we feel strongly that Westhues' action in writing the "Dear Gail" letter was unfair, since he criticized Nelson in a way that allowed her no real possibility of a reply. A similar comment needs to be made about the discussion of the case in *Moral Panic*, which seems to be based entirely on Westhues' account of events. Once again, a one-sided picture of Nelson is presented in a forum where she cannot adequately defend herself. Those who have been persuaded by these public statements have taken information received from interested parties as if it represented the whole truth, suspending that careful, critical judgment which ought to deter them from drawing conclusions based on the evidence given by one side in a controversy.
- The Committee notes that, just as Westhues was insensitive to the power imbalance between him and Nelson, so too was the university administration insensitive to the power that it held over Westhues. We believe that it was entirely inappropriate for Professor Kalbfleisch to retaliate against and punish Westhues by broadcasting his views on his case on the Internet and elsewhere. Why it was decided to use the Internet in the first place is very unclear; there does not appear to be a rationale anywhere in the documentation for this extraordinary decision to publish details of personnel matters in a way that both damages the individuals concerned and might cast doubt on the University's ability to manage its own affairs.
- In the final analysis, the Committee concludes that the widespread publicity by the various parties to this case again reflects, at least in part, the inadequacy of internal dispute resolution mechanisms at UW.

### IV. RECOMMENDATIONS

With respect to Professor Westhues' complaint, the Academic Freedom and Tenure Committee recommends:

1. that the suspension of Professor Westhues from involvement in the graduate program of the University be lifted immediately; and
2. that all material the university administration has placed on the Internet relating to this matter be removed forthwith.

With respect to Policies 33 and 63, we recommend:

3. that procedures be immediately modified so that in any subsequent grievance a single tribunal shall hear the entire grievance, including any counter-complaints; and
4. that the FAUW and the administration of the University of Waterloo negotiate an agreement with respect to discipline and faculty grievances. This agreement should be in accordance with relevant CAUT policies and should be guided by the recommendations of the previous CAUT task forces on these issues.

Final Report Approved by CAUT Academic Freedom and Tenure Committee May 25, 1996.

Roger Gannon, Chair  
 Patrick Grassick  
 Glenna Knutson  
 Patrick O'Neill  
 Gail Storr

### Notes

- 1 November 12, 1984. Savage, D.C., & Mullan, D. *The Savage-Mullan Report: Task Force on Procedures Relating to Academic Appointments at the University of Waterloo.*
- 2 March 23, 1990. Geramita, J.M., Savage, D.C., & Mullan, D.J. *Report of the Canadian Association of University Teachers Task Force on the Adequacy of the University of Waterloo's Policies Affecting Faculty.*
- 3 January 27, 1995. *Report of the Provost's Ad Hoc Committee on Harassment & Discrimination (PAHCOHAD).* The report states:
 

"Input from committees operating under current policies, as well as from individuals, also indicated concern about the arbitrary separation of ethical issues from other grievable actions. Often a complaint will contain claims (e.g., abuse of supervisory authority) which now must be dealt with by the ethics Committee, together with claims of inappropriate administrative action which now falls under one of the grievance processes. Not only is it difficult to separate the two, it is also possible that some complaints could 'fall between the cracks' as hearing committees try to sort out jurisdictions. We do not believe that was ever UW's intention to require a complainant to divide his/her grievance into two parts to be dealt with under different policies. Accordingly...we recommend that the exclusions of matters of ethical behaviour now present in Policies 63 and 70 be dealt with by an agreement to permit the establishment of joint tribunals, at the discretion of the Chairs of the relevant panels, so that cases are heard just once and in their entirety..." (p. 8).
- 4 op. cit., p. 11.
- 5 That letter, dated November 29, 1994, sets forth President Downey's acceptance of the findings of the Faculty Grievance Hearing Committee after it had stepped down from its consideration of Professor Westhues' grievance. It reads in part: "Since I believe the conditions set down by the Committee for the hearing of your grievance were reasonable, I do not feel there is any point in requesting that another hearing be struck under Policy 63 to consider this case."

### RESPONSES TO THE AF&T COMMITTEE REPORT

My views of the report of the CAUT Academic Freedom and Tenure Committee accord fully with the statement of Professor Ron Lambert, Chair of the Department of Sociology. The following points are worthy of emphasis.

1. No one who bothers to consider the facts of this case will mistake the AF&T Report for an impartial review. The disregard for fairness and natural justice in a body so free with advice to others on these matters is distressing but increasingly unsurprising.
2. The charges against Professor Westhues were that he interfered with the administration of a comprehensive examination, with the apparent intent of attempting to influence its outcome, and that, in doing so, he was also uncollegial in his relations with an untenured member of faculty.

If Professor Westhues believed that his Chair had erred in applying sanctions, surely he could have

demonstrated his complaints against Professor Lambert before the grievance committee. I am not prepared to believe that the members of the grievance committee, chosen jointly by the presidents of the University and the Faculty Association, and chaired by a former president of FAUW, acted in anything but good faith.

The AF&T Report offers no reason to believe that Professor Lambert erred in imposing sanctions, or in his method of doing so. It is revealing that the Report is mute on whether Professor Westhues had any responsibility to proceed with his grievance or, though this matter was explicitly raised by Professors Lambert and Nelson, whether the FAUW had not acted in an invidious manner throughout the process. Thus all the blame is conveniently reserved for the university administration.

3. This university is governed by a set of policies that have been put into place over the years, under the authority of the University of Waterloo Act. The role of faculty has been paramount in the formulation of these policies. This is nowhere more evident than in Policy 63 (Faculty Grievances), where the role of FAUW in formulating the policy is described and in which the execution of the policy is the joint responsibility of the presidents of the University and FAUW. Over the years, there have been many revisions to existing policy, as there will no doubt be in the future.

The AF&T Committee does this university a disservice when it ignores the requirements of academic citizenship. Binding arbitration appears to the AF&T Committee as a magic solution; but without addressing the more fundamental problem of people's willingness to work together, arbitration simply offers a much more expensive dumping ground for disputes. The Westhues case is more a problem of attitude and will than of policy.

While the University remains willing to explore with the Faculty Association alternatives to the current grievance policy, it must be recognized that collegial resolution of disputes will always depend on a measure of good faith and fair dealing by the parties. In this particular case, there has been a regrettable absence of both good faith and fair dealing on the part of the FAUW and the CAUT, which has contributed to the difficulty of effecting a reconciliation between Professor Westhues and his colleagues.

**James Downey**  
**President, University of Waterloo**



As Department Chair, I imposed sanctions on Professor Ken Westhues on the grounds that he had improperly interfered with the administration of a doctoral comprehensive examination and that he had also threatened the job security of an untenured faculty member. The grounds on which sanctions were imposed are fully documented, a fact which continues to elude CAUT AF&T. Westhues' subsequent behaviour, and his continuing demands that the sanctions be lifted in their entirety, offer no reason to believe that he would behave any differently today. It is irresponsible on CAUT's part, therefore, to recommend lifting his partial suspension from the graduate program.

Although CAUT has agreed that two of the three sanctions should stand, it nonetheless concludes that Westhues was unfairly disciplined. "Discipline can only be said to be fairly imposed," CAUT pronounces, "if both the truth of the allegations in question and the appropriateness of the penalty imposed are subject to independent and fair review." CAUT's reasoning on this point thus establishes an interest on Westhues' part in refusing to cooperate with the UW grievance panel. In terminating the grievance proceedings, Westhues deprived me of an opportunity to demonstrate the appropriateness of my actions. The panel asked, over Westhues' objections, that he attend the hearings; that he not make allegations against colleagues who were not parties to his grievance against me; and that he respect confidentiality, a not unreasonable request given the requirements of Policy 63 and his propensity to trumpet his personal misfortunes. Having thwarted the grievance panel's good faith efforts to hear his grievance, and pampered by CAUT, Westhues pleads victim status.

CAUT has reserved most of its criticism, however, for this University's grievance and ethics policies. The

Committee pretends that it is disinterested and presumes to instruct the University on fairness and natural justice. Judge CAUT's own conduct by the standards of fairness which it professes:

- FAUW invited CAUT to intervene on Westhues' behalf precisely because it represents his interests, and not the interests of his colleagues, the Department or UW;
- The AF&T Committee, including its membership and investigatory mandate, is the creature of CAUT and answerable only to CAUT;
- In laying blame, CAUT has refused to pass judgment on FAUW cronyism and FAUW's mischievous role in the Westhues case, on the grounds that this exceeds CAUT's jurisdiction;
- Having established a "fact-finding" sub-committee, consisting of the head of CAUT AF&T and its legal counsel, CAUT then claims to have ignored the findings of this sub-committee in preparing its final report;
- CAUT has consequently limited its "investigation" to an indeterminate number of written submissions whose origins and contents have been withheld from the scrutiny of the University.

Until CAUT has put its own house in order, its gratuitous advice to this University must remain tainted. To correct the flawed analysis and special pleading contained in CAUT's final report, my document, *The Westhues Case: A statement of Fact*, has been placed on the Internet at <http://www.uwaterloo.ca> under *documents*.

### Ronald D. Lambert



If I am ever asked for advice by someone who has the misfortune to come across a bully masquerading as a Full Professor and who tells me that the Bully has attempted, in various ways, to intimate them into passing the Bully's favoured student on a Ph.D. comprehensive exam, my advice will be:

1. "If you don't have another job lined up, and the student's performance on the exam is substandard, pass the student and forget about standards"; or
2. "If, in your best academic judgement, the student's performance does not warrant a pass, fail the student, and quit your job."

If one asks one's Chair to intervene, this will cause the Chair countless hours of time, energy and eventual anguish. If the Chair attempts to receive input from colleagues/administrators, the Chair will be portrayed as slow and ineffectual. If the Chair acts on his/her own, s/he will be portrayed as a draconian and despotic. The AF&T of the local Faculty Association will line up squarely behind the Bully and suggest that the Chair and the "Overreacting Colleague" write a letter of apology to themselves and that the Bully will consider signing select portions of it. When the Bully is told that the Overreacting Colleague and the Chair do not wish to play this little game, their refusal will be portrayed as evidence that they were never really serious about reconciliation in the first place.

Should the Overreacting Colleague inform his/her colleagues of what occurred, and they call for an investigation, this will be portrayed as a "cabal," mobbing," and an "informal court." However, when the Bully writes to 100 "Friends and Colleagues" this will be seen as a reasonable way of spending a wet Saturday afternoon. The Bully will then file grievances against the whole department and shriek "conspiracy!" In a volume of grievances the size of the New York City telephone book the Bully will offer further "proof" of the "plot" that the Bully supposedly suspected all along. The Bully will emphasize that the exam was scheduled to coincide with the anniversary of the fall of Germany in WWI and will point out, in Eureka fashion, that the student was born in Germany. Other professors whom the Bully disapproves of will be accused of lusting after the Bully's graduate courses. Out will come the F-word (Feminist) and those rubber wedding rings, "political correctness" and "female tribalism."

Committees of Review will be struck. Should they fail to see things the way the Bully does, the Bully will proclaim their members to be part of the Conspiracy (i.e., Female Tribalists, the Politically Correct, the Morally Bereft...). The Bully will never wonder, if those quiet moments of the early dawn, whether the Overreacting Colleague could possibly have been right. In the "I know best" epistemology of the Bully,

the Bully is always more sinned against than sinning.

I guess the only real option is Option #2. Upon reflection, that would now have to be my advice.

### Adie Nelson



"Societies appear to be subject, every now and then, to periods of moral panic." So Stanley Cohen began his classic *Folk Devils and Moral Panics* (1972).

This report documents the current panic surrounding gender at one university. The evidence it reviews does not fit a picture of academics confused by faulty policies, doubtful about how to proceed, and therefore stumbling into unfairness. The evidence shows academics shot outside the orbit of policy by a woman's cry of intimidation and chilly climate, freed by her cry from reason and doubt. Much additional evidence unmentioned in this report fleshes the latter picture out.

My "case" serves to expose the biopolitical panic at Waterloo, but other professors, students, and staff have fared worse than I, in being forced out of the university altogether. They are male and female, white and nonwhite, gay and straight. One after another they have been offered in sacrifice to the gods of groupthink (Janis 1982) and corporatism (Saul 1995), in an effort to relieve ambiguities in Canada's "overall best" university (*Macleans* 1995), enforce a technocratic orthodoxy, and strengthen a local elite. The craziness and waste described here are the tip of an iceberg that has made the climate chilly for many scholars of independent mind.

Let no one gloat over UW's predicament. Essentially the same panic has infected campuses across the continent (see Sommers 1994, Fekete 1994, Emberley 1996), as well as the courts, law, politics and the media (see Gwyn 1995, Laframboise 1996, Rauch 1993). How much CAUT is itself caught up deserves debate in this *Bulletin*.

The power of a group is such that anyone it officially deems to be a villain easily internalizes this identity and responds with Shylock: "Thou call'dst me dog before thou hadst a cause, But, since I am a dog, beware my fangs." I am grateful to Gail Paton Grant and the other children of Portia who have helped me resist such internalization. I seek no pound of flesh from anyone. I seek an end to the panic, accountability of UW to authorities outside itself, and lifting of the restrictions and stigma wrongly placed on me.

I appreciate the report's recommendations toward these ends, and support its call for policy reform. Mainly, I thank the committee for publishing its telling of the tale, and for inviting commentaries. One theme of the graduate theory course I used to teach is that truth lies in the process of honest, reasoned dialogue (Buber 1955), more than in what anybody says. If this report helps reactivate the dialogic process at UW and elsewhere, it will be worth the work and pain behind it. Our reputation matters less than our substance, our private feelings less than our public responsibilities (Eshtain 1993).

### Kenneth Westhues

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