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# Report of the Ad Hoc Investigatory Committee

## On the Seizure & Dismantling of **Blathering On in Krisendom,** a Satirical Sculpture by George Rammell, Department of Studio Art, Capilano University

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# Report of the Ad Hoc Investigatory Committee on the Seizure & Dismantling of *Blathering On in Krisendom*, a Satirical Sculpture by George Rammell, Department of Studio Art, Capilano University

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# 1 | Introduction

## Terms of Reference

In May 2014, the authors of this report were asked by the then Canadian Association of University Teachers (CAUT) Executive Director, Dr. James Turk, to form an Ad Hoc Investigatory Committee under the guidelines in Section 6 of the *CAUT Procedures in Academic Freedom Cases*.† The Committee was asked to undertake an investigation into the seizure of a sculpture created by Capilano University faculty member, George Rammell. Dr. Turk provided the Committee with written correspondence with Mr. Rammell and other relevant background information.

The terms of reference for the investigation are as follows:

- To investigate the circumstances surrounding the seizure of George Rammell's sculpture;
- To determine those responsible for the seizure;
- To determine whether George Rammell's academic freedom was violated;
- To address any larger issues for the Capilano academic community arising from these events; and
- To make any appropriate recommendations.

## Interviews Conducted

The following individuals were interviewed as part of the Ad Hoc Committee's investigation:

- George Rammell, Studio Art Instructor at Capilano University
- Brent Calvert, Capilano University Faculty Association President

- Joanne Quirk, Capilano University Faculty Association Past President
- Peter Matthews, Capilano University Facilities staff member
- Ben Lee, Studio Art Technician at Capilano University
- Laurel Whitney, Women's and Gender Studies Instructor at Capilano University
- Jennifer O'Keeffe, Studio Art Student at Capilano University
- Sacha Fabry, Capilano Student Union VP University Relations and Services
- Brittany Barnes, Capilano Student Union VP External
- Christopher Girodat, Capilano Student Union General Manager
- Robert Belton, Creative and Critical Studies Associate Professor at University of British Columbia Okanagan

The following individuals were invited to participate in the investigation, but declined the invitation to meet with the Committee:

- Jane Shackell, Chair, Capilano University Board of Directors
- Kris Bulcroft, President, Capilano University

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† CAUT, <http://bit.ly/1GOLz3Y>

## Documentation & Source Material

In addition to the above-mentioned interviews, the Committee relied on video recordings of the following important events at Capilano University:

- April 29, 2013** on campus public forum to discuss the program cuts.
- May 10, 2013** Birch Theatre public forum on program cuts.
- June 12, 2013** Presentation by then Capilano Faculty Association President Mark Battersby.
- May 23, 2014** Special Board of Governors meeting on budget.

The Committee also relied on audio recordings of the following:

- May 13, 2014** CBC Radio show *On the Coast*, which included interview with George Rammell.
- May 14, 2014** CBC Radio show *On the Coast*, which included interviews with Capilano University Board Chair Jane Shackell and Capilano University English Instructor Ryan Knighton.
- May 15, 2014** CBC Radio show *On the Coast*, which included interview with Capilano Students' Union representative Brittany Barnes.

Finally, the Committee gathered written sources such as University Policies, the Collective Agreement, statements from George Rammell and other faculty colleagues, and stories retrieved from print media.

## 2 | Chronology

### Events Surrounding the Seizure of the Sculpture

On the morning of Thursday, May 8, 2014, Capilano University Studio Art instructor George Rammell arrived at the sculpture area of the Studio Art Department to begin his workday. He discovered that one of his sculptures, *Blathering On in Krisendom*, was missing from the studio. The artwork was a satirical caricature of University President and Vice-Chancellor Kris Bulcroft, along with her poodle Margeaux, draped in an American flag. Fearing that the sculpture had been stolen, Rammell immediately called campus security. He was informed that security had received a directive from the University Administration to confiscate his artwork and remove it from campus.

Rammell continued to investigate the removal of his sculpture. He reported the suspected theft to the RCMP. A file was opened and an investigation began. Rammell also reported the removal of his artwork to the Capilano Faculty Association (CFA) and they in turn sought guidance from CAUT.

Rammell subsequently learned that Capilano University Board Chair, Jane Shackell,<sup>†</sup> had ordered the seizure of his artwork, and that the acrylic polymer sculpture had been cut into pieces during its removal. Ms. Shackell later stated that she alone had ... *concluded that the repeated display of this object on campus amounted to personal harassment [of the University President] and ordered it to be removed.*<sup>‡</sup>

### Events Leading Up to the Seizure

To fully understand the context in which Professor Rammell's sculpture was seized, it is necessary to review prior events that had transpired at the University. In the Spring of 2013, students, staff, and faculty at Capilano learned of the Administration's plan to eliminate programs and courses in studio and textile art, computer science, interactive design, and adult basic education. This was announced three days before the end of the term, and two weeks before the University Board was to vote on the planned cuts.

Senior administrators attempted to justify the cuts based on what they projected was a \$1.3 million shortfall in the University's \$89 million budget.\* To avoid a deficit, the Administration prepared a draft budget for the 2013-14 fiscal year that included discontinuance of the courses and programs noted above. It appears that the Administration did not consult with the University's Senate on the course and program cuts, even though the Capilano Faculty Association informed the Administration that consultation with Senate is required under the provincial *University Act*. Section 35.2 (6) (b) of the *Act* states that the senate of a special purpose, teaching university such as Capilano must advise the board, and the board must seek advice, on educational policy matters including, *the establishment, revision or discontinuance of courses and programs at the special purpose, teaching university.*

<sup>†</sup> Jane Shackell became Board Chair on August 13, 2013.  
<sup>‡</sup> Capilano University Special Board Meeting, May 23, 2014.

\* Crawford Killian, "Cuts at Cap U: Is Worse to Come?" The Tyee. May 1, 2013. <http://bit.ly/1dN3otg>.

Capilano University President and Vice-Chancellor, Kris Bulcroft, claimed that consultation with the Senate was not required. She indicated that the Administration was using *processes that were established by the University Act as well as our own Senate and Board ... [and we] did not deviate from those processes.*<sup>†</sup>

The Federation of Post-Secondary Educators (FPSE), on behalf of the Capilano Faculty Association, filed for and was granted an injunction temporarily suspending the Board vote on the program cuts on the grounds that the Administration had violated section 35.2 of the *University Act*. The budget authorizing program cuts was eventually passed by the Board on June 11, 2013.

FPSE also filed a lawsuit against the University over the lack of Senate consultation. On April 28, 2014, the British Columbia Supreme Court ruled that the University had acted contrary to the *University Act*. Justice Savage found that the University,

*does not have the authority to discontinue courses and programs as outlined in section 35.2(6) of the University Act, unless the decision to do so is made by the board after seeking advice on the matter from the Capilano Senate and the Capilano Senate has so advised the Capilano Board.*<sup>‡</sup>

Three days after the British Columbia Supreme Court ruling, the Capilano University Faculty Association unanimously passed a motion of non-confidence in President Bulcroft's leadership.

## Protests & the Administration's Reaction

Throughout the period of the controversy over the planned program and course cuts, many students, staff, and faculty at Capilano University organized demonstrations and other events to protest the Administration's actions. Artistic expression was a key part of the protests. Students who had created and displayed various sculptures on campus decided to register their displeasure with the Administration by either publically destroying their art works, or covering them in black tarps to symbolize what they termed the *death of art* at the University.

The Committee learned of instances where the Administration attempted to limit the activities of protestors. Jennifer O'Keeffe, a student activist enrolled in the Studio Art program, and several of her classmates identified what they believed were examples of questionable spending by the University. The students produced a leaflet documenting this information and distributed copies around campus. According to O'Keeffe, the Administration subsequently ordered the leaflets, posters and protest banners to be removed:

*Basically the students were having our own protest posters and expressions removed from the school and taken down and like we even had fact sheets .... Things were being taken down, the CFA banners that faculty had made and put up around campus were destroyed .... After a certain point we couldn't even have anything up for any length of time because it would just get immediately taken down. To a certain extent, your voice is just being shut down.\**

<sup>†</sup> Capilano University Special Board Meeting, May 23, 2014.  
<sup>‡</sup> *Capilano University Faculty Association v. Capilano University*, 2014 BCSC 712, <http://canlii.ca/t/g6npk>

\* September 12th, 2014 interview with former Studio Art student Jennifer O'Keeffe.

Jennifer O’Keeffe played the Committee a voice-mail message she received from someone in the Administration. Ms. O’Keeffe had inquired about banners she had helped create and that had been removed. The voice-mail message is as follows:

*Oh hi Jenny ... I’ve got some information regarding your banner. I’ve been informed that it has been disposed of, and that any and all signs that are put up around campus, do get removed and disposed of, so, unfortunately, I don’t have your banners to return to you.*

### George Rammell’s Sculpture

Like many students and colleagues at Capilano University, Professor Rammell was unhappy about the planned program cuts, and the manner in which they were being implemented by the Administration. A colleague suggested that Professor Rammell create a sculpture of President Bulcroft as an artistic expression of student and faculty displeasure with the University’s Administration. Professor Rammell describes the sculpture, entitled *Blathering On in Krisendom*, as a satirical monument to encourage discussion and debate about the issues that [students, staff and faculty] felt powerless to redress.† Rammell explained that he was offended by the Administration’s dictatorial style in cutting programs and courses. The sculpture, he said, was intended to hold up a mirror to the President’s promotional spin and contrast that with the reality of what many, according to Rammell, were facing: lay-offs, program cuts, half-finished diplomas, and a silencing of voices.

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† Ibid.

In addition to the sculpture, Professor Rammell also created a short satirical video, featuring the sculpture speaking about the program cuts.‡ A Capilano University student created a video as a class project approved by the student’s instructor, showing Professor Rammell making the sculpture and explaining the significance of the artwork.\*

### Seizure & Dismantling of the Sculpture

At a special Board meeting held May 23, 2014, Chair Jane Shackell stated that she gave the order to have *Blathering On in Krisendom* seized. She indicated that she had concluded that the repeated display of this object on campus amounted to personal harassment and I ordered it to be removed.§ She went to explain that she had determined that the object in question was being used in a manner that amounted to harassment and intimidation.††

Shackell said it was her decision alone to seize the sculpture. However, it is worth noting that President Bulcroft had also publicly criticized the sculpture a year earlier on May 10, 2013, at an employee forum to discuss the program cuts. At that time, Bulcroft stated that she had an obligation as a woman and as a leader to flatly denounce ... the making of this grotesque caricature. Capilano University, she said, is a campus that will not tolerate bullying and harassing behaviours.‡‡

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‡ <https://youtu.be/2TEj8-aDxsU>

\* <http://vimeo.com/91578073>

§ Board Chair Jane Shackell speaking at May 23, 2014 Capilano University Board Meeting.

†† Ibid.

‡‡ President Kris Bulcroft speaking at the May 10, 2013 Public Forum on Program Cuts.



## 3 | Analysis

### Harassment

The Administration's seizure of Rammell's sculpture was based on the claim that the art work amounted to harassment and bullying of President Bulcroft. In reaching this conclusion, the University referred to its *Harassment Policy*<sup>†</sup> and its *Respectful Learning and Working Environment Statement*.<sup>‡</sup>

The *Harassment Policy* defines two types of harassment – discrimination based on protected grounds and sexual harassment. The latter is defined as *comment, conduct or representations of a sexual nature, including sexual advances, requests for sexual favours, suggestive comments or gestures, or physical contact ....* Based upon the comments made by Board Chair Shackell and President Bulcroft, it appears that both were concerned the sculpture constituted a sexist and misogynistic representation.

There is, in our view, no reasonable argument to be made that the sculpture produced by Professor. Rammell was a form of sexual harassment. In his written submission to the Committee, Dr. Robert Belton, Associate Professor with the Faculty of Creative and Critical Studies at the University of British Columbia Okanagan, explained that within the history and iconography of political art,

*the caricatured depiction of President Bulcroft is actually rather tame, and could not reasonably be characterized as sexist since there are no gender specific signifiers of any sort that would trigger that theme.*

Laurel Whitney, an instructor in the Department of Women's and Gender Studies at Capilano University, informed the Committee that she discussed President Bulcroft's accusations with her departmental colleagues.

They concluded that the sculpture was neither sexist nor misogynist.

That leaves the question of whether the sculpture constituted personal harassment and bullying. Capilano University's *Respectful Learning and Working Environment Statement* defines personal harassment as follows:

*Personal harassment is objectionable and unwanted behaviour that is verbally or physically abusive, vexatious, or hostile, that is without reasonable justification, and that creates a hostile or intimidating environment for learning or working ....*

*Personal harassment behavior includes persistent demeaning or intimidating comments, gestures or conduct; threats to a person's employment or educational status, person or property; persistent comments or conduct, including ostracism or exclusion of a person, that undermine an individual's self-esteem so as to compromise their ability to achieve work or study goals; unwarranted and excessive supervision or criticism of an individual; abuse of power, authority or position; sabotage of a person's work; hazing; spreading of malicious rumours or lies; or making malicious or vexatious complaints about a person.*

It is the Committee's view that the Administration adopted an overly broad interpretation of personal harassment in this matter when it claimed that the sculpture was a form of harassment of President Bulcroft. The sculpture was clearly in the tradition of political satire of a public figure. This did not constitute *abusive, vexatious, or hostile* behavior. There is no doubt that expressions and representations based on satire and ironies, including the use of grotesque caricatures, are intended to be controversial and unflattering. Satirical expressions in themselves, however, do not constitute personal harassment. On this, even Capilano University's own *Respectful Learning and Working Environment Statement* seems to concur:

<sup>†</sup> Capilano University *Harassment Policy*, <http://bit.ly/1lmLQ3U>

<sup>‡</sup> Capilano University *Respectful Learning and Working Environment Statement*, <http://bit.ly/1lmMkHr>

*Personal harassment does not include ... constructive criticism ... techniques such as irony, conjecture, and refutation, or assigning readings or other instructional materials that advocate controversial positions.*

In fact, Capilano University Board of Governors Chair, Jane Shackell, in a CBC radio interview, admitted that satire is a legitimate form of protest and expression:

*Clearly, satire is a protected form of expression .... Capilano University, like all Canadians, I think, values artistic expression and values the rights we all enjoy to political protest, and I also would agree that a person in the position of President in a public university has to expect to absorb a certain amount of criticism and maybe even some personal criticism.†*

Professor Rammell's sculpture was in our view a legitimate form of expression on a matter of broad concern to the university community and the public. His sculpture communicated his opinion about the President's approach to the program and course cuts at Capilano University. According to Dr. Robert Belton, the significance of the sculpture in which President Bulcroft and her pet poodle are draped in an American flag should be obvious:

*Not only is the artist pointing out that President Bulcroft literally is an American, he says metaphorically that she is taking shelter in an American political mindset. Given the perceived context of little to no consultation in deciding on program cuts at Capilano, this allusion to what some call American 'flag fetishism' is a clear metaphor of political conservatism and all of its perceived failings.*

*The significance of the poodle has less to do with President Bulcroft's actual pet Margaux than it does with the political symbolism of poodles and dogs in general in contemporary*

*visual culture. Dogs are standard symbols of fidelity; so a poodle wrapped in an American flag is a standard signifier of faithful allegiance to the flag.*

It is the Committee's view that Professor Rammell's sculpture constituted legitimate expression, not bullying or personal harassment. In this regard, we conclude that the University was not justified in seizing the sculpture.

We also note that even if the Administration believed the sculpture constituted harassment, the University did not appear to follow its own policies in dealing with the matter. The University's Harassment Policy‡ requires that complaints be brought to the attention of the Conflict Resolution Advisor. Following consultation with the Advisor, a complainant may proceed with informal initiatives, request mediation under procedures outlined in the policy, seek formal administrative action, or take no further action. In this case, it appears these steps were not followed, but that the Chair of the Board made the decision to have Professor Rammell's sculpture removed.

## Academic Freedom

We turn now to the matter of whether the seizure of Professor Rammell's sculpture constituted a violation of his academic freedom rights. The Canadian Association of University Teachers *Policy Statement on Academic Freedom* defines it as:

*[T]he right, without restriction by prescribed doctrine, to freedom to teach and discuss; freedom to carry out research and disseminate and publish the results thereof; **freedom to produce and perform creative works**; freedom to engage in service to the institution and the community; **freedom to express one's opinion about the institution, its administration, and the system in which one works**; freedom to acquire, preserve, and*

† May 14th, 2014, Capilano Board Chair being interviewed on CBC Radio Program *On The Coast*.

‡ Capilano University Harassment Policy E.501, Revised October 29, 2008.

*provide access to documentary material in all formats; and freedom to participate in professional and representative academic bodies. **Academic freedom always entails freedom from institutional censorship.*** [Emphasis added]

Of particular importance to this case is the recognition in the CAUT statement that academic freedom applies to artistic expression as well as other scholarly work. Additionally, academic freedom includes the right to criticize the institution and its Administration without retaliation or censorship.

Also relevant to this case is the CAUT *Policy Statement on Academic Freedom and Artistic Expression*. This statement underlines that artistic expression merits the same academic freedom protection afforded to academic staff in other disciplines. This includes a prohibition on censorship of artistic creations:

*Direct or indirect attempts to impose tests of propriety, ideology or religion are acts of censorship which deny the freedom to explore, to teach, and to learn. Academic staff members have a duty to resist such attempts. The academic community has the responsibility to ensure that artistic activity is guaranteed the protection of academic freedom.*

Finally, Capilano University policy recognizes that academic freedom applies to creative expression. It defines academic freedom as the,

*freedom to engage in teaching, learning, research, or other creative work in order to expand knowledge and to do so in an atmosphere of free inquiry and exposition. Academic freedom is the right to examine, question, and learn in an environment that supports the need to investigate, speculate, and comment without reference to proscribed doctrine.†*

† Capilano University Senate Policy S2003-01, Academic Freedom, Revised May, 2010.

We have determined that Professor Rammell's sculpture was a creative expression of his opinion on a matter of general interest to the university community and to the public. As Professor Rammell explained to the Committee, he created his sculpture in the first instance to promote discussion and debate:

*A faculty member whom I respect originally asked me if I'd make an effigy of the President as a protest piece; being a better sculptor than a writer I thought I could run with this suggestion and make a satirical monument to encourage discussion and debate about the issues that we were powerless to redress. I simply wanted to make a parody that encouraged discussion about the president's flawed leadership and repeated blunders.‡*

As a criticism about his institution and its Administration, Professor Rammell's sculpture is protected by academic freedom as understood in the CAUT policy. Just as academic staff in other disciplines would not expect censorship of their written or spoken expressions, artistic expressions should similarly be vigorously defended as an exercise of academic freedom. Consequently, we conclude that the Administration was guilty of institutional censorship and violated Professor Rammell's academic freedom by seizing his sculpture.

### **Academic Freedom & the University's Respectful Learning & Working Environment Policy**

The Committee found that the University Administration relied upon allegations of *personal harassment* based upon a broad interpretation of its *Respectful Learning and Working Environment Statement* (RLWES) to justify the confiscation of the sculpture.

‡ June 3, 2014, George Rammell's written summary of events sent by e-mail attachment.

Because some individuals found the sculpture and its signification to be offensive, the Administration felt this alone warranted its seizure.

Academic freedom cannot be compromised simply because an expression may cause offence. A university policy that has the effect of restricting expression beyond the constraints imposed by the law is a threat to academic freedom. In this case, Capilano University's RLWES was used to impose unacceptable restrictions on the tone and character of expression within the university, undermining the university's core mission as a site of free and open exchange:

*The values that civility and respectful workplace policies seek to enforce are important and should be supported. Yet it is a different question whether standards of behaviour should be enforced by institutional regulation. Freedom is fragile because those who seek its protection are often or invariably the ones who are least sympathetic. Their expressive activities invite attention and oversight because they are offensive, confrontational, and even abusive .... Unless and until they cross a threshold of harm that justifies a regulatory response, transgressions that are merely offensive must be tolerated and addressed by other means .... Whether characterized as harassment, bullying, fighting words, or hate speech, conduct that is regulated under these headings must also be defined narrowly and with care to avoid unnecessary interference in these freedoms.†*

The Committee is of the opinion that Capilano University had no justification for seizing Professor Rammell's art work. The standard of tolerance for controversial expression under widely-recognized standards of academic freedom is much higher.

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† Jamie Cameron, "Giving and Taking Offence: Civility, Respect, and Academic Freedom." In J.L. Turk (ed.) *Academic Freedom in Conflict: The Struggle over Free Speech Rights in the University*, (Toronto: James Lorimer and Company, 2014), p. 303.

## Larger Issues for the Capilano University Academic Community Arising from these Events

During the course of its investigation, the Committee learned of other actions taken by the Capilano Administration that raise broader concerns and issues. In particular, there appears to have been efforts by the Administration to prevent students and staff from engaging in peaceful protests. Student and faculty posters protesting the planned cuts were removed and destroyed.

According to a student activist we interviewed, protest banners made by volunteers and funded with donated money were destroyed and removed. When this student inquired about what had happened to the banners, as noted above, she received a voice-mail from the Administration stating that *any and all signs that are put up around campus do get removed and disposed*.

These actions by the Administration, in addition to the seizure of Professor Rammell's artwork and the lack of consultation of program cuts and faculty and staff layoffs, have led to a culture of mistrust and fear at Capilano University. This culture of fear has made faculty afraid to speak out or criticize the Administration and their decisions. They worry that they will be ostracized, or worse, become a target of the Administration.

## 4 | Recommendations

### Recommendations for the Capilano University Administration

1. That the Administration issue a public apology to Professor Rammell for the seizure of his artwork, an act that constituted a breach of his academic freedom.
2. That the University provide Professor Rammell with recompense for the distress and damage the University caused.
3. That the Administration, in consultation with the Capilano University Faculty Association, review its *Respectful Learning and Working Environment Statement* in order to ensure the principles and procedures in the policy uphold and are compatible with academic freedom and expressive rights.
4. That the Administration publicly commit to upholding academic freedom for both extramural and intramural speech, and not interfere with the right of all students and staff to criticize and peacefully protest administrative actions.

### Recommendations for the Capilano University Faculty Association

5. That the Association seek to include strong protection for the academic freedom rights of members in its collective agreement with the University.
6. That the Association sponsor an event or events on academic freedom that includes broad participation of its membership.

### Recommendations for the Canadian Association of University Teachers

7. That CAUT write to President Bulcroft and other senior administrators to inform them about the necessity of actively protecting and promoting academic freedom rights.
8. That CAUT develop policy and provide information and education to its member associations regarding respectful workplace policies, including the dangers these policies pose to academic freedom and expressive rights.
9. That CAUT's Academic Freedom and Tenure Committee review the *Policy Statement on Academic Freedom and Artistic Expression* and make any changes necessary in light of the findings of this report.



## Appendix A



George Rammell with his sculpture, *Blathering On in Krisendom*.