
Report of the Ad Hoc Investigatory Committee

To Examine the Allegations of Improper Conduct within the **Faculty of Arts** at Laurentian University

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Report of the Ad Hoc Investigatory Committee to Examine the Allegations of Improper Conduct within the Faculty of Arts at Laurentian University

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Contents

Background & Context

- I| Interference in Collegial Governance
 - A. Interference with the Appointment of Chairs
 - B. Interference in Hiring Decisions
 - C. Interference with Teaching Assignments
 - D. Improper Changes to Grades

- II| Improper/Excessive Use of Disciplinary Measures
 - A. Geography
 - B. English
 - C. Law & Justice
 - D. Economics
 - E. Monitoring of TravelObservations
Recommendations

- III| Failure to Maintain Faculty Complement
 - A. Sociology
 - B. French
 - C. Economics
 - D. Administrative ResponseObservations
Recommendations

Conclusion

Appendix 1

Background & Context

On May 8, 2014, Professor Anis Farah, President of the then Laurentian University Faculty Association (LUFA), wrote to Dr. James L. Turk, then the Executive Director of the Canadian Association of University Teachers (CAUT), to follow up an earlier discussion they had in regard to the perceived deterioration of collegial governance and academic freedom at Laurentian University. The main issues raised in that letter related to allegations concerning:

1. Changing grades without the instructors' agreement or following Senate rules;
2. Blocking the appointment of elected chairs;
3. Denying faculty access to the departmental office;
4. Numerous grievances involving violations of the collective agreement and collegial governance;
5. Gross interference with workload assignments recommended by departments; and
6. Decimation of faculty complement in some departments.

Professor Farah requested that CAUT consider the situation and take appropriate action. Upon reviewing the matter, the CAUT President, the Chair of the Academic Freedom and Tenure Committee, and the Executive Director authorized the creation of an Ad Hoc Investigatory Committee to look into these matters.

The terms of reference for the Ad Hoc Investigatory Committee (AHIC) are to:

1. Examine allegations within the Faculty of Arts of:
 - Improper procedural practices and restrictions on academic freedom;
 - Disregard of collegial decision-making;

- Irregular hiring procedures;
 - Inappropriate interference in workload assignments;
 - Restrictions on faculty access to the departmental office;
 - Failure to maintain appropriate faculty complement;
 - Failure to provide particulars in disciplinary investigations;
 - Breach of privacy;
 - Improper changes to grades; and
 - Interference in teaching methods and styles.
2. Consider other issues that may arise in the course of its investigation.
 3. Make appropriate recommendations.

The members of the AHIC are:

- Sheila Embleton, FRSC, Distinguished Research Professor of Linguistics, Department of Languages, Literatures and Linguistics, Faculty of Liberal Arts & Professional Studies, York University;
- Eric Tucker, Professor, Osgoode Hall Law School, York University; and Distinguished Scholar in Residence, Cleveland-Marshall College of Law, Cleveland State University.

The AHIC operated under CAUT's "Procedures in Academic Freedom Cases".¹

On November 25, 2014, David Robinson, Executive Director, CAUT, wrote to Mr. Dominic Giroux, President and Vice-Chancellor, Laurentian University to advise him of the AHIC, its mandate, and its membership, and to notify him that the AHIC would be contacting him (or his designate) to gather relevant

¹ CAUT, <http://bit.ly/1FFoFSA>.

documentation from the University as well as to meet with appropriate University officials so that the AHIC could get a full and fair understanding of the facts. The AHIC wrote to Mr. Giroux on December 17, 2014, advising of the planned site visit to Sudbury on January 15-16, 2015. Mr. Giroux declined to meet the AHIC or provide any documentation (letter of December 23, 2014), and in essence rejected the entire process. Thus this report, of necessity, is based solely on information from the 14 members of faculty and LUFA officials we interviewed; wherever possible we have sought documentary evidence (memos, e-mails, Laurentian University policies, LUFA grievances, etc.), especially given the lack of opportunity to interview University administrators, who might of course have a different side of the story. Furthermore, consistent with CAUT procedures in investigating academic freedom cases, parties who may be adversely affected by the findings of the report were notified in advance of publication and permitted an opportunity to provide comment and further information.

We would like to thank all those faculty members who took the time to speak with us during the course of our interviews in Sudbury, by phone or skype from other locations, and by bringing (or later sending) e-mails and other documentary evidence. We realize that in some cases to speak with us was difficult emotionally or because it brought back difficult episodes that they were trying to put behind them. We thank Linda St. Pierre, Chief Steward, and Dr. Anis Farah, President of the Laurentian University Faculty Association. We thank Monique Cooke for logistical and secretarial support, and David Robinson, CAUT's Executive Director, and Peter Jacobsen, CAUT's legal counsel, for their support and advice.

|| Interference in Collegial Governance

The exercise of academic freedom requires collegial self-governance with the full participation of scholarly members. All academic staff retain the right of free expression, including the freedom to criticize one another, the university, its policies and its administration. Interference with collegial self-governance by administrators outside of the rules and procedures established by the collegium and through collective bargaining agreements fundamentally undermines academic freedom by introducing the spectre of arbitrary decision-making or, worse yet, retaliatory action against faculty members individually or departments for being critical of the administration's policies or actions.

A. Interference with the Appointment of Chairs

A critical dimension of collegial self-governance is that faculty members should be free to participate in the selection of department chairs through a democratic process, and that their judgment about the qualifications of members of their department to fulfill this position is respected in the absence of good reasons for rejecting it. Moreover, faculty members normally have both a right and a duty to serve in administrative positions for which they are qualified. This principle is instantiated in the collective agreement between LUFA and LU, Article 9.15, which provides for the election of faculty members of the selection committee, an open nomination process, and a ballot by the faculty from a short list of candidates prepared by the selection committee. The candidate with the most votes becomes the faculty's recommended candidate. While the faculty's preference is a recommendation that the Dean has the power not to accept, in which case a new selection process is to be started, it is customary practice that committee recommendations are accepted in the normal course

unless there is good reason for a refusal. If the Dean accepts the recommendation then it is forwarded to the Vice-President, Academic and Provost who, according to Article 9.15.10 "will make the appointment." This wording does not seem to provide the V-P, Academic and Provost any power to refuse a recommendation once it has been accepted by the Dean. The collective agreement does not stipulate the basis upon which a Dean can reject a recommended candidate, but it does require that in such a case the Dean must indicate the reasons for the refusal to the selection committee and department. Moreover, it is our understanding that the customary practice is for selection committee recommendations to be accepted in the normal course unless there is a very good reason for refusing them. Importantly, a chair cannot be appointed by the Provost unless he or she has been recommended by her or his faculty and acting chairs can only be appointed, even in exceptional circumstances, after consultation with a department (see Article 9). Finally, this process takes place within the context of an agreement in Article 5.15 that faculty members have a right to engage in University governance and administrative duties.

1. Chair of Psychology

In the fall of 2011, the then chair of the Psychology Department stepped down from the position and, pursuant to the Collective Agreement, Article 9.15, a selection process was initiated. Two faculty members were nominated, Professors Glenn Legault and Michael Emond. The department vote was 10 to 7 with one abstention in favour of Professor Emond. In a meeting with the Selection Committee on December 8, 2011, Dean Dawes indicated that she was not prepared to accept the Committee's recommendation because Professor Emond had been rude and hostile toward her

and to her secretaries.² This was followed up in an email sent to all members of the department on December 11, 2011; Dean Dawes invoked her power under Article 9.15.11 to not accept the Selection Committee's recommendation on the grounds that:

Dr. Emond's aggressive behaviour that has been the subject of complaints from both faculty and staff and to which I myself have been subjected. I believe that his appointment would be divisive for the department.

The email continued:

It is worth noting that as recently as December 3, 2011, LUFA emailed me on another matter requesting that 'the Administration take the necessary steps to ensure that all members have a safe and healthy work environment'. I will not allow my staff to be subjected to this kind of behaviour for the next three years.

Dean Dawes indicated that the selection process would be reinstated in 2012, as provided in the collective agreement, Article 9.15.11.³

These are very serious allegations to be made against a faculty member in any context, but especially in an email directed to the entire department. LUFA filed two grievances on December 22, 2011, numbers 2011-24 and 2011-25. Grievance 2011-25 alleged that Dean Dawes had undermined collegial governance by inappropriately

intervening in the selection process, refusing to accept the successful candidate on improper grounds, imposing improper discipline on the candidate, and defaming the candidate. Grievance 2011-24 alleged that the Dean had violated members' privacy on a number of occasions, including the email disclosing that Professor Emond had been the subject of several complaints.

While the grievance was pending, Dean Dawes sent another email to the Psychology Department, dated May 30, 2012, in which she informed faculty members that four colleagues had agreed to act as chairs over the summer to deal with student inquiries. The email ended somewhat ominously:

We will resume the selection process in the Fall. In the meantime, I will contact the other Deans to explore the possibility of appointing an Acting Chair from one of the other Faculties in the event the next search fails.

No indication was given as to why Dean Dawes anticipated that the next search might fail and why she thought it appropriate to explore appointing an acting chair from another department, or even another Faculty, in that event. Moreover, there is no indication of the basis upon which such an extraordinary measure might be taken. However, the implication of the email was clear; the Dean was not prepared to accept Professor Emond should he be recommended again and that if that was the result the department might be chaired by a person from outside the Faculty. The President of LUFA, Professor Farah, responded to Dean Dawes' email on June 1, 2012, indicating his concern that acting chairs had been appointed without consultation, as required by the collective agreement, Article 9.15.13, and that the question of how to deal with student inquiries over the summer was a matter for the department to resolve, not the Dean. The email concluded:

2 This is based on an account provided in a Note to File by Professor Michael Persinger dated December 8, 2011 and signed by Michael Persinger, Christine Whissell (acting chair of Psychology), Shelley Watson (Chair of the Selection Committee and one other person whose signature we cannot decipher).

3 Article 9.5.11: "Should the Dean/University Librarian not be prepared to accept the Selection Committee's recommendation, the Dean/University Librarian shall indicate her/his reservations to the Selection Committee and the Department/School. If the Dean/University Librarian and the Selection Committee are unable to agree on an appointment, the selection procedure shall be reinstated as in clause 9.15.3 above."

Your interference with the collegial and democratic process is unacceptable and unprecedented. LUFA will have no choice but to grieve if you don't rescind your email and cease and desist from interfering in departmental matters that don't involve the Dean.

The grievance over the refusal to appoint Professor Emond was settled through mediation on August 12, 2012 and the terms of that settlement are confidential. Nevertheless, we do know that it allowed Professor Emond to stand again for chair and that, in the event he was recommended by the department, Provost Kerr would decide whether to accept or reject the recommendation in accordance with the terms of the collective agreement. It also provided that Dean Couture rather than Dean Dawes would convene a new selection committee. That committee met in September 2012. To fill the gap, Professor Whissell was appointed as Acting Chair from September 1 to the end of December 2012. Nominations were solicited and only Professor Emond agreed to stand for chair. Seventeen of the nineteen members of the faculty voted, with twelve in favour of Professor Emond and five against. Following the vote, on November 12, 2012, the Selection Committee recommended to Dean Couture that Professor Emond be appointed and on November 12, Dean Couture recommended to Provost Kerr that Professor Emond be appointed.

On November 29, 2012, Provost Robert Kerr wrote to Professor Emond. The letter began by citing the Minutes of Settlement, which provided that if Professor Emond was again recommended by the department, the decision whether to accept or reject that recommendation would be made by the Provost in accordance with the collective agreement. After briefly outlining the expectations of a

chair, Provost Kerr stated the reasons why he was rejecting the Selection Committee's recommendation:

I am not satisfied that you have the administrative ability to successfully be a Department Chair. More specifically I am concerned that you do not have the interpersonal communication skills necessary to effectively deal with students, faculty members, staff and the Dean in order to ensure an effective link between administration and faculty.

Professor Whissell emailed Dean Couture on December 3. Since her interim appointment was coming to an end she wanted to know who would be guiding the next selection. Dean Couture replied on December 6 "that the Director Selection process restarts and Elizabeth [Dean Dawes] runs the show." An email from Dean Dawes to the Psychology Department followed on December 18 in which she announced a number of interim measures; a professor was appointed to chair department meetings; another professor was assigned to do student advising; and most significantly that "the Dean will have sole signing authority for the departmental budget and for any matters requiring the signature of the Chair. This will continue until such time as a new Chair is appointed by the Vice-President, Academic and Provost."

Another selection committee was formed in 2013 and Professor Emond was again the only member of the department who was nominated and stood for chair. Another vote was held and, after unsuccessful settlement talks to which the Committee has not had access, the votes were counted. The result was similar to the result of the previous one: seventeen out of nineteen voted with eleven in favour of Professor Emond and six against. Provost Kerr refused the recommendation and a grievance was filed. On October 23, 2013 the parties entered into a Memorandum of Agreement that

Professor Whissell would be appointed acting chair effective immediately and continuing for 18 months or until the grievance is resolved. The grievance has now been resolved but the terms of the settlement are confidential.

2. Chair of Human Studies Program

Professor Simon Laflamme is a member of the Sociology Department who was involved in the creation of an inter-disciplinary program in Human Studies and was its chair prior to his sabbatical in 2011-2012. Upon his return, he applied to be chair again beginning in 2012. The Selection Committee recommended his appointment to Dean Dawes, who rejected the recommendation based on the needs of the Sociology program, because of the shortage of tenured or tenure-stream faculty in that program.

LUFA became involved and wrote to Professor Sawyer, the chair of the Selection Committee, on May 17, 2012, objecting on the grounds that that the reason for rejecting Professor Laflamme was inappropriate and interfered with collegial governance since it was the employer's obligation to ensure that proper resources were provided to the program. Professor Sawyer replied on May 27, reviewing the procedures that had been followed, reiterating that Dean Dawes refused the recommendation and stating that the program constitution is not dealt with in the collective agreement. LUFA responded on May 28, referring to the fundamental right of faculty to participate in university governance, citing Article 5.15⁴ of the collective agreement, where this right is provided. Dean Dawes was copied on this exchange and LUFA's request that the

decision be reconsidered was presumably directed at her, notwithstanding that the email was addressed to Professor Laflamme.

The decision was not reversed and LUFA did not file a grievance. A new selection process was started in which Professor Laflamme did not put his name forward. A different candidate was recommended and approved for a one year term by Dean Dawes. The following year a new selection committee was struck to appoint a new chair in 2013. Professor Laflamme applied, was recommended, his recommendation was accepted by Dean Dawes and he was appointed by Provost Kerr.

Observations

The right and duty of faculty members to participate in collegial governance and take on administrative duties is fundamental to principles of academic freedom and university governance. We also recognize that senior administrators may sometimes need to take into account program needs in assigning administrative duties and considering selection committee recommendations. This is not a great concern when such considerations result in a temporary postponement of a faculty member assuming an administrative position, as in the case of Dr. Laflamme.

More troubling is the refusal to appoint Professor Emond as chair of the Psychology Department, notwithstanding strong and continuing support for his appointment from his department colleagues in three successive searches.

We find several aspects of the procedure followed troubling. First, Dean Dawes' email to the department rejecting Professor Emond on the basis of his "aggressive behaviour" was inappropriate. Because of confidentiality surrounding the grievances and their settlement, we do not know whether the allegations against Professor Emond had been previously brought to his attention and

4 Article 5.15.26: "To the extent consistent with their teaching/library and scholarly responsibilities, Members shall contribute to the governance of the University through membership on appropriate bodies...."

whether he was provided with a fair process to defend himself. Certainly, if this had not occurred previously then Dean Dawes' email was particularly egregious. But even if these matters had been raised with Professor Emond previously and an appropriate process had been provided, unless the process provided for public disclosure it was still inappropriate to raise these matters in a departmental email. Moreover, Dean Dawes' statement that she had recently received a request from LUFA regarding the provision of a healthy and safe work environment and that she would not allow her staff to be subjected to aggressive behaviour for the next three years was itself aggressive and unhelpful in resolving a difficult situation. Finally, the adoption of interim measures by the Dean in the absence of consultation with the department undermined the principle of collegial self-governance, which is entrenched in the collective agreement.

Provost Kerr's letter to Professor Emond rejecting the second recommendation for appointment was not circulated to the department and the tone of it was quite different from the email of Dean Dawes. It is based on Provost Kerr's assessment of Professor Emond's administrative abilities and interpersonal communication skills, rather than on allegations of aggressive behaviour. We do not know the basis for these concerns and whether they are connected to the allegations contained in Dean Dawes' email. Moreover, because of the confidentiality surrounding the settlement of the grievances arising out of the refusal to appoint Professor Emond, we do not know whether there were other procedures or communications that would touch on this matter. All we can say is that we are confronted with a

situation in which the University administration has rejected Professor Emond's selection as chair notwithstanding that a strong majority of his colleagues express continuing confidence in his abilities despite the damaging allegations publicly made against him by Dean Dawes and the difficulty their support for him has caused the department.

Recommendations

I.A.1: If serious allegations of misconduct are made against a faculty member, the faculty member should be informed of those allegations in a private communication and should be provided with an appropriate procedure, consistent with the collective agreement, for responding to those allegations.

I.A.2: Serving as a departmental chair is an important part of collegial self-governance, and departmental chairs should be selected by their peers. Furthermore, faculty members should be able to fulfill this position during their careers in the absence of cogent reasons for denying them this opportunity.

I.A.3: The recommendation of departmental colleagues to appoint a faculty member as chair should normally be followed in the absence of cogent reasons for rejecting the recommendation.

I.A.4: If administrators reject a recommendation for chair, the reasons for that rejection should be communicated to the individual, to the department, and to the academic staff association in a manner that respects the legitimate privacy concerns and personal dignity of the individual affected.

B. Interference in Hiring Decisions

A central concern of collegial governance is in regard to faculty appointments. While hiring decisions are ultimately made by the University, faculty play a central role in the process through their role in the establishment of hiring priorities, majority participation in hiring committees, and making recommendations to the University. These principles are instantiated in the LUFA/LU collective agreement:

5.20.2(a) Appointments shall be made by the Vice-President, Academic and Provost on behalf of the Employer and on the recommendation of the Dean/University Librarian and the written recommendation of the majority of the Members of the Department/School concerned after scheduled, minuted meeting(s) with Department/School Members. Individual Members (including those on leave) may choose to vote in person, by email or by facsimile. Proxy voting is not permitted.

During our investigation, however, a number of instances were brought to our attention which raise questions about the University's commitment and adherence to these principles.

1. Geography

The hiring process in Geography in 2013 gave rise to two sets of concerns, one in regard to the inappropriate use of disciplinary measures and the other in regard to improper procedures and administrative interference. This part of the report focuses on the later concern. The use of disciplinary measures will be discussed in the next section.

The hiring process was initiated in 2013. In April, Dean Dawes sent a memo to Stephen Meyer, chair of the department, advising that Provost Kerr was planning to engage a consultant for the next round of Aboriginal hires, and that she wanted to have the Aboriginal ads finalized so they would be ready as soon as the consultant

was in place. A draft advertisement for the position was circulated. The advertisement indicated the areas of expertise that the Geography Department was seeking and contained the standard LU language about the university and its employment equity policies. A suggestion for revisions in regard to the department's priorities was sent to Dean Dawes who sent the ad back with some further recommendations. A final advertisement was produced, to which the following statement was added:

Increasing the Indigenous content of courses across the curriculum is one of Laurentian University's strategic objectives. Thus, the successful candidate is encouraged to incorporate material relevant to Aboriginal students into his or her courses.

An Aboriginal consultant, Brock Higgins, was retained by Provost Kerr to assist in the search and on June 12 members of the department were invited by Dean Dawes to attend a meeting with the consultant to discuss the hiring process. Dean Dawes advised department members to "prepare carefully for the meeting in order to provide information about your department, the requirements of the position, your ideal candidate, etc."

On November 16, department members were given materials assembled by the consultant. One document consisted of a report which identified the total number of candidates as of November 12 (126) and the number who had applied (39). It included a matrix that summarized each of these applicant's credentials and other relevant background information, followed by a very brief report on each of the 126 potential candidates, with somewhat longer assessments of the candidates who applied, including a statement of whether the candidate was Aboriginal or not. Finally, a link was provided to documentation for two of the applicants, both of whom were identified as Aboriginal. The

members of the department were not provided with access to the applicants' files or CVs and did not have any role in the selection of the two applicants apparently chosen for further consideration.

Sometime later in 2013 there was a meeting between the department and Dean Dawes. Members of the committee raised concerns that there seemed to be only one candidate and that this candidate had not yet completed her PhD. The hiring committee was reassured that if the candidate was unacceptable the search would continue.

An interview with the candidate was arranged for January 2014 and a set of interview questions was prepared by the committee based on standard university procedures. The interview was held as scheduled. Subsequently, the department met to consider the candidate. The events of that meeting are discussed in more detail in the section of this report on the use of disciplinary measures. The department voted against hiring the candidate, three opposed, two in favour. On January 31, Stephen Meyer, the department chair, wrote to Dean Dawes summarizing the vote and the reasons for and against the candidate. The reasons for opposing the appointment included concerns about the candidate's teaching ability and lack of experience in a number of specified areas. The points made in favour of hiring the candidate included strong potential for excellent teaching and willingness to meet the program's needs.

The AHIC was advised by some members of the department that Dean Dawes was not pleased with the department's decision and, at least according to some members of the department, she took the position that she could overturn the decision of the department and that she had invoked the Aboriginal Equity Initiative,

pursuant to Article 5.30.2 of the collective agreement.⁵ As well, there was some conjecture within the department that the Dean wanted the department to join the recently created School of Northern Development and some members of the department reported that pressure was put on the department by Dean Dawes, indicating that unless they agreed to join the recently created School of Northern Development, members of the department would not be replaced when they retired.

LUFA was contacted and on February 4, 2014, Linda St. Pierre wrote to Dean Dawes asking for clarification of the Dean's position. Emilie Cameron, Director of Professional Relations, responded on February 6. She stated that the University had not invoked the Aboriginal Equity Initiative, so that was not an issue. In regard to the position of the Dean, she referred to Article 5.20.2 of the collective agreement in supporting the position that the Dean "is not required to support the department's recommendation but is simply required to provide a recommendation to the Provost." The email went on to specify that Dean Dawes had not stated that she was going to overturn the decision of the

5 Article 5.30.2: The Employer agrees to develop a "grow-our-own" program to recruit and appoint Aboriginal professors and librarians to probationary appointments, who, on the condition of agreeing to work at Laurentian as professors/librarians for a minimum of three (3) years, shall be supported in completing the academic qualifications needed for tenure (per Article 5.10 – Academic Qualifications Guidelines). The details of the program are to be agreed to by the Employer and the Union in consultation with the Office of Academic Native Affairs. Each September, the Employer shall canvas Departments/Schools with upcoming probationary appointment vacancies, and assuming the Department's/School's agreement to participate in this program, shall make every reasonable effort to appoint at least two (2) Aboriginal candidates under the program every year beginning July 1, 2009.

department, only that she would provide her own recommendation to the Provost.

Later that day, LUFA answered Ms. Cameron's email regarding the interpretation of Article 5.20.2, stating that the V-P and Provost could only appoint a candidate upon a recommendation from the Dean and the majority of the department. No reply was received.

Dean Dawes called a meeting with the department on February 7 at which LUFA representatives, Linda St. Pierre and President Farah, were in attendance at the request of department members. The Dean asked for an explanation of the vote and there was some discussion of what would happen going forward but no agreement. It was also during that meeting that a department member raised a question about the Aboriginal status of the candidate, which gave rise to the dean's allegations of racism against the three members of the department who had voted against the candidate, discussed *infra*.

On February 12 the chair informed the department that the V-P announced that the candidate who had not been recommended by a majority of the department had been hired by the University. Some members of the department were asked to write letters to the V-P stating that they would be willing to work with their new colleague. Professor Soumahoro was one of those faculty members and he wrote to Provost Kerr on February 12 (in French) to say that while he had a problem with the principle of appointing a candidate without majority support of the department, there was absolutely no reason to be concerned about his willingness and ability to work cooperatively with the candidate. Professor Étougué-Mayer wrote a similar letter that day as well.

On March 5, 2014, Dean Dawes invoked the disciplinary procedure against the three faculty members opposed to the appointment. On March 20 the department sent

Dean Dawes a memo advising her that the department was seeking membership in the School of Northern Development. It was signed by the chair and the three members of the department who had voted against the candidate and who were now subject to disciplinary action. Two days later, Dean Dawes wrote to the department welcoming and supporting their proposal.

Each of the three department members against whom disciplinary action was commenced had a meeting with Dean Dawes on April 15 at which Linda St. Pierre was present. These meetings are discussed at greater length in the Discipline section of this report, but it is noteworthy that at each meeting, Dean Dawes expressed her satisfaction about the decision to join the School of Northern Development. Professors Soumahoro (April 24) and Étougué-Mayer (April 29) subsequently wrote to Dean Dawes categorically rejecting her accusations and insinuations of racism and criticizing the basis upon which she reached her conclusion. Again, this matter is discussed at greater length earlier as are the letters that Dean Dawes sent to the three members of the Department on May 8 in which she indicated that she considered the matter resolved. For the purposes of this section of the report, however, it is worth noting that Dean Dawes also stated in each letter that the faculty member confirmed that proper hiring procedures were followed. If by this Dean Dawes intended to say that the faculty member confirmed that they had based their judgment of the candidate on academic criteria then the observation is correct. However, if by this statement Dean Dawes meant that the faculty members had agreed to the legitimacy of the appointment without department support then she is incorrect.

LUFA filed a grievance on May 20, 2013 in regard to the hiring process. The grievance alleged that the administration had breached the collective agreement by:

failing to provide the department with a list of all applicants; not allowing the department to create a short list of applicants; denying the department copies of the applicants' CV; failing to agree to LUFA's request that the Aboriginal Equity Initiative Program be implemented but yet proceeding with an affirmative hiring program outside the terms of the CA; threatening members that if they did not agree to recommend the Dean's preferred candidate there would be consequences with respect to comments made during the hiring process; retaliating against members for failing to agree with the Dean's request that her preferred candidate be hired; abusing managerial power by frivolously invoking disciplinary proceedings; and proceeding with an appointment despite the fact that the majority of the department had not recommended the candidate. At the time of writing, the grievance has not been resolved and is scheduled to go to arbitration.

2. Sociology

In 2013 the Sociology Department also commenced a hiring process for an English language professor. The procedures that were followed were similar to those used in the Geography Department. The position was earmarked as an Aboriginal position, although the advertisement did not indicate that only Aboriginal candidates would be considered. A consultant was hired to assist in the hiring process and a five person search committee was struck. Subsequently, a meeting was held with the consultant at which the Associate Vice President, Academic and Indigenous Programs, was present. The consultant made a presentation and brief summaries of the applicants were provided. The question of how a person is identified as Aboriginal was raised and it was explained that the community of Aboriginals decides. No one was accused of racism for raising the issue or failing to object when the question was asked. Ultimately, the search committee agreed to

accept a shortlist of two applicants recommended by the consultant and the Dean, despite concerns about their qualifications. A set of questions for the candidates was prepared and the interviews were held. Both candidates ultimately withdrew and so the process is being restarted.

Observations

Our principal concern is not with violations of the collective agreement in their own right but rather the question of whether the Administration interfered with collegial governance and academic freedom. The evidence we have received raises very serious concerns in this regard. We are not concerned directly with the issue of affirmative hiring and whether an agreement had been reached with LUFA over the implementation of such a policy. As well, we are not concerned that a consultant was retained to assist in the hiring for the purposes of identifying and encouraging qualified candidates, and especially Aboriginal candidates, to apply. We are concerned, however, when the consultant and, perhaps, the Administration intrude on collegial governance by usurping the function of the hiring committee or department in vetting applications and selecting those candidates to be given further consideration, and ultimately producing a short list of candidates to be invited to on-campus interviews. It is particularly egregious when only one candidate is presented to the department, as was the case in the Geography Department hiring.

We are also concerned that after a majority of the Geography Department voted against appointing the candidate, the administration proceeded with the hire. This is not only a clear violation of the collective agreement, which provides that the appointment will be made on the recommendation of the Dean and the written recommendation of the majority of the members of the department concerned, but a gross infringement

of collegial governance which recognizes that, absent exigent circumstances, faculty appointments cannot be made in the absence of at least majority support of the members of the department concerned.

Were there exigent circumstances? We have discussed in more detail elsewhere the disciplinary actions taken against the three members of the Geography Department. For our purposes here, it appears as if this was an attempt by the Dean to discredit the collegial governance process and justify the extraordinary step of making an appointment in violation of the collective agreement and principles of collegial self-governance. The lack of merit to the allegations that the decision was tainted by racism and prejudice only reinforces the seriousness of the interference with collegial self-governance. We cannot say for sure what motivated the Dean to behave in so reckless a fashion, but it would be unacceptable for a Dean to tarnish the reputations of faculty members who participated in good faith in a hiring process by trumped up charges because they reached a conclusion about the merits of a candidate different from hers.

Recommendations

I.B.1: The University Administration should re-commit itself to the principle that faculty appointments are a core component of collegial self-governance and that new tenure and tenure-stream faculty should not be appointed without majority support of the hiring unit.

I.B.2: Outside consultants may at times have a legitimate role in assisting hiring committees in identifying qualified applicants for faculty positions, particularly in contexts where historical practice demonstrates that identifying and encouraging qualified applicants to apply has been an obstacle to achieving equity objectives. However, we recommend that the assessment of

applicants' qualifications and the selection of the applicants who are to receive further consideration must remain a core function of collegial self-governance, and not be the role of consultants. We recommend that the role of outside consultants be strictly limited to expanding the applicant pool and preparing preliminary files for further consideration by the hiring unit.

C. Interference with Teaching Assignments

Numerous concerns, from several different departments, were raised with us about Dean Dawes' micro-management of departmental matters, including what courses would be taught and who would teach them. We have chosen not to delve into these matters in this report. We do not have enough information about the particular facts of each case and the larger context for the Dean's involvement to comment more fully on this matter. However, we offer the general observation that decisions about which courses should be taught and who should teach them is primarily a matter for departmental decision-making and, in the absence of a compelling justification, decanal involvement is an intrusion into collegial self-governance.

D. Improper Changes to Grades

It has long been recognized that the assessment of student academic performance, including the assignment of particular grades, is a faculty right, a direct corollary of the teacher's freedom in the classroom. Administrative officers should not on their own authority substitute their judgment for that of the faculty concerning the assignment of grades. Review of a student complaint over a grade should be by faculty, under procedures and policies adopted by the faculty and any resulting change in grade should be made only in accordance with those policies and procedures. Consistent with this principle,

the Laurentian University Senate adopted a Policy on Academic Appeals. The concerns documented below regarding administrative changes to grades not made in accordance with those policies and procedures therefore engage the academic freedom of faculty.

1. Professor Mehdi Ben Guirat

Professor Ben Guirat was a sessional lecturer in the Economics Department in Fall 2012 when these events took place. A student needed to take three courses in order to complete his program. He enrolled in one course being taught by Professor Ben Guirat but the other two were not on offer. However, Professor Ben Guirat agreed to offer these additional courses on an individual basis (and without additional credit or pay). As a result, the student was enrolled in three courses with Professor Ben Guirat that semester. In one course, the student failed to write a final examination, despite being given three opportunities to do so, including the option of writing it as a take home examination. In another course the student failed to return a take home paper that was the final assignment. The student did not provide an excuse such as illness or death in the family for not completing the exam or assignment. In the third course, the student committed plagiarism on a homework assignment and was given a zero. As the result, the student received failing grades in two of the courses and a grade of D in the third.

The student went to the Department Chair, Professor Brian MacLean, in the first instance, but did not launch an appeal under the Senate Policy on Academic Appeals. Instead, he went to Dean Dawes. Professor Ben Guirat received an email from the Registrar on 19 December 2012, advising that Dean Dawes had approved a deferred final examination for this student and asked Professor Ben Guirat to provide one. Professor Ben Guirat questioned the process being followed and advised that

he had offered the student three opportunities to write the final examination and was not going to provide a fourth. On 8 January 2013, Professor Ben Guirat received an email from Dean Dawes asking him to bring all the work of the student in the course, including exams, to her so that she could examine them in the context of a complaint from the student. Professor Ben Guirat responded that same day inquiring about what procedure was being followed in the case and asking why he had not been consulted about it. Dean Dawes' response stated that she was following procedures laid out by the Registrar's Office. She also obliquely referred to the student's complaint:

It would be possible to invest hours and hours in consulting, conducting meetings, deciphering chains of emails, etc. without ever learning exactly what went wrong. We have thousands of students and every year a few such situations arise. It is best not to take them personally. Faculty and staff all do their best to ensure equity and fairness.

Professor Ben Guirat responded in an email on 9 January 2013 in which he reiterated the student's failure to complete the work in two courses and the plagiarism on an assignment in the third. Again, he stated his concern about not being consulted about the situation.

Professor Ben Guirat advised his Chair, Professor MacLean, about these developments and Professor MacLean started exchanging email messages with Dean Dawes on January 8 regarding the proper procedures to be followed for a grade appeal. On January 13 Professor MacLean wrote to the Dean advising that Professor Ben Guirat had submitted his grades and that the proper procedure was for the student to launch an appeal pursuant to the Senate rules.

On January 28 Dean Dawes wrote to Professor Ben Guirat stating that as she had not received the papers and

exams requested she was assuming that he did not have them and asked him to confirm that he had nothing to add to the file. She also stated that she intended to submit final grades for the student the next day. This email was copied to the Department Chair, Professor MacLean, who replied later that day. In his email, Professor MacLean reviewed his previous correspondence with Dean Dawes and stated that he had assumed that Dean Dawes had advised the student about the proper procedure and that the 8 January request to Professor Ben Guirat to submit papers and exams was no longer relevant. He also stated that he consulted with Professor Ben Guirat who assured him that he has the papers and exams in question.

Dean Dawes responded on 30 January to advise that she had met with the Vice-President Academic and Provost, Robert Kerr, to discuss the case. She reports that they decided to have a faculty member familiar with the courses review the available documentation and establish grades. She also mentions that some coursework could not be taken into consideration because it had not been provided by the instructor as requested. Dean Dawes then summarized the reviewer's findings, which are not relevant for the purposes of this review, but which do not state a conclusion about whether or how the grade should be changed.

Professor MacLean responded on 3 February 2013 in which he stated that her message raised a few concerns but that his primary concern was that the Senate appeal procedures had not been followed. Dean Dawes' response was oblique. "As you know very well, this case involved more than a simple student appeal." No explanation was provided.

On 13 March 2013, LUFA President Anis Farah raised the matter with Provost Kerr. On 28 March, Provost Kerr responded, stating that no grade had been changed

and that proper procedures had been followed. President Farah responded, identifying the following grade changes:

Course	Grade Submitted	Changed Grade
ECON 4916FL-01	47	70
ECON 4916FL-02	44	72
ECON 2136FL-01	57	73

President Farah stated that the change in grades without the professor's approval and without an appeal is a violation of the Senate policy and of academic freedom. LUFA requested that the change of grades be rescinded and that the appeal process be followed. He also stated that if no action was taken by April 8 a motion on the matter would be brought before Senate.

A follow-up email from President Farah on April 2 noted that there was some confusion about the course numbers that is not germane for our purposes. The email extended the date for a response to April 9.

This was followed by a further email outlining the Senate policies and the Registrar's regulations regarding special examinations, and stating they had been violated.

Provost Kerr wrote to President Farah on April 9. He explained that he could not discuss the details of a student's file in an email, but he did state that this was not a case about a grade appeal, that none of the grades assigned by the instructor were changed, and that the "ARA" was involved in helping find a resolution to the case. Provost Kerr offered to discuss the case at their next meeting.

The reference to the "ARA" presumably is to the Senate Committee on Academic Regulations and Awards. Their

jurisdiction in this matter, however, is not clear, and no further mention of their role is made in the correspondence.

There is a second email from Provost Kerr to President Farah dated April 11. In that email Provost Kerr identifies three places where there is a role for the Dean in grade appeals or matters related to the determination of final grades:

- a) *the Academic Integrity policy speaks of Deans establishing sanctions;*
- b) *with regard to the method for the determination of final grades, or changing it, requires Decanal approval;*
- c) *the example of the Dean having a say in an appeals process is also associated with the question of grades: see Academic Regulations on LUNET as below –*

*6. Student appeals regarding the method of determining final grades must, first of all, be submitted to the department /school's Appeals Committee, no later than the end of the second week of classes. **In the second instance, if necessary, they are submitted to the dean who makes a final resolution after consultation with the student(s), the instructor, and the department chair/school director.***

The email concluded by stating that meetings were being arranged with the Registrar, Serge Demers, and the Records Manager, Imane Ricard.

Finally, there is an email from Provost Kerr to President Farah on April 15 in which Provost Kerr states that the instructor failed to provide the materials requested and that it was the Registrar's Office that prescribed the process for the Dean to follow.

Just before the April 16 meeting of Senate, President Giroux asked if the motion to Senate could be postponed so that a meeting could be arranged at which the matter would be discussed. Subsequently, a meeting was held with the Provost, Dean Dawes and the Registrar. LUFA

did not receive an explanation that satisfactorily explained why the Senate process for appeals was not followed.

No action was taken by the Administration and the motion that had been prepared for Senate calling for the change of grades to be rescinded, that the student be given an opportunity to file a late appeal, and that the Senate affirm that the Registrar is not permitted to change grades without the agreement of the professor in the course unless the change was ordered by the Appeals Committee under the Senate rules, was never presented.

On the face of the evidence that has been provided to us there seems to be a clear breach of the Senate rules regarding grade appeals. At one point Dean Dawes asserts that she is following the procedures set out by the Registrar's Office but she never identifies what those procedures are. The Academic Regulations establish a role for the Registrar in scheduling special examinations in limited circumstances:

Special examinations

Requests for special examinations must be submitted to the Registrar with supporting documentation. If the request is approved, the student must contact the Office of the Registrar to make arrangements for the writing of the examination. There is a fee of \$40 per examination. Such requests are only considered if the student is in good academic standing in the course and has met one or more of the following criteria:

- 1. The student was ill and unable to be present or to adequately prepare for the examination (substantiated by a medical certificate);*
- 2. The student was unable to be present or to adequately prepare for the examination due to a legal obligation such as jury duty, witness, defendant, etc;*
- 3. A personal or family tragedy occurred which prevented the student from being present or from adequately preparing for the examination.*

There is no suggestion that any of these circumstances was present in this case.

There does not appear to be any provision that would authorize the Registrar or the Dean to establish special procedures for reviewing or awarding grades. Certainly, neither Dean Dawes nor Provost Kerr ever identified the source of such a power in their correspondence.

There is also Dean Dawes' statement that this is "more than a simple student appeal" and Provost Kerr's statement that this case was "not about a grade appeal." But there is no indication of what that "more" is or what this case was about if it was "not about a grade appeal." Moreover, the Administration never provided an explanation of what procedures were being followed, or the basis for them, if the case was about something other than a grade appeal.

Finally, after making statements that the case was about something else, Provost Kerr identifies situations where the Dean purportedly does have a role in appeals or matters related to grades. However, he does not make any attempt to explain how those situations might apply in the context of this case. There is no suggestion that this case was about sanctions for a violation of the Academic Integrity policy, involved a change by the instructor in the method for determining final grades or with a student appeal in regard to the method of determining final grades.

In short, the evidence strongly supports the conclusion that Dean Dawes, with the support of Vice President Academic Kerr, changed a student's grade in three courses taught by Professor Ben Guirat without the authority to do so.

2. Professor Raoul Étongué-Mayer

Professor Étongué-Mayer is a Professor in the Geography Department. In winter 2011 he taught Introduction to Human Geography. A student in the course was a special needs student who had a note taker as a form of accommodation. There were five components to the course evaluation. Despite accommodations by Professor Étongué-Mayer, the student did poorly on two practical exercises. She also did poorly on an essay assignment because she wrote on the topic of birth rates when the assignment called upon her to write on migrations. The student performed well on the mid-term and final examination and was awarded a final grade of 70 for the course.

The student complained about her grade to Professor Étongué-Mayer, but he did not agree to change it. The student next went to the department chair who offered to increase the grade to 75, with Professor Étongué-Mayer's agreement. Presumably that offer did not satisfy the student who went to Dean Dawes. Professor Étongué-Mayer received a call from the Dean's secretary to arrange a meeting at which he was to bring the student's course work and the grading form. Professor Étongué-Mayer attended the meeting and left all the requested material with Dean Dawes.

On 29 June 2011 Dean Dawes wrote to Professor Étongué-Mayer and advised him that she was satisfied that he had done his best to accommodate this student. Nevertheless, she had the student's essay re-evaluated by a committee composed of three professors from other departments in the Faculty of Social Science and they determined that the student should be given a grade of 80. As well, she stated that she had re-evaluated the map

exercise and given the student a grade of 70 on that component. As a result, the student's final grade was changed to 77.

No explanation was offered for not following Senate appeal policies and instead adopting an ad hoc procedure.

3. Professor Jim Ketchen

Professor Ketchen is a Professor in the Department of Law and Justice. The chain of events leading up to a change in his grading began in the fall of 2013. Professor Ketchen was teaching a seminar entitled "Wicked Legal Systems" (JURI 4856EL 01). In mid-October, Professor Ketchen changed the format of the course after discussion with the students so that instead of meeting weekly at the regularly scheduled times students would arrange to meet with the Professor individually or in smaller groups to discuss their major papers, which they were preparing. As a result, five regularly scheduled classes were not held. Apparently one or more students complained about this change and the teaching of the seminar to Dean Dawes. In December 2013, Professor Ketchen received an email from Dean Dawes indicating she had received a number of student complaints regarding cancelled classes, lack of availability, lack of teaching effectiveness and unethical conduct. These were spelled out in more detail and related to breaches of specific provisions in the collective agreement. Dean Dawes requested a meeting and stated that Professor Ketchen was entitled to bring a LUFA representative.

A meeting was held in December at which Professor Ketchen explained his actions. The matter then went to Provost Kerr, who wrote to Professor Ketchen on January 23, 2014 reiterating the complaints and alleged breaches of the collective agreement and indicating that he was considering disciplinary action, in the form of a one week suspension. There was further correspondence

and ultimately a letter of counselling was given to Professor Ketchen on April 4, 2014. These matters are addressed in more detail where we talk about the use of disciplinary measures against faculty. For our purposes here, they are only background to the change of grade issue.

The students in the course submitted their work and Professor Ketchen marked it and awarded grades. At some time during this process, but prior to January 17, 2014, Dean Dawes wrote to the students advising them that following consultations with the Registrar, Dr. Serge Demers, and Provost Academic Kerr, special arrangements had been made to provide students with three options to address their concerns: 1) withdrawing from the course and receiving a full refund of the tuition paid for the course; 2) keeping the grade assigned by Professor Ketchen; and 3) appealing the grade, which would be dealt with as a group appeal with the result being that all students who chose this option would get a grade of "S" as long as they provided copies of all course work graded by Professor Ketchen.

The concern here is with the third option. A subsequent email reiterated that this was a group appeal, that individual rationales for the appeal would not be required, and that the group appeal was going to be submitted to the Registrar's office on January 17, 2014. Clearly, the "appeal" being offered here is not an appeal that is contemplated or authorized by the Senate Appeal policy. This raises the question of the authority of the Dean or the Registrar to offer this option to the students. The appeal policy sets out a process that requires a copy of the notice of appeal to be sent to the faculty member whose grade is being appealed and provides that the faculty member is given an opportunity to present evidence to the Committee and to be given "a full and fair opportunity to correct or contradict any statement

prejudicial to their position.” (Student Appeals Committees, Terms of Reference, Composition, Procedures, s. 8.1.2(b)). In this case, there was no hearing and, provided the student had completed the assignments, the result of the appeal was pre-determined.

Observations

We have been presented with three cases in which the Dean, in some instances with the cooperation of the Registrar and the support of the Provost, interfered with a professor’s grades without any apparent authority to do so. While it may be that the Dean was attempting to address grading issues in contexts that were more challenging than most, creating ad hoc procedures that lack any foundation in University rules not only violates University governance policies but infringes on academic freedom, which protects the faculty member’s academic judgment from unauthorized administrative interference. Moreover, we find it particularly disappointing that senior administrators are seemingly unconcerned that there is no authority for their actions. In particular, Provost Kerr’s correspondence in regard to the grade change in Professor Ben Guirat’s course seems designed to obscure the basis for his actions by asserting grounds for his actions that seem to lack any connection to the situation at hand.

Recommendations

I.D.1: The University administration should formally re-commit itself to the principle that the authority to award student grades is vested in the faculty member and the faculty member’s judgment can only be interfered with in accordance with the University’s policies and procedures, approved by the Senate.

I.D.2: The University administration should formally confirm that in the future it will not interfere with grades awarded by faculty members except in accordance with applicable Senate policies and procedures.

Improper/Excessive Use of Disciplinary Measures

Individuals are entitled to fair treatment as a matter of fundamental justice. Faculty members who are accused of wrongdoing that could lead to disciplinary measures, including letters of counselling, must be accorded a fair procedure and due process, and, of course in a unionized context, the relevant collective agreement must be followed. We received disturbing evidence from several faculty members that disciplinary powers have been used improperly and excessively. Our report does not cover every incident reported to us, but rather concentrates on those that we viewed as the most serious.

A. Geography

As noted in Section I with respect to a hiring process in the Department of Geography, three members of the hiring committee were accused by Dean Dawes of racist behaviour during the course of that hiring process.⁶ It just so happens that these three professors were also the members of the hiring committee who voted against the candidate.

Briefly, the events leading up to the allegation are the following. The hiring committee interviewed the candidate on January 24, 2014. Subsequently, three members voted against recommending that the candidate be hired, while two voted in favour (the department chair and a faculty member external to the department). Professor Stephen Meyer, the department chair, wrote to Dean Dawes on January 31 summarizing the reasons of those who supported and those who opposed the candidate. He explained that opposition to the candidate was based on concerns about the candidate's teaching ability and lack of experience in a

number of specified areas. Professor Meyer did not indicate he suspected any improper motive or consideration may have influenced the vote.

Dean Dawes was unhappy with the result and called a meeting with the department to discuss the matter. The meeting was held on February 7, 2014. In addition to the five members of the hiring committee, two representatives from the Faculty Association, Anis Farah and Linda St. Pierre, were present, as were Dean Dawes, Sheila Cote-Meek, Associate Vice President for Academic and Indigenous Programs and the Dean's secretary. Dean Dawes asked for an explanation for the 'no' vote. One of the three professors who were opposed raised the question of the criteria for determining whether a candidate was Aboriginal. No one in the room expressed a concern at the time that this question was evidence of racist behaviour. Subsequently, on February 12, the Geography Department was informed that the Administration decided to appoint the rejected candidate. The three professors who had voted against the candidate were then asked to provide a letter to Vice-President and Provost Robert Kerr that they would be willing to work with the candidate. All three complied. However, that was not the end of the matter. On March 5, 2014 Dean Dawes wrote to the three members of the department who had opposed the appointment, accusing them of racist and discriminatory behaviour which was allegedly manifested during the January and February meetings. In the case of Professor Raoul Étougué-Mayer and Professor Moustapha Soumahoro, the evidence of their racist behaviour apparently consisted of their failure to challenge the professor who raised the question about determining aboriginality and their vote against the candidate. The two other members of the hiring committee, who also did not object to the question but who voted in favour of the candidate, were not accused of racist behaviour. Neither, for that matter, were the

6 From Dean Dawes to Professor Étougué-Mayer, March 5, 2014: *L'allégation c'est que vous vous êtes comporté de façon raciste et discriminatoire ... Ce comportement s'est manifesté durant le processus d'embauche qui a eu lieu en janvier et février 2014....*

Dean nor the AVP Academic and Indigenous Programs, despite their failure to object to the question about aboriginality at the February 7 meeting.

Disciplinary meetings for each of the accused were scheduled for April 15. In the meantime, on March 20, the Department of Geography sent a memo to Dean Dawes and Charles Daviau, the Director of the School of Northern Development) which stated that they were seeking membership in the School and were proposing to have all Geography programs become part of the School. The memorandum was signed by the chair of the department and the three other department members who had each been accused of racist behaviour in regard to the hiring. Dean Dawes, who been strongly encouraging the department to take this step, enthusiastically welcomed this step in an email dated March 22.

The disciplinary meetings were held on April 15, in the presence of Linda St. Pierre and Emilie Cameron, Director of Professional Relations for the University. In Linda St. Pierre's notes from those meetings, she writes that Dean Dawes opened each one by expressing how pleased she was that the department had agreed to join the School of Northern Development. At the meetings, Linda St. Pierre requested more particulars about how the Dean arrived at her conclusion the accused professors had behaved in a way that was racist and discriminatory during the hiring process. In the case of the faculty member who raised the question, Linda St. Pierre asked how the Dean reached the conclusion that the question was racist and discriminatory, but no further information was provided. In the cases of Professors Soumahoro and Étoungué-Mayer, it was conceded that the basis for the Dean's accusation was their silence at the February 7 meeting. The disciplinary meetings were all short, less than ten minutes, and

Professors Soumahoro and Étoungué-Mayer reserved the right to provide a written response.

Professor Soumahoro wrote a lengthy letter to Dean Dawes dated April 24 in which he categorically denied the accusation. Professor Étoungué-Mayer's letter, dated April 29, was shorter but also totally rejected the accusation of racist and discriminatory behaviour.

In letters dated May 8, Dean Dawes withdrew the charges of racism against each of the three professors. The apparent basis for her decision was that because of the voluntary agreement of the department to join the School of Northern Development, Dean Dawes considered the matter resolved.⁷ In our meeting with Professor Soumahoro he stated that he felt bullied and intimidated by Dean Dawes. He stated this matter has been affecting his health and wellbeing greatly, as there is "no single day" that he doesn't think about this and feel anger at all that has transpired.

The evidence presented to us very strongly suggests that the threat of disciplinary measures was used to retaliate against faculty members who opposed the appointment of a candidate favoured by the Dean and as a lever to obtain their agreement to transfer to the School of Northern Development. We did not hear from the faculty member who raised the question of how one determines aboriginality, but we do not view such a question in and of itself as evidence of a racist or discriminatory attitude, and Dean Dawes did not explain how she reached that conclusion at the May 8 meeting.

⁷ From Dean Dawes to Professor Etoungué-Mayer, May 8, 2014: *Étant donné que vous avez démontré une volonté d'aller de l'avant en vous joignant à l'École de développement du Nord, en participant à la planification de la maîtrise en développement communautaire durable du Nord et en appuyant le partage d'espace entre les programmes d'anthropologie et de géographie, je considérerai cette affaire comme étant résolue.*

Moreover, the suggestion that the silence of Professors Soumahoro and Étongué-Mayer was evidence that they behaved in a racist and discriminatory way during the hiring process is simply unreasonable, especially in light of the fact that other people who were in the room and who also remained silent were not accused of racist or discriminatory behaviour because of their silence. It is also disturbing that the accusation seems to have been dropped because of the department's agreement to join the School of Northern Development. Surely, if there was genuine concern that faculty members were behaving in a racist and discriminatory manner in the hiring process, the fact they agreed to join the School of Northern Development does not in any apparent way resolve the matter.

Finally, we are also concerned that members of the department who voted against the candidate were asked to write letters stating that they would be willing to work with her after she was appointed. It is not uncommon for some faculty members to oppose an appointment but it is assumed as a matter of course that after the appointment is made faculty members will work together collegially. We have never previously heard of a situation in which faculty members were called upon to write letters of this type and it is surely an objectionable practice that in this context should be viewed as a disciplinary measure insofar as the request is premised on the view that faculty members would otherwise behave improperly towards a newly appointed faculty member.

B. English

Professor Thomas Gerry is Full Professor of English, at the Barrie Campus of Laurentian University. The Barrie Campus has a Liaison Committee, to which people bring their concerns, and the Chair of that Committee (for some time, Professor Gerry) relays those concerns to the

appropriate place in the central administration. Administrators have apparently referred to it, at least sometimes, as “Tom Gerry’s committee”, or as “just one person’s opinion”, which denigrates its function and Professor Gerry’s role within it.

There was an incident involving the discussion of the roles and responsibilities of a particular staff member at Barrie, which resulted in a disciplinary letter (letter of counselling, April 24, 2014, from Dr. Sheila Cote-Meek, Associate Vice President, Academic and Indigenous Programs) being placed in Professor Gerry’s file (LUFA is trying to have this letter removed, under a separate process). In brief, Professor Gerry, on behalf of the Liaison Committee, wrote on March 27, 2014, to Professor Bernadette Schell (Vice-Provost in Barrie) and Dean Dawes, with a number of concerns that had been brought to the Committee’s attention about the role (not the job performance) of a particular staff member.⁸ Professor Schell suggested that he needed also to bring Dr. Christine Blais (Executive Director of the Centre for Academic Excellence) into the discussion, which Professor Gerry did on March 28. Within an hour, Professor Gerry received a short, strongly worded e-mail from Dr. Blais, which included the following statements: “Your behaviour in this matter is completely inappropriate”, “it is not your role to write her job description”, and “I will be asking LUSU [Laurentian University Staff Union] and Human Rights that you apologize . . . for this type of behaviour”. She then refers to his invitation to meet the Committee as “your summons”. Professor Gerry then responded on April 11, again on behalf of the Liaison Committee, that in lieu of Dr. Blais attending a meeting, he is forwarding a list of recommendations about the advising process. He also states that LUFA was “in the process of ascertaining

⁸ These are detailed in the committee minutes of March 11, 2014.

whether advisors in Sudbury and Barrie are performing similar tasks campus-wide and that these do not interfere with members' advising roles and responsibilities", and refers to an Arbitration Settlement of November 12, 2012, which includes the statement that "... the Academic Advisor in Barrie hired through the Centre for Academic Excellence does not replace the academic counselling role of faculty as referred to in the collective agreement and Senate policy". On April 14, Dr. Farah, as LUFA President, wrote to Vice-President Kerr to remind him that "the Collective Agreement specifies that no work within the domain of the faculty can be assigned to non-members without the agreement of LUFA" and also of the November 12, 2012 agreement. Vice-President Kerr responded on April 15, stating that these advising roles do not replace that of the faculty member, but "they are complimentary in an effort to more fully meet the needs of all students".

In all this subsequent correspondence, there was no further suggestion that Professor Gerry had behaved inappropriately by raising the issue in the way that he did. Nevertheless, on April 24, 2014, Dr. Sheila Cote-Meek issued her "letter of counselling", again strongly worded, but treating the whole episode as Professor Gerry having interfered in "the Administration's management rights", having been unprofessional, and having presented public criticism of a staff member. The letter ended with a warning that "any unprofessional behavior by you will not be tolerated; and if you treat staff with disrespect, you will receive disciplinary action as outlined in the Collective Agreement."

What is striking about the March 28 letter from Christine Blais and the April 24 letter of counselling from Dr. Cote-Meek is that they seem disconnected from what actually happened. It is clear from Professor Gerry's memo that he is raising a concern about whether

student advising is a staff or an academic role. There is absolutely no suggestion that the performance of the particular staff member is being criticized. Moreover, the statement in Professor Cote-Meek's letter of counselling that it is unprofessional to object to how the administration exercises its management rights seems antithetical to the norms of collegial governance. Indeed, the use of disciplinary powers in this context seems designed to suppress a legitimate discussion of the question of who has responsibility for academic advising and, more generally, to undermine the role of the Barrie Liaison Committee in the governance process.

Professor Gerry is a full professor with tenure, hence not afraid to speak out on issues, including governance, but others with lesser status or more precarious status feel afraid to speak out. Representatives of LUFA, President Anis Farah and Linda St. Pierre, also related this same problem to us.

C. Law & Justice

Professor Rosanna Langer stated that the locks on the departmental office had been changed in February 2013. This meant that faculty members lost access to staff, all office support and supplies (such as printer, letterhead, administrative forms, paper, hole punchers, staplers, pencil sharpeners, etc.), mailboxes (incoming mail, books, student assignments, exam books, etc.), delivery of larger items, etc. The situation was particularly difficult for sessionals especially if teaching after normal office hours. The Dean's Office staff was offered as alternate support staff.

By way of explanation, a March 8 e-mail from the Dean's Office (Carole Germain-Chiswell to the Departments of Law & Justice and Political Science, copied to Linda Brisson, Elizabeth Dawes, and Julie Ouellette) referenced incidents in the departmental secretary's office, incidents

that were never explained or substantiated. However, that reference was enough to flavour the change “with an aura of punitive reprisal”, to quote Professor Rosanna Langer. The arrangement was then changed to one in which faculty members had to go to the Department of Political Science for support. There is erosion of not only the support provided (and to which faculty members are entitled under the Collective Agreement with LUFA) but also to the sense of collegium, as the departmental office was the locus of much interaction. It also greatly alters the relationship between faculty members and support staff. All this was altered without notice or consultation. Later (February 28, 2013) an e-mail from the Dean required⁹ attendance at a meeting on March 1 about departmental support. The Dean was accompanied by Emilie Cameron, the Director of Professional Relations, and Bernard Beaulieu, Director of Human Resources, no agenda was provided in advance, and the meeting had the aura of collective progressive discipline. The Laurentian University “Policy on a Respectful Workplace and Learning Environment” was referenced, but there were no details or specifics for the unstated and alleged personal harassment. Another faculty member, Professor Ketchen, referred to this same meeting as feeling like a “verbal letter of counselling”. Combined with interference in collegial process around curricular decisions (see Section I), there is a feeling of disrespect for colleagues and due process. It was also suggested that the Dean’s animus to one particular member of the department (related to an incident described in Section I.D.3) resulted in an impact on the entire department. LUFA President Farah and Linda St. Pierre similarly referred to this as “collective punishment”.

9 In bold, in the e-mail of February 28, “Please note that your attendance is required”.

There was also an incident arising out of the improper changing of grades by Dean Dawes in a course taught by Professor James Ketchen, referred to in Section I. During the course of that incident, Professor Ketchen was summoned to a disciplinary meeting with Dean Dawes on December 10, 2013 in response to the student complaints that were the occasion for Dean Dawes’ involvement in changing Professor Ketchen’s grades. Dean Dawes raised concern that based on the student complaints Professor Ketchen had acted improperly and the matter was subsequently referred to Vice-President Academic & Provost Robert Kerr. A disciplinary meeting was held on March 19, 2014. At that meeting Professor Ketchen provided a lengthy letter which stated his version of events and rebutted the student complaints and allegations. In an undated letter provided to us, Professor Ketchen states that he “was never provided an opportunity to see these complaints, to know the exact number of complaints made or to challenge or test these complaints. Both the Dean, and subsequently Dr. Kerr took them as given”.¹⁰ He also states that since a remedy had already been provided to the students, this implied there had been wrongdoing on his part before the relevant discussions had even taken place.

Following the meeting, on April 4, 2014 Dr. Kerr wrote to Professor Ketchen. He stated that he found Professor Ketchen’s letter “helpful in making a full and proper assessment of the situation”. This apparently was sufficient to convince Dr. Kerr that disciplinary action was not warranted. Certainly no finding of fact was made that Professor Ketchen had behaved improperly. Nevertheless, Dr. Kerr characterized his letter as a letter of counselling in regard to Professor Ketchen’s conduct

10 The statement is made in an undated document prepared by Professor Ketchen and provided to us.

of the course and he went on to clarify his expectations for Professor Ketchen's future behaviour, emphasizing that he was to behave in a respectful and courteous manner and to refrain from using an adversarial approach. The letter ended with a warning that any unprofessional behaviour would not be tolerated and that if Professor Ketchen treated his colleagues or students with disrespect he would be subject to discipline under the collective agreement.

Our concern here is that there is in fact no finding that Professor Ketchen's conduct was unprofessional and because the letter of counselling is not considered disciplinary it cannot be grieved. This deprives Professor Ketchen of the opportunity to challenge the finding and require the employer to prove on a balance of probabilities to a neutral third party that wrongdoing had indeed occurred. The result is that the letter creates an aura of guilt without a finding of guilt. Moreover, the letter of counselling goes beyond the unproven allegations made by the students and suggesting there is a broader pattern of unprofessional conduct, notwithstanding the absence of any such findings.

D. Economics

Professor Ben Guirat stated that in the aftermath of an incident of conflict with the Dean (improper grade change, described in Section I), he was punished in various ways:

1. Classes he usually taught were cancelled well before the start of the semester, even when they were core classes. Since he was sessional, this had major impact.
2. He also was not hired for a full sessional position to which he applied, and for which he believed he was the better qualified candidate.
3. There was an incident in Fall 2012 in which one of his courses was given an odd timetable slot (Tuesday at 10, Friday at 12); after finding new options from the Registrar, and with the agreement of all the students and the chair, he tried to change the course to Monday and Wednesday at 8:30, but the Dean refused to allow the time-change.
4. His department was looking for someone to attend the Ontario Universities Fair, and he volunteered. He went to the orientation and was part of an e-mail list where all the arrangements were confirmed, but an hour before the bus left for Toronto he received an e-mail from the President's Office saying that they did not need his services. The faculty member who attended instead, no longer in the Economics Department but another unit, was the one who had reviewed materials in the grade change incident described in Section I.
5. In February 2010, after another professor in the department had a health issue and could no longer teach a course, he took it over. Since it was over the contractual cap, LUFA gave a memorandum of agreement. There was debate about how much pay he would receive, and he still did not have a contract when he was about to submit the grades. In the end there was a settlement for a small amount of pay, but he felt he had made his point, namely that for a sessional such extra work should be compensated and not performed for no pay whatsoever. Professor Ben Guirat believes that these various instances, where he felt disrespected, were as punishment for the grade change incident.

E. Monitoring of Travel

Professor François Dépelteau (Sociology), active in various departmental matters since before Dean Dawes arrived, participated in an Aboriginal hiring in his department. A number of matters regarding this hiring were controversial. At issue is the following: after it was agreed to interview two candidates, Professor Dépelteau constructed a list of questions to be sent to candidates so that they could prepare. The Dean later stated that they were losing candidates because of his list and that people did not come because of his list. The search failed, and they started again, using the same headhunter. Professor Dépelteau believes that he was later punished, as Dean Dawes monitored his exact absence for a 7-day research trip to Brazil.

Professor Brian MacLean (Economics) had a number of instances of operational disagreement with Dean Dawes (a student requesting a further opportunity to rewrite, a faculty member transfer to the School of Northern Development, major loss of faculty complement despite a tripling of enrolment, her directing cuts rather than allowing discussion as to where to cut). In what felt like a retaliatory move, Dean Dawes then complained to Professor MacLean about a conference trip he made, despite the fact that the trip was a short one, it was no secret he was away, and he was accessible by e-mail all the time he was away. He had attended the American Economic Association meeting, but when he sent in the expenses for reimbursement, he was told that he had been out of the country without notice, and was informed that he should give notice in the future, and also that it was his responsibility to notify her if others were away. In what felt like a more generalized retaliatory move (cf. "collective punishment" in Section II.C), large numbers of faculty members suddenly received negative evaluations of their annual reports, rather than the previous more constructive commentary

(e.g. suggestions for areas for further work or improvement). There were a number of other smaller administrative issues (related to secretarial support, payroll signatures, etc.) which also felt to Professor MacLean as retribution.

Observations

We find two of these cases (those in Geography, and that of Professor Gerry in English) to be particularly egregious; the other cases fall more into the domain of administrative overreach, poor management or poor interpersonal relationships. From all of our conversations, a picture is painted where there were a number of incidents in which no formal disciplinary action was taken, but which clearly left faculty members feeling that they were being adversely treated because of their conflicts with the Dean or other administrators, or because of objections to administrators' plans or actions. In some cases, these are hard to differentiate from perceptions, with no formal action taken or difficult to document, but nevertheless contribute to an unfortunate climate in which faculty members feel intimidated and that their opinions are unwelcome.

The use of letters of counselling is particularly concerning. In several cases allegations of wrongdoing were made that were disputed by faculty members. Instead of engaging in a process to determine whether these allegations were true, administrators chose to issue letters of counselling which by their very nature imply that wrongdoing has occurred. This course of action not only creates an aura of guilt, but it deprives faculty members of the opportunity to challenge the allegations themselves or the letter of counselling since the letter is not considered a disciplinary measure. In short, the use of letters of counselling in this way is procedurally and substantively unfair.

We were taken aback by the number of people who referred to Dean Dawes as being vindictive or vengeful, and exhibiting lack of respect for what is done at Laurentian. A number of people commented that Dean Dawes' animus towards any member of a department could have consequences for a department and its programs as a whole. In particular, there was a sense that cuts to the tenure-stream complement were used as a threat or as a weapon (discussed in Section III).

There were also numerous comments that those without tenure (pre-tenure but tenure-stream, sessionals, etc.) were simply afraid to voice opinions because of this alleged vindictiveness.

A number of people commented on the use of "letters of counselling" as tools to suppress dissent. These are letters placed in one's file, which lay out behavioural expectations (none of which is objectionable in its statement), but which leave the impression that behaviour has not lived up to these standards, so they serve as a type of warning, felt to be unwarranted in that they seem to follow from pseudo-disciplinary meetings when no finding of transgression has been established according to agreed procedures.

There were also many references to the toxicity of the workplace, to feeling bullied, to undue stress, and to stress-related illnesses (in themselves or in others).

Recommendations

II-1: The University administration should formally re-commit itself to the principle that matters of disagreement should be resolved by collegial discussion and not by discipline, whether real or threatened.

II-2: The University administration should formally confirm that in the future it will not use letters of counselling except as the outcome of a formal disciplinary process.

II-3: The University administration should engage an outside consultant to deliver a certified course for managers and supervisors on bullying and workplace harassment as defined in Ontario's Bill 168, and how to recognize it and prevent it. Senior administrators should be required to take this course.

II-4: The University should apologize to Professors Étougué-Mayer and Soumahoro for the unfounded allegations of racist and discriminatory behaviour and should insure that no material related to those allegations remains in their personnel files.

II-5: The University should apologize to Professor Gerry for the unfounded allegation of professional misconduct, withdraw the letter of counselling, and insure that no material related to this allegation remains in his personnel file.

II-6: The University should desist from the practice of requiring faculty members who opposed a candidate during the hiring process to write letters promising that they will work collegially with the candidate in the event that candidate is subsequently appointed by the University.

Failure to Maintain Faculty Complement

During our interviews, we were provided with 3 graphs (see Appendix 1) relating to faculty complement: 1) a graph of the total faculty complement in Sudbury, year-by-year 2009-2014, showing that the complement fell from 380 to 339 over this period; 2) a graph of total complement, broken out by faculties, year-by-year 2009-2014, showing that whereas faculty complement remained relatively constant in the professional schools, in Science & Engineering, and in Management, it fell considerably in Humanities and Social Sciences; and 3) a graph of the net change in complement between 2009 and 2014 in each of 14 units in Humanities and Social Sciences. There is only one case of complement gain (Northern Development), ten instances of complement loss, and three cases of no net change. These figures do not always agree with the figures cited in our individual interviews.

A. Sociology

Professor Monique Benoit was chair of the Department of Sociology from 2011-14. According to Professor Benoit, in 2009 there were 14 professors in the department, while in 2014 there were only 4¹¹, and yet there is a need to maintain 6 programs (including the offerings at the Barrie campus). A program review of Sociology in 2011-12 indicated a need for more appointments. Suggestions about cross-listing courses, or having professors from other departments (Political Science, Physical Education, Psychology) teach, have not worked out for various reasons. The Labour Studies program has left for the School of Northern Development, without first discussing and arranging what would happen to those who need the courses that they offer. The department is not able to continue offering the MA due to lack of personnel. She offered the

¹¹ Graph 3 shows the net complement change in Sociology in this period as being minus 6.

opinion that the lack of resources was because the department was not liked, because they have a critical attitude. She also worried about the quality of the education the students are now getting because there are now so few full-time faculty in the department.

We heard similar information about the reduction of the tenure-stream complement in Sociology from Professor Dépelteau, to the point where he is the only tenure-stream professor left “on the English side” in Sociology. He recounted the story of initiatives to change the undergraduate Sociology program significantly. He said that Dean Dawes had promised three tenure-stream positions if the program changed significantly. There were three workshops of two to three hours each; 250 students were consulted; and the curriculum was reconfigured based on this wide consultation. Dean Dawes apparently did not like the resulting suggested configuration, and as a consequence said there would be no tenure-stream positions. Professor Dépelteau drew the conclusion that positions are used to enforce conformity with the Dean’s views, against what the colleagues feel is good judgment. He also noted that this is not a budgetary issue, as it was clear that positions would have been available had Dean Dawes approved the suggested reconfiguration of the program. As a former MA coordinator, he was concerned about the ongoing weaknesses in the MA program, including the lack of provision of an adequate number of faculty members. One idea to make the MA program viable was to offer it jointly with Nipissing University and Algoma University. The latter declined. The joint program with Nipissing has been approved by Nipissing, but not by Laurentian. The most recent Periodic Appraisal of the program evaluated the new joint program, but it cannot be offered since there is not yet approval at Laurentian. Again, Professor Dépelteau felt as though complement was being used as some sort of weapon.

B. French

French and FSL (French as a Second Language) have been cut from 13 positions to 8¹², but still need to offer all three specialties (language, literature, linguistics). When sessionals are employed, they can only teach undergraduate, not graduate, level courses, and this puts MA programs at risk. The faculty member we spoke to, Professor Ali Reguigui, stated that 80% of teaching in French is done by sessionals. He stated that sometimes positions are promised but never materialize, giving an example of an MA in Speech and Language Pathology. The program was proposed and external evaluators arrived, and were told by many faculty members that the program was premature; the evaluators said that two more tenure-stream positions would be needed and these were promised. One person was hired, but stayed only one year before leaving, and was not replaced. The program is no longer a priority. During the cyclical program review in French, Dean Dawes promised two positions, and a higher-level committee (ACAPLAN) agreed, but subsequently she withdrew those positions. There is the sense amongst faculty we interviewed that this is because other programs and departments are more in favour.

C. Economics

Professor Brian MacLean, Chair of the Department of Economics, spoke of the loss of 5 faculty members in 5 years¹³ (one death, one retirement, 3 transfers), while enrolment tripled. Again, there is the sense that this department is out of favour for some reason, despite strong enrolments.

¹² Graph 3 also shows the net complement change in French Studies in this period as being minus 5.

¹³ This is consistent with the data in Graph 3.

D. Administrative Response

We reiterate that our invitation to meet with senior administrators was rejected; so we have not met directly with any senior administrator. However, we were given a copy of a letter from President Dominic Giroux to Dr. Anis Farah, President of LUFA, dated May 3, 2013, in which President Giroux refers to 7 tenure-track positions to be advertised in 2013-14 (this should already have happened by the time of our interviews with faculty members in January 2015), and that 5 positions had already been filled since Dean Dawes' arrival in August 2010 (two of which were in Barrie). He also notes "that all three new research chairs identified in the 2012-17 Strategic Research Plan approved by Senate will go to the Social Sciences" and "have been fully budgeted by the University for 2015-16, 2016-17 and 2017-18"; these of course had not yet been hired at the time of our visit in January 2015. President Giroux also states that "15 faculty hires have been approved for the Social Sciences and Humanities during her [Dawes'] mandate"; presumably this is 7 (for 2013-14) plus 5 (already filled) plus 3 (from the Strategic Research Plan). This doesn't directly address either net complement (President Giroux's letter only refers to the gains not the losses), nor the ability of any given program to fulfill its obligations.

Observations

Professor Farah and Linda St. Pierre referred to a strategic plan to reduce the total faculty complement from approximately 400 to 339, and that in this process the priority was to protect "signature" programs, largely in engineering. It is clear that the complement in Humanities and Social Sciences has fallen significantly, while the complement in the other faculties has remained approximately constant despite minor fluctuations. Thus the fact of complement decline seems clear for Humanities and Social Sciences. However,

without knowing other facts, such as student enrolment per department over the same time span, one cannot comment more on the appropriateness of this, nor is it our mandate to do so. What is important academically is whether there is sufficient tenure-stream complement to maintain the programs, and if not, what steps are taken to deal with it (typically either adding complement or curtailing programs) and that the decisions should be as collegial as possible. Our interviewees indeed referred to the difficulty of sustaining programs, often in two languages, especially when there are also graduate programs.

We therefore raise the question of the process that was followed in making the decisions around complement cuts. To what extent was there a Faculty plan? To what extent had it been clearly communicated to chairs and/or regular faculty members? Had faculty members been able to participate in the development of this plan (if there was a plan)? Was adequate consideration given to the impact of selective complement cuts on the ability of departments to deliver programs? Or were the cuts simply unplanned and opportunistic, in that positions were simply not replaced when faculty members retired, resigned, moved elsewhere, or died? An unclear and non-transparent academic planning process leaves the opportunity for people to impute reasons as to why resources are received or withheld. Although several interviewees felt that the distribution of the complement cuts was related to retaliatory behavior on the part of Dean Dawes, in the absence of clear evidence that the allocation of complement was punitive, these are more questions of good academic administration than of academic freedom.

Recommendations

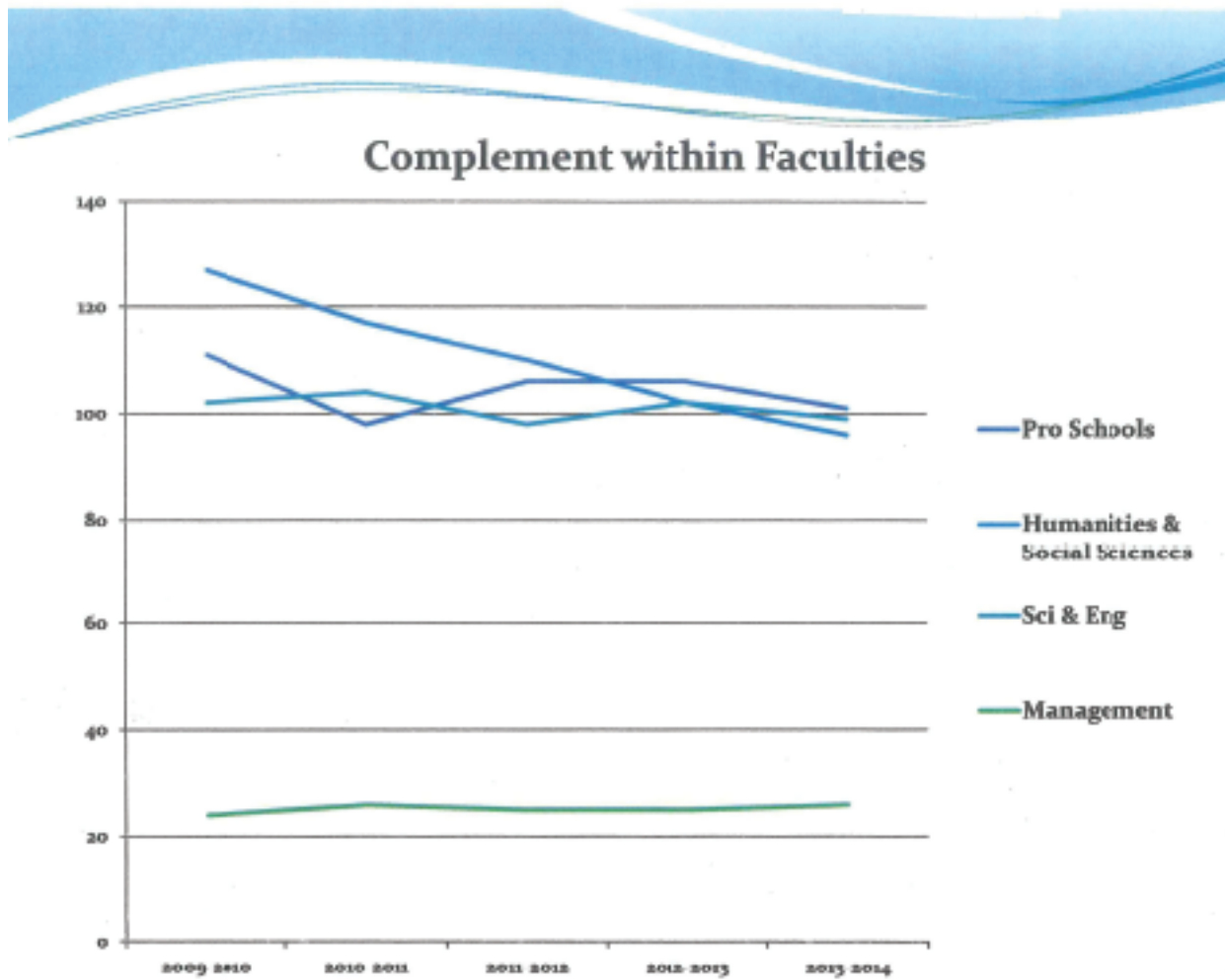
III-1: The University administration should formally re-commit itself to the principle that academic planning, including curriculum redesign, should be open, transparent, and collegial, and that the facts upon which academic planning is based should also be open.

III-2: The University administration should formally confirm that in the future resource allocation, including complement allocation, will be open and transparent.

Conclusion

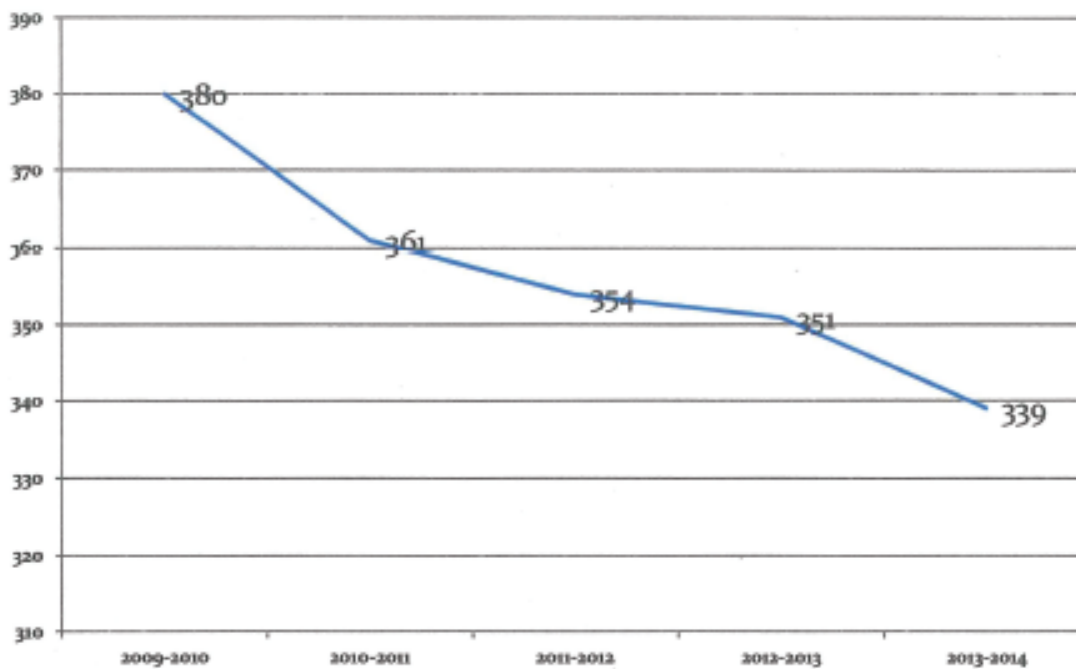
As we noted in the Introduction to this report, it is based on the information we received during our onsite visit, which included interviews with fourteen faculty members and LUFA staff, as well as from documentary evidence provided to us. University officials have refused to meet with us or to provide us with any documents and so we have not had the benefit of their input. Nevertheless, on the basis of the information we did receive, we were left with a disturbing picture of an environment in which the principles of academic freedom and collegial governance are not consistently adhered to. We found numerous incidents, which we have documented in our report, in which university officials appeared to have acted outside of the applicable academic rules, failed to respect principles of collegial governance and improperly used or threatened to use disciplinary powers. The overall effect of these actions has been to create a feeling, at least among some portion of the faculty, that their academic freedom is under threat and that they are not being respected as valued members of the academic community. We have made many specific recommendations that aim to address these concerns, but we want to emphasize the overarching need for the university administration to affirm its support for and commitment to the principles of academic freedom and collegial governance and their application in the day to day governance of the university.

Appendix 1





Total Faculty Complement (Sudbury)





Humanities & Social Sciences (2009 - 2014)

