

**Report of the
Canadian Association of University Teachers
Ad Hoc Investigatory Committee
Regarding the
Termination of Dr. Colin Wightman
by Acadia University**

Committee Members

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In September 2007, Dr. Colin Wightman, a tenured professor at Acadia University and Director of the School of Computer Science, was fired by that University “in all capacities.” This included both as Director and as a tenured full professor. The matter was referred to the Canadian Association of University Teachers (CAUT) initially when the Acadia University Faculty Association took his dismissal as a tenured full professor to arbitration and subsequently when the arbitrator ruled the union could not represent Professor Wightman as he did not immediately return to the bargaining unit on the termination of his administrative appointment. Whether a member of the bargaining unit or not, a tenured professor cannot legitimately be dismissed without regard for due process and just cause. As that is what allegedly happened to Professor Wightman, the termination of his tenured position appeared to be in contravention of the conventional understanding of tenure at Canadian universities as reflected in the CAUT Policy Statement on Tenure.

CAUT appointed an Ad Hoc Investigatory Committee in March 2008 to examine the termination of Dr. Wightman by Acadia University." [A.1.1 & A.1.2] to determine if the termination was for just and sufficient reasons and through procedures that ensured fairness before a properly constituted and independent tribunal.

In order to ensure accuracy, this report identifies documentary evidence (which is listed in Appendix A) in parenthesis after the relevant statement. Verbal evidence is identified as such.

Dr. Colin Wightman

In 2006, Dr. Wightman left a tenured appointment at Minnesota State University (Mankato) [A.2.1] to accept “tenured position (#20308) at the rank of Full Professor” and directorship of the Jodrey School of Computer Science at Acadia University. The tenured position falls within the definition of “a professorial position” under the *Eleventh Collective Agreement*. The letter of appointment from President Dinter-Gottlieb clearly identified the salary on the faculty scale (placement on the salary grid at step 10) and indicated that the directorship carries a further administrative stipend of \$5,000.00. [A.2.2]

The terms of the letter used vocabulary such as “join the faculty” and “academic appointment”. The appointment as director was for a six-year term, with the possibility of renewal. The letter of appointment refers to the *Eleventh Collective Agreement* between Acadia University and the Acadia University Faculty Association. [A.2.2; A.5.1]

The CAUT Ad Hoc Investigatory Committee (hereafter “the Committee”) examined e-mail correspondence between Dr. George Iwama, chair of the Selection Committee, and Dr. Wightman. (A) In the view of the Committee, the intention of the appointment was to convey tenure. Dr. Wightman, in an interview with the Committee, indicated that he would not have accepted the appointment at Acadia had it not conveyed tenure. (w)

In May 2007, Dr. Wightman was appointed Acting Dean of Pure and Applied Science for a twelve-month period. Terms used in the letter of appointment included the phrase “professorial salary” and noted that there would be an administrative stipend of \$1,000.00 per month. [A.2.3]. Around the same time, Dr. Wightman was named chief negotiator for the University’s team for the pending contract negotiations with the Faculty Association. [A.3.1]

It is clear that Dr. Wightman was a rising star in the Acadia firmament. The deanship and role as negotiating team member suggest that Acadia University was serious about using his talents and retaining his services.

The Incident

In April 2007, Dr. Wightman engaged in a one-time fantasy sex encounter with a young woman. The encounter involved some elements of bondage. The encounter was arranged over the internet, using computer equipment owned by Dr. Wightman and through his personal IP provider. The woman in question was over the age of 18. The circumstances were consensual. And there was no connection between the woman and Acadia University. In sum, this was a personal and private event. [w]

Following this encounter, and unbeknownst to Dr. Wightman, the woman laid an accusation of sexual assault with the Royal Canadian Mounted Police (RCMP). On June 19, 2007, the RCMP in New Minas contacted Dr. Wightman as part of their investigation. [w] They seized his personal computers, Blackberry, and a password-protected memory stick. [A.3.5; w] The RCMP did not perceive a need to examine Dr. Wightman’s Acadia laptop and at the time were not about to contact Acadia. Dr. Wightman was detained at the New Minas detachment while the search warrant for his computing equipment was executed; he was released between 2:00 and 3:00 a.m. on June 20. No charges were laid. [w]

Early the same morning, Dr. Wightman contacted the University President, Dr. Dinter-Gottlieb, whom he reached by cellphone. He also reported to Glenn Hirschfeld, Director of Human Resources at Acadia University. Both Acadia officials, according to

Dr. Wightman, expressed astonishment but were calm about his news. Dr. Wightman contacted Acadia because he felt a need to be open and honest with the University administration, to protect the reputation of the University should the investigation become public. He felt that news of this sort, especially involving an Acting Dean, would be damaging. In his communication, Dr. Wightman asked that he be placed on administrative leave and be requested to remain off-campus until the investigation was completed. [w] A letter to this effect was provided by Dr. Tom Herman (Acting Vice-President Academic) on June 22; the letter makes reference to the “police investigation” and not to the substance of the investigation. [A.3.2]

In his conversation with Glenn Hirschfeld, Dr. Wightman also requested a referral to a mental health therapist. In his interview with the Committee, Dr. Wightman noted that he was motivated to understand how he could have got himself into such a situation that could so drastically affect his family and professional career. Hirschfeld recommended a therapist and Dr. Wightman began therapy immediately. [w]

One week later, and “in the light of [his] absence from campus,” Dr. Wightman’s appointment as Acting Dean of Pure and Applied Science was suspended in a letter from Dr. Herman. [A.3.3]

For the next two months, Dr. Wightman was at home pending the outcome of the police enquiry. No word was received from Acadia or from the police. In mid-August, looking toward the start of the academic year, Dr. Wightman contacted the Director of Human Resources who indicated that Acadia preferred a “wait and see” attitude, not wishing to bring someone back too soon or (in Dr. Wightman’s words) “terminate somebody and it was later found that the person was innocent.” However, Hirschfeld noted that the RCMP investigation had “raised some concerns” at Acadia; he anticipated that a meeting with himself, the Vice-President Academic and Dr. Wightman would be needed. [w]

In mid-August, Dr. Wightman’s lawyer contacted the RCMP for a status report. On August 23rd, the police reported that their examination of computers, Blackberry and protected thumb drive was almost complete. They “[did] not anticipate any criminal charges against Mr. Wightman.” [A.3.5] Armed with this report, Dr. Wightman contacted Hirschfeld at Acadia with a request to restore his Acadia e-mail and Acadia laptop, so that preparations for the fall term could begin. In response, Hirschfeld indicated that Acadia would be looking through the laptop as part of a “small internal investigation”. [w] The Committee notes with concern that this “internal investigation” runs counter to Acadia’s pledge in the Collective Agreement “to respect the privacy of Employees in the proper use of Acadia’s computer facilities.” [A.5.1, s.17.15] Acadia did not contact Dr. Wightman prior to embarking on this “investigation” and only provided an indication of it after Dr. Wightman initiated contact. [w]

On September 7th, Dr. Wightman was asked to attend a meeting with Herman and Hirschfeld at Acadia at noon on September 10th. He was not advised in advance of the business to be covered. At this meeting, Dr. Wightman was presented with a letter

terminating his “employment at Acadia University, in all capacities ...effective immediately.” [A.3.6] He was given the option to resign but was required to sign a “full and final release” that would absolve the Board of Governors at Acadia from any liability, would waive any recourse under labour standards or human rights legislation and would bind Dr. Wightman to secrecy in this matter and any other confidential matters with Acadia. [A.3.6; A.3.7; A.3.8] Dr. Wightman declined the voluntary resignation, and was required to relinquish his keys, Acadia identification, etc. He gathered up the documents and left the campus. [w]

The Termination Letter and Issues

What were the grounds for termination as set forth in the Acadia letter?

- 1) “...we have discovered from an analysis of your University laptop that you have been using our computer and facilities during working hours to engage in highly inappropriate communications of a sexual nature on chat rooms, etc. Such conduct is a serious violation of the University’s policy on computing services...”
- 2) “...the conduct giving rise to [the Police’s] ongoing investigation is utterly incompatible with the purpose, principles and operating imperatives of Acadia University.”

In addition, the letter refers to “the University’s reputation,” “a safe and morally appropriate institution of higher learning for ... students who are mostly young adults,” and “aberrant behaviour.” [A.3.6]

The Committee notes with concern that Acadia did not provide full disclosure on the first point, and thus violated the principle of Article 22.00 of the *Eleventh Collective Agreement*, which prohibits the use of “anonymous material”. [A.5.1, s.22.00]

Analysis

The Committee contacted both Herman and Hirschfeld to develop an accurate picture of Acadia’s position and reasoning in this matter; both declined to meet with the Committee. [A.1.3; A.1.4] In absence of any direct information from Acadia officials, we have been forced to conclude that the grounds for dismissal centre on moral conduct and the abuse of university computing services. To this end, the Committee examined the public documents of Acadia University as well as the relevant *Eleventh Collective Agreement* to determine what rules, policies or principles might apply and what protocols were in place to deal with those who break them.

1) Labour practices:

Under the Faculty Association Collective Agreement (article 37.10), “Directors of Schools are not...members of the Bargaining Unit” and “the conditions of employment for Directors of Schools are determined by the Board.” To this end, Directors (even when appointed to professorial positions) do not receive many of the protections afforded elsewhere in the Agreement. [A.5.1]

The Committee examined the published Collective Agreements for other unions at Acadia to determine a common standard of practice for dismissal. The Faculty Agreement refers to discharge “for just cause,” and uses phrases such as “notification in writing with reasons” and “documented disciplinary action.” Of greater note is article 14.01, which indicates that discipline must be commensurate with the just cause. [A.5.1, s.14.01] The AUPAT agreement section T-2 specifies dismissal for “just cause,” while the Service Employees International Union specifies “written reasons.” [A.5.2] There are grievance and arbitration provisions to protect due process.

2) **Computer policies:**

Policy number C-10: Computing Services (which was revised September 2001) sets out the operating rules. It employs general terms such as “responsible and ethical use” of computer resources, contains general statements such as “certain activities by users constitute abuse,” but most importantly contains a complaint and appeal system, which specifies mechanisms for dealing with complaints.

[A.4.4]

The guiding principles specify that computers are “for University use only.” They further indicate that “University related work takes priority.” [A.4.4] This phrasing implies that non-University work might be countenanced as long as it does not interfere with the primary objective. Computers may not be used for “illegal activities and harassment” or to send nuisance, abusive or obscene messages.

[A.4.4]

The seventh bullet under general principles specifies that “Breaking Acadia University published policies constitutes a break of employment conditions and/or academic integrity.” [A.4.4]

The policy goes on to identify specific violations. These include “personal profit-making activities,” sending “nuisance, abusive, obscene, forged or anonymous messages to anyone...externally,” or using network facilities “to harass other users.” [A.4.4]

In order to determine how these computer policies work, the Committee interviewed a former director of computing services. The Committee was advised that new faculty and staff signed a form agreeing to honour “all University policies.” However, while policies exist on paper, they are not administered stringently. In general, most forms of computer activity, whether related to academic work or not, were tolerated. This would encompass sending and receiving personal e-mail, e-commerce, and even use of Acadia accounts by non-Acadia personnel (e.g., spouses). Disciplinary action was taken only after a complaint was filed. In other words, there was no ongoing monitoring of the Acadia network to track violators. In general, Acadia University was aware of

non-work activity occurring on university accounts but did not actively intervene to deter such activity. [B]

What sorts of action drew attention? Torrenting (the downloading or uploading of large volumes of data), stalking, and harassing behaviour resulted in intervention. However, in every instance, the individual was confronted, asked to modify behaviour, and (in the event of non-compliance) disciplined. [B] Acadia University operated reactively, responding to a complaint. There is no evidence in the Wightman case of any complaint being made in regard to his computer use.

3) **Codes of Conduct:**

There are two policies which provide guidelines for over-arching conduct.

Policy C-7: Code of Conduct appears to refer to conflict of interest in dealing with individuals outside the University. However, it does note that no employee shall “engage in community or personal activities in which there could be a conflict with the best interest of the University.” The policy further specifies that any employee who feels that he or she might be in such conflict must disclose the circumstances. [A.4.1]

In Acadia’s Strategic Plan (adopted 2006), the section on “Values” contains the following:

“a strong consistent sense of social consciousness, responsibility, equity and ethics. Acadia’s students, faculty, and staff hold themselves to high standards of personal and academic conduct.”

However, elsewhere in the same document reference is made to diversity, the respect for “contrasting views” and liberal education. [A.4.7]

Relating Termination and Policies

At this point it is crucial to realize that the withdrawal of tenure from a full professor (and especially one on whom a university has conveyed a directorship and then a deanship) requires an extraordinary breach of working conditions.

Moral issues: Acadia University makes allusions in its letter of termination to moral and sexual behaviour. [A.3.6] In the view of the Committee, Acadia has lost sight of the personal and private nature of Dr. Wightman’s behaviour. There was no connection between the actions giving rise to the police enquiry and Acadia. In fact, had Dr. Wightman not been overly honest by informing Acadia officials about the enquiry, it is unlikely that Acadia would have known anything. In this regard, Dr. Wightman is being punished for honesty.

Acadia's moralistic tone in declaring Dr. Wightman's actions "utterly incompatible with the purposes, principles and operating imperatives of Acadia University" [A.3.6] is not borne out by any existing policies. Neither the Code of Conduct nor the Strategic Plan makes more than general reference to responsibility, leadership and ethics. [A.4.1 & A.4.7] That an individual's private activity could be labelled a violation of a university policy opens the door to any manner of terminations based on behaviours of which the university might disapprove. That the police exonerated Dr. Wightman at the end of their enquiry seems to be irrelevant to Acadia.

Acadia labels Dr. Wightman's sexual activities as "aberrant behaviour." [A.3.6] While the literal meaning of aberrant is "departing from the right, normal or usual course", it is more often read in the context of a momentary or temporary lapse. Dr. Wightman's request for and pursuit of therapy suggests such an interpretation. For any university to extinguish tenure based on a "one strike and you're out" policy severely undermines the principle of tenure, especially that supported by CAUT. [A.1.1] Were Dr. Wightman to study sexual activity or bondage in the context of psychology, criminology, or history, his activity would be covered by "Academic Freedom" and protected. But, according to Acadia, the nature of his personal sexual activity, although engaged in on his home computer and not involving anyone at Acadia, is university business, can be judged as aberrant and is punishable by immediate termination. The University has no place in the personal sex life, cyberspace, or private affairs of its professoriate. Its right to regulate the workplace does not extend to the home.

Computer issues: Acadia also censures Dr. Wightman for violating the University's computing policies. This is based on "an analysis of [his] University laptop." [A.3.6] It is unfortunate that the University's letter does not provide detail. Dates, times, volumes of activity relative to other online activity – all are missing. Dr. Wightman admitted to the Committee that he had used his university-supplied laptop to enter chat rooms, but access to a chat room and sending messages within one are scarcely grounds for dismissal. [w] There is no evidence of disciplinary action on Acadia's part and no adherence to the University's own printed computing policy, which specifies a complaint and appeal procedure.

The RCMP had possession of Dr. Wightman's Acadia laptop for an extended period during its investigation, but did not find actionable material after a thorough forensic audit. [A.3.5] Yet Acadia, which had the laptop returned on or about the 30th of August, alleges sufficient evidence for termination based on chat room communication, after a one-week investigation. The Committee wonders how this is possible. The former director of computing services questioned whether there were sufficient forensic skills at Acadia to perform the type of audit required to substantiate the claims made by the University. While it might be possible to log connections between the Acadia server and a chat room, determining the content of the connection and chat message is improbable. Acadia appears to accuse Dr. Wightman on the basis of circumstantial evidence and moral disapproval, without providing detail or soliciting explanation.

Due process: In no cases can we find an Acadia process through which an employee is called to a meeting with the Vice-President Academic, given no advance notice of the content, and fired. In the meeting between the Vice-President, the Director of Human Resources and Dr. Wightman, there is no evidence that Dr. Wightman was offered an opportunity to bring an observer or other representative. There is no evidence that he was given an opportunity to prepare or rebut the arguments proposed by the employer. There is no evidence that the employer was willing to hear explanations, but there is evidence that the only “just cause” the employer was willing to provide was that cited in the letter of termination.

The Preamble to the *Eleventh Collective Agreement* specifies “equity in the treatment of Employees through fair procedures which are published for all Employees.” [A.5.1, Preamble] In Acadia’s negotiated positions with other employee groups on campus, it adheres to a careful dismissal process. Here it is important to recall that disciplinary measures in dealing with faculty members are to be “commensurate with the just cause.” [A.5.1, s.14.01] In the case of dismissal of faculty members, there must be a formal meeting involving the faculty union, representatives of the person being disciplined, and university officials. The possibility of proceeding to arbitration exists. The termination meeting in the office of the Vice-President Academic scarcely acknowledges such processes.

In the case of Directors of Schools (Article 37.80), “the Board may request a review of the performance” of an incumbent. This requires striking a review committee to advise the Vice-President Academic. [A.5.1] It is not countenanced in this article that a review can be mandated by the Director of Human Resources or by the Vice-President Academic acting alone. To this end, the termination followed neither the process for faculty (which we would anticipate would apply to a tenured full professor) nor the process for Directors.

Acadia University Professional, Administrative and Technical Staff (AUPAT) do not enjoy any protection. However, the Service Employees International Union specifies a process of “progressive discipline” in which the employee is notified in advance, in writing, with written reasons and relevant dates. This process countenances a grievance and arbitration process. [A.5.2]

The Committee notes that, in February 2008, the Acadia University Faculty Association and the Board of Governors signed a memorandum of understanding amending the Collective Agreement for faculty to incorporate protections and processes to govern the dismissal of Directors of Schools and similar officials. [A.6.1] Had these processes been followed in the case of Dr. Wightman, it is highly unlikely that he would be engaged in a civil suit against Acadia University for wrongful dismissal.

The Ad Hoc Investigatory Committee concludes that Acadia University has not adhered to the tenets of the CAUT Policy Statement on Tenure, to wit:

“The word tenure and its derivatives mean that such an appointment can only be terminated for just and sufficient reasons, which are limited to the areas of financial exigency or of grave misconduct, and which must be proved through procedures that ensure fairness before a properly constituted and independent tribunal.” [A.1.1]

Acadia University is visiting its ultimate punishment – termination – on a tenured faculty member who was honest enough to draw attention to a problem, arising from his personal life, which might affect his university. Dr. Wightman had no obligation to be as open as he was. He personally initiated measures to deal with the problem. He was cleared by the police, who engaged in a lengthy investigation, and there appears to be no residual impact on Acadia. In this light, it would appear that the University has over-reacted, jumped the protocols of due process and dismissed an employee without the standard burdens of proof it applies in other employment contexts.

Acadia University’s behaviour in this matter should cause grave concern for both present employees not covered by collective agreements and for future appointees who might be excluded from bargaining units. While unionized employees are protected by processes involving grievance, arbitration and fair hearings, administrative employees seem to be subject to the exercise of “management rights” expressed in one document as serving “at the pleasure of the Board”. The termination of any employee who is innocent of criminal behaviour but of whose personal beliefs and behaviours the administration might disapprove is an extraordinary breach of employer-employee relations. It reflects management practice of an era most organizations consider long gone, and with good reason.

Recommendations

The Memorandum of Understanding between the Acadia University Faculty Association and the University, signed in February 2008 in concluding the Wightman grievance and arbitration process, puts in place provisions that protect future faculty members who might be out of the bargaining unit from the treatment visited on Dr. Wightman.

This does not change the fact that Acadia University's treatment of Dr. Wightman failed to respect the concept and nature of a tenured appointment. It does not change the fact that Dr. Wightman was treated without respect for due process and without providing him with more than generalities justifying his dismissal. It does not change the fact that no evidence was provided to show how Dr. Wightman's behaviour specifically violated policies of the University.

The Committee recommends that Acadia University restore Dr. Colin Wightman to his position as a tenured faculty member in the Jodrey School of Computer Science, including his appointment as Director of that School.

The Committee recommends that Dr. Wightman be compensated for his lost salary and benefits, including the stipend and benefits that would have flowed from his appointment as Acting Dean of Pure and Applied Science.

The Committee recommends that Dr. Wightman be compensated for his legal expenses in defending his right of tenure and his teaching position.

The Committee recommends that any reference to this termination (including documents that Acadia University might have prepared to defend its actions) be removed from Dr. Wightman's official files and employment record.

The Committee is sufficiently concerned about Acadia's behaviour in this instance, as to the processes it followed and the message it sends concerning that university's lack of respect for tenure, to recommend that CAUT consider censure in the event that the University does not implement the four preceding recommendations. It is essential that a message be sent not only to Acadia but to all Canadian universities that the principle of tenure is not to be trivialized. It is not the right of any Canadian university to dismiss tenured faculty simply because they are not in a bargaining unit.

June 2008

APPENDIX A: DOCUMENTS AND REFERENCES

A.1 Administration of inquiry

- A.1.1 Letters of appointment (Wainwright, Vaisey)
- A.1.2 Letters of notification (Wightman, Herman)
- A.1.3 E-mails from Committee to Wightman, Brewster, and Hirschfeld, and responses to e-mails
- A.1.4 Fax to Herman and response

A.2 Appointment of C. Wightman to Acadia and Acadia-related career documents

- A.2.1 Internet profile of C. Wightman, validating previous appointment at Minnesota State University
- A.2.2 Letter of appointment to Acadia
- A.2.3 Letter of appointment to position of Acting Dean of Pure and Applied Science, Acadia University
- A.2.4 E-mail correspondence between Dr. George Iwama (Selection Committee) and Dr. C. Wightman re: terms of appointment

A.3 Documents relating to the Incident

- A.3.1 C. Wightman, *A rough chronology of the events related to the investigation of Dr. Colin W. Wightman*
- A.3.2 Letter placing Wightman on administrative leave
- A.3.3 Letter suspending appointment as Acting Dean of Pure and Applied Science
- A.3.4 Letter of August 29 from Wightman to Hirschfeld re: investigation
- A.3.5 Letter of August 23 from Royal Canadian Mounted Police to Wightman's lawyer (cited in A.3.4)
- A.3.6 Letter of termination, September 10, 2007, from T. Herman to C. Wightman
- A.3.7 Draft letter of resignation presented to Wightman at September 10, 2007 meeting
- A.3.8 Text of *Full and Final Release* presented to Wightman at September 10, 2007 meeting

A.4 Acadia University policies

- A.4.1 C-7 Code of Conduct
- A.4.2 C-8 Computer Accounts
- A.4.3 C-9 Computer Workstations
- A.4.4 C-10 Computing Services
- A.4.5 T-2 Term Appointments – AUPAT and Senior Administrative Positions
- A.4.6 T-3 Termination of Employment
- A.4.7 *Strategic Plan for Acadia: Personalized Education for a Complex World*
- A.4.8 *Appointment and Review of Senior Academic Officers, Guidelines for*

A.5 Collective Agreements (Acadia University)

- A.5.1 *Eleventh Collective Agreement between the Board of Governors of Acadia University and the Acadia University Faculty Association, July 1, 2003 – June 30, 2007*
- A.5.2 *Excerpt from Collective Agreement between the Board of Governors of Acadia University and Service Employees International Union, Local 902 (Acadia Campus), May 1, 2005 to June 30, 2008*
- A.5.3 *Excerpt from Terms of Employment for Acadia University Professional, Administrative and Technical Staff [AUPAT]*

A.6 Memorandum of Understanding between the Acadia University Faculty Association and the Acadia University Board of Governors concerning persons who currently hold academic administrative appointments at the University.

B. Personal interview between the Committee and Kerri Brewster, former Director of Computing Services, Acadia University. Held at Wolfville, Nova Scotia, May 2, 2008.

W. Personal interview between the Committee and Dr. Colin Wightman. Held at Kentville, Nova Scotia, May 2, 2008.