

Report of

**CAUT Ad Hoc Investigatory Committee:
McMaster University Senate Guidelines for Members
of the McMaster University Community regarding Interactions
with the Media**

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CAUT Ad Hoc Investigatory Committee: McMaster University

Part I: Background

On 2003 February 12, McMaster University Senate approved amendments to the document *Guidelines for Members of the McMaster University Community regarding Letters to the Editor*. The *Hamilton Spectator* (2003 February 15) soon afterward raised the possibility that the new *Guidelines* would "... inhibit free speech," quoting professors and administrators who offered strikingly different views of the intentions behind the new *Guidelines* and the reasons for replacing the old ones.

The new version of the *Guidelines*, now known as *Guidelines for Members of the McMaster University Community regarding Interactions with the Media* asserts that

...a member shall not refer to McMaster University if the statement expresses a personal opinion, and that opinion is unrelated to the area of academic or professional expertise of that member.

The revised *Guidelines* raise the question whether McMaster academics, when they speak publicly, can, should, or *dare* invoke their University affiliation in all circumstances and at any time.

With Senate and Board approval of the revised *Guidelines*, McMaster becomes the first university in Canada to limit professorial speech rights vis-à-vis the media. In Canadian universities, it has until now been universal practice *not to limit those rights in any way*. Universities have accepted that there is no difficulty so long as professors do not purport to speak on behalf of "the University" when not explicitly so authorized.

Normally, Canadian university teachers are free, limited only by the common law, to speak on any subject and any matter, to any of the media, at any time. They have the right to name their academic affiliation, and indeed, are encouraged to do so by the media and by the public.

The university, for its part, limits itself to ensuring its employed teachers are carrying out contractually agreed work (in teaching, research, and service), and to providing wholly adequate means for doing that work.

On the other hand, academics have a duty and a responsibility to engage actively and vigorously in all forms of public debate. Credibility is important in debate and a professor's university affiliation is one aspect of his or her credibility as a public intellectual. Mention of one's affiliation is at all times possible, and often desirable.

The revised McMaster *Guidelines* raise particular difficulties, apart from general considerations of academic freedom, responsible public debate, and credibility. The

revised *Guidelines* (i) would limit public comments by professors to their area of professional expertise, and (ii) would produce an artificial distinction between personal opinion and professional opinion. A defensible and sharp distinction between personal and professional opinion cannot easily or reliably be made *and at the same time* guarantee academic freedom. These particular considerations add weight to the argument that the revised McMaster *Guidelines* deserve scrutiny from outside that one institution.

The Executive Committee of the Canadian Association of University Teachers [CAUT] discussed the matter in February 2003. The Committee invited the Executive Director to discuss the question with the McMaster University Faculty Association [MUFA]. This he did in March 2003. Following the discussions with MUFA, the CAUT Executive found that the matter at issue had not been exhausted. At its September meeting, the Executive Committee referred the matter to CAUT's Academic Freedom and Tenure Committee [AF&T].

At its December 2003 meeting, and in light of the Executive's and the Executive Director's positions on the question, the AF&T unanimously recommended an *ad hoc* investigatory committee be established to look into the matter and to prepare a report. Drs. William Bruneau (Professor Emeritus, Educational Studies, UBC) and Ted Hannah (Professor of Psychology, Memorial University of Newfoundland) were appointed to the committee (hereafter, "the Committee"). The Committee's terms of reference were to:

- examine the Senate's *Guidelines for Members of the McMaster University Community regarding Interactions with the Media*,
- determine whether the *Guidelines* constitute a threat to academic freedom, and
- make any appropriate recommendations.

MUFA was informed of the establishment of the ad hoc committee on December 12, 2003, and University Officials (President, Secretary of Senate) on December 15, 2003.

Part II: Background Research

Review of Legal Documents

No legal cases from Canada and the United States exactly pertained to the revised *Guidelines* under consideration. Some cases were nonetheless deserving of consideration, as they illustrate (i) the great latitude of action, opinion, and expression available to university teachers, and (ii) that when boundaries are prescribed, those boundary definitions must be extraordinarily precise.

As regards latitude, the cases show that:

- universities do not as a rule limit professors to using or mentioning their University affiliation only when talking in or about their field(s) of expertise,
- in most circumstances the media themselves will identify the professor whether or not he or she wills it,
- where a professor criticizes the ethics of his or her colleagues, the policies and performance of university administrators, or brings some internal university matter—of public concern—to the media’s attention, it would be nonsensical to require that he or she not identify himself or herself with the University, and
- professors should be able to identify themselves as members of the academy/intelligentsia or as persons of stature when speaking to the media about matters of general public concern.

As to “boundaries” for professor/media interaction, the cases show that boundaries for “out-of-discipline” speech, were such boundaries ever to be drawn, might be more exactly and precisely drawn than the boundary drawn by McMaster University.

The question what is or is not part of a professor’s discipline or area of expertise is practically and conceptually difficult to determine. It would be counter-productive to go down this road, and the Committee has not attempted to do so (nor would it recommend that others do so, except for the purposes of scholarly research in the fields of the sociology of knowledge, epistemological inquiry, and so on). Our review of legal cases suggests strongly that universities typically shy away from the conundrum of field-specialization. On the other hand, in cases of speech that is truly offensive—for instance, hateful, discriminatory, or violent—universities would be thought justified in *considering intervention* to reprimand, suspend, dismiss, or reassign a professor *whether that speech is intra-mural or extra-mural, “in-discipline” or “out-of-discipline.”*

In summary, nothing in our review of legal cases and summaries suggests a justification for a restriction of the right of its professors to speak freely to the media, whether or not such comments are in or out of discipline.

Review of AAUP Policy on Media Interaction

The American Association of University Professors [AAUP], in its 1940 *Statement of Principles*, wrote as follows:

(c) College and university teachers are citizens, members of a learned profession, and officers of an educational institution. When they speak or write as citizens, they should be free from institutional censorship or discipline, but their special position in the community imposes special obligations. As scholars and educational officers, they should remember that the public may judge their profession and their institution by their utterances. Hence they should at all times be accurate, should exercise appropriate restraint, should show respect for the opinions of others, and should make every effort to indicate that they are not speaking for the institution.¹

Because the 1940 *Statement* left scope for administrative and/or political interference in university teachers' pursuit of inquiry, teaching, and the dissemination of research results, the AAUP in 1970 revised its 1940 position:

Paragraph (c) of the section on Academic Freedom in the 1940 *Statement* should...be interpreted in keeping with the 1964 "Committee 'A' Statement on Extramural Utterances" (Policy Documents and Reports, 32), which states *inter alia*: "The controlling principle is that a faculty member's expression of opinion as a citizen cannot constitute grounds for dismissal unless it clearly demonstrates the faculty member's unfitness for his or her position. Extramural utterances rarely bear upon the faculty member's fitness for the position. Moreover, a final decision should take into account the faculty member's entire record as a teacher and scholar."²

Review of University Websites

In order to provide a framework within which to cast the revised McMaster *Guidelines* on faculty interactions with the media, we surveyed the websites of Canadian and

¹American Association of University Professors, *1940 Statement of Principles on Academic Freedom and Tenure with 1970 Interpretive Comments* (Washington, DC: AAUP, 1940-1970). Accessed 2005 January 18 at web site: <http://www.aaup.org/statements/Redbook/1940stat.htm>

²*loc. cit.*

American universities. Although this survey was neither complete nor “scientific,” the results were instructive.

We could not find a university with a stated policy on media relations that in any way limited a professor’s freedom to identify his or her University affiliation, whether speaking “in” or “out” of discipline. The most common reason for a stated policy on faculty/media interaction was to remind professors that they should not purport to be speaking for the university administration or announcing university policy unless they have been designated specifically as spokespeople.

Perhaps the clearest statement of a University’s willingness to stand up for academic freedom rights was made by the President of Harvard University on April 8, 2003 in a statement on how the University would respond to the Patriot Act. He said

... with respect to any individuals within this community—students, staff, junior faculty, faculty—the University will uphold and defend their right of academic freedom and their right of free speech. We do these things because academic freedom is central to what the University is all about.³

³Derek Bok, “Statement on the Patriot Act and academic freedom,” Harvard University, April 8, 2003. This statement is drawn from remarks made at the Faculty of Arts and Sciences meeting on April 8, 2003. It may be accessed at: <http://www.president.harvard.edu/speeches/2003/patriot.html>

Part III: Findings During McMaster Visit

Summary

We asked McMaster University officers, the McMaster University Faculty Association Executive, and individual McMaster University teachers how they understood academic freedom. Here are examples we used in discussion (for details, see Appendix E), all involving citations by colleagues of their *university affiliations*:

- a professor who is neither a criminologist nor a gun owner expresses an opinion in opposition to the gun registry
- a history professor with no chemistry background asserts that ZyKlon-B was used as a de-lousing agent in Nazi Germany
- a professor of English with admittedly no training in accounting, complains publicly that her university's budget is weighted too heavily in favour of the sciences
- teachers of Social Psychology, Sociology and Biology speak out on same-sex marriage, with the inevitable difficulty in deciding whose opinions were legitimately “professional” and which were wholly matters of “personal opinion.”

Faced with these imaginary⁴ examples, interviewees said that their range of expression or action either should not, or would not have been limited by the revised McMaster *Guidelines*. Even so, we concluded on grounds given in the final section of this document that the sentence beginning “... with respect to any individuals ...” constitutes a threat to academic freedom. We stress that it would be unwise of other faculty associations to permit the adoption of McMaster-like guidelines.

When asked to produce examples of situations where the revised *Guidelines* would certainly apply, no one could do so. The main reason was the closing sentence in the revised *Guidelines*, according to which nothing in the *Guidelines* should be taken to interfere with the workings of academic freedom.

Appendix E summarizes other observations made and records of interviews held during our visit to McMaster.

⁴All these examples closely resemble incidents and/or persons whose experiences became widely known in the academic worlds of Canada or the United States.

Part IV: Conclusions

The Committee was mandated to examine McMaster University's Senate *Guidelines for Members of the McMaster University Community Regarding Interactions with the Media*, to determine whether the *Guidelines* constitute a threat to academic freedom, and to make appropriate recommendations.

1. We accept that faculty members must not claim to “represent” or to “convey definitively” the University's official positions on matters of policy or practice, without official authorization. The representation of official administrative policy or practice is an administrative or management right.

To put this another way, faculty members must not make public claims in the media that they have taken the place of the President or the Vice-Chancellor in university affairs. For example, it would be wrong of a faculty member (a) to claim that she or he *knows* the university will raise money by a bond issue or by the sale of a certain parcel of land, and (b) to assure interested outside parties that he or she “represents” the university in such matters.

2. On the other hand, faculty members must be entirely free to criticise university policy, administrative practice, and institutional means and ends. Also, university professors must be free to comment on broader issues of community or societal concern.

3. In all cases, therefore, faculty members may disclose their institutional affiliation when they speak in public and/or in the media. They should be at entire liberty to do so.

In our view, the McMaster Guidelines are a threat to academic freedom, for they contemplate circumstances and situations where academics may or may not mention their affiliation to McMaster University.

We have the McMaster administration's assurance that it will not attempt to discipline professors for perceived breaches of the revised *Guidelines*. The President of the University explicitly mentioned the example of scientific research that may be embarrassing to Dofasco Steel, or to the proponents of an unpopular expressway in Hamilton; he was firm in his promise that discipline would never be invoked in such cases.

Yet we worry about the examples (see Appendix E) of the Head of the Department of Music and Art, and of David Hitchcock (in which latter case the Vice-Provost “reminded” Hitchcock of the McMaster Policy on communications with the media). A letter from the Vice-Provost, however neutrally worded, will be received with anxiety. However “modest” in scope or implication, a document of this kind is a threat to academic freedom, especially if it causes a person to “think twice” about what he or she is writing or speaking.

We think the framers of the policy opened the door to the possible restraint of many forms of academic speech, when in fact they *may* have intended only to restrain those members of the university community who seek to claim a miraculous understanding of the university's official will, and to represent that will in public.

At all events, the language of the revised *Guidelines* would be seen as an unacceptable restraint on academic freedom in any other university or college in Canada. For this reason, we offer the following arguments and recommendations.

Summary Arguments

The following arguments form the basis of our recommendations:

a) **The University and all its members are under general obligation to participate in public debate, and to be active in their use of academic freedom to enliven and to extend critical thought and inquiry.** It must name itself, and individuals within it must have the freedom to name themselves and their affiliation, if that obligation is to be met in full. One reason for taking this stand is straightforward: the weight of the University's function and reputation are implied when its name is used in debate and inquiry. Considering the *crucial* importance of free debate and inquiry in academic freedom, it is *necessary* that the University's name be used as often as possible in that debate and during that inquiry. A well known Americanism applies to academic freedom: "Use it or lose it."

b) **The *Guidelines* assert the primacy of academic freedom, but envisage cases where that primacy would be in doubt.**

The assertion on academic freedom is as follows:

...this [referring to an earlier portion of the *Guidelines*] in no way is meant to restrict the academic freedom or freedom of speech of any member of the University community.

But that assertion is inconsistent with the previous sentence:

Further, a member shall not refer to McMaster University if the statement expresses a personal opinion, and that opinion is unrelated to the area of academic or professional expertise of that member.

Interviews with the Vice-President (Academic) Ken Norrie of McMaster; discussions with the Faculty Association's President, Past-President, and Past-Past-President, and talks with concerned faculty members all point to the fundamental flaw of the revised *Guidelines*. The revised *Guidelines* assert the primacy of academic freedom, yet includes a sentence ("Further....") that would,

if applied, limit an academic freedom—the freedom to say that one teaches at McMaster.

The Committee accepts that academic freedom is intact at McMaster. But the Committee does so *only because* McMaster University has administrators and governors who are, *for the time being*, sympathetic to academic freedom.

c) **McMaster’s administrative officers could not conceive of a case where the policy would apply.** The sentence beginning “Further....” may be inapplicable in any *practical* sense, where faculty members are in communication with the media. That is, the policy may be practically difficult to enforce. The only instance where the policy might have disciplinary weight at McMaster would be a case where a faculty member claimed falsely to present the settled and binding opinion of the Administration of the University. But such a case would be an instance of “misrepresentation,” and (presumably) actionable at law and almost certainly disciplinable under Joint Committee procedures.

d) **The *Guidelines* have inadequate legal or academic justification.** The revised *Guidelines* were passed at the McMaster Senate because a lawyer said it was “necessary,” *not* for reasons having to do with academic policy. The legal reason was that the University might be liable for something a member of faculty had said, should the member mention her affiliation with McMaster. Without examples or cases-in-point, and without any reference to precedents or principle, this legal reasoning struck us as dubious at best.

We have seen a portion of the relevant legal opinion; but it offers no persuasive legal reasons in the policy statement, nor are such reasons provided in senate minutes connected to the policy statement. One is left with nothing that justifies the revised *Guidelines* as a whole, and in particular the sentence beginning “Further....” Earlier forms of the *Guidelines* (from 1986 on) do nothing to clarify the present case. At any rate, the liability of McMaster community members is, as a matter of policy and practice, far removed from consideration or definitions of academic freedom as it is understood in Canada.

e) **The revision to the *Guidelines* was not shaped by the primary requirements of academic freedom, but rather by considerations of possible legal costs.** According to documents provided by the Vice-President (Administration) Karen Belaire, the administration has accepted a view proposed by CURIE [Canadian Universities Reciprocal Insurance Exchange], and supported by University Counsel. On that view, costs of successful defamation suits against members of the McMaster University community, may rise. The University may have to bear some or all of such costs. If the University found itself paying highly costly settlements, there might be a consequential increase in the premium the University must pay for the relevant form of liability insurance.

The question of liability and liability insurance for defamation is an administrative and legal matter. It should be dealt with among and between individuals, or among and between the Faculty Association and the University Administration in collective bargaining. Academic freedom and defamation insurance have little to do with each other, and *should* have nothing to do with each other.

f) **The impossibility of distinguishing the personal from the professional.** If it is up to the university administration to make that distinction, then academic freedom is, by definition, under threat. McMaster's network of regulation and practice makes it unlikely the McMaster administration would ever play that role, and in any case the policy offers a supervening statement on academic freedom. And yet there are serious dangers in the proposed distinction of "personal" and "professional."

g) **The worrisome implications for academic freedom of a letter from Vice-President Norrie to Professor David Hitchcock referring to the revised *Guidelines*.** The threat to academic freedom in Vice-President Norrie's letter (see Appendix B) is indirect and distant, but nonetheless real. It is hard to see what the letter could mean except that Professor Hitchcock should, or should not have said X. Coming from a high administrator, and however discreet in form and tone, the letter portends a threat to academic freedom. The letter exists because the Policy exists. Therefore the Policy, or at least one offending sentence in it, should be removed.

h) **The revised *Guidelines* operate more in the breach than in practice.** We give in Appendix C the text of a letter dated December 2003 to the *Hamilton Spectator*, signed by more than 30 McMaster colleagues. We reprint it because the letter makes clear why and how the revised *Guidelines*, and Dr Norrie's letter to Professor Hitchcock, have "worrisome implications." This letter of December 2003, innocent and ordinary as it may be, contains statements not within the "areas of expertise" of the signers and could be construed as breaching the revised *Guidelines*. In this case, the breach led to no comment from the McMaster administration, suggesting once again that the revised *Guidelines* are not enforceable. The offending sentence is a threat to academic freedom, we believe it ought to be rescinded and deleted.

i) **It is a fundamental requirement under academic freedom that a colleague be free to participate in any way she or he thinks right and useful in public debate.** The McMaster policy, on the face of it, does envisage a limit to that freedom, a limit drawn from administrative convenience and a remote consideration of liability insurance.

j) The administration's determination to retain the present wording, despite their assertion that they could not think of cases to which it would apply, suggests that they can imagine cases. For example, can McMaster professors be assured the following would not fall under the revised *Guidelines*:

- a history professor with no biology or chemistry background asserts that genetically modified plants threatened the health of Canadians
- a professor of English with admittedly no training in accounting, complains that the university administration is misrepresenting the financial situation by hiding funds in non-operating accounts
- teachers of Social Psychology, Sociology and Biology speak out on how Stephen Harper is misusing the issue of same-sex marriage to stop Paul Martin getting elected.

k) The possibility that refusal to remove the offending statement could result in censure by CAUT.

Part V: Recommendations

- I. We **recommend** to McMaster University Senate the excision of the offending sentence from the revised *Guidelines*, “Further, a member shall not refer to McMaster University if the statement expresses a personal opinion, and that opinion is unrelated to the area of academic or professional expertise of that member....”
- II. We **recommend** the McMaster administration and the McMaster University Faculty Association consider a campaign of public information in the McMaster University community and beyond. The purpose of such a campaign would be to assure all academic members of that community that they enjoy the full protection of academic freedom in their public lives as communicators to/with the media, and to/with the broader society which McMaster serves. The campaign would also help educate the public about the essential nature of, and need to protect, the academic freedom of university professors.
- III. Finally, we **recommend** to the Academic Freedom and Tenure Committee of CAUT that our findings and arguments be widely publicized, considering the risk to academic freedom were the McMaster policy concerning relations of university and college teachers to the media to be adopted in less sympathetic universities—or indeed, any university or college.

APPENDIX A:

McMaster's Policy on Professor-Media Interactions

McMASTER UNIVERSITY

GUIDELINES FOR MEMBERS OF THE McMASTER UNIVERSITY COMMUNITY REGARDING INTERACTIONS WITH THE MEDIA

Date of Most Recent Approval:

Senate: February 12, 2003

Board of Governors: March 27, 2003

Position Responsible for Developing and Maintaining the Policy: Secretary of the Senate

Contact Department: University Secretariat

“Although the Senate acknowledges that members of the McMaster community do not have complete control over the way in which interactions with the media might be used, it feels that as much care as possible should be taken to distinguish between an official University position and the personal views of an individual or a group of individuals within the University.

To avoid confusion between the stated policies of the University and the personal views of members of the McMaster community, the Senate has developed the following guidelines regarding communications with the media. When interacting with the media, care should be taken to ensure that on all matters, both internal and external to the University, every effort is made to avoid any confusion as to whether the writer is expressing a personal or professional opinion or is speaking as an authorized University representative. Further, a member shall not refer to McMaster University if the statement expresses a personal opinion, and that opinion is unrelated to the area of academic or professional expertise of that member.

However, this in no way is meant to restrict the academic freedom or freedom of speech of any member of the University community.”

APPENDIX B:

Correspondence between R. Lancaster, President P. George, Vice-President (Academic) Norrie, and Professor Hitchcock

Lancaster to George

----- Original Message -----

From: "Ron Lancaster" <ron2718@netaccess.on.ca>

To: <presdnt@mcmaster.ca>

Cc: <pgeorge@mcmaster.ca>; <hitchckd@mcmaster.ca>

Sent: Friday, November 07, 2003 12:07 AM

Subject: Fwd: Re: Request

Dear Peter:

I received the following message today from David Hitchkok *{sic}*, a professor at McMaster. I think he has violated the rules that employees must follow in speaking publicly about issues not directly related to their work. Would you please investigate this matter and if you agree, please ask David to refrain from using his McMaster connection to promote his points of opinion.

Ron Lancaster
McMaster '75
Alumni Hall of Fame

Text of message received from David Hitchcock on November 6, 2003

From: "David Hitchcock" <hitchckd@mcmaster.ca>

To: "David Hitchcock" <hitchckd@mcmaster.ca>

Cc: "Marvin Caplan" <mcaplan@city.hamilton.on.ca>,
"Brian McHattie" <mchattie@sympatico.ca>

Subject: Re: Request

Date: Thu, 6 Nov 2003 22:22:51 - 0500

X- Priority: 3

Dear fellow resident of Ward 1,

Like you, I received Marvin Caplan's recent message asking us to vote for him on Monday.

In this message, Marvin represents himself as progressive and hard- working.

Marvin has many fine qualities. But his campaigns are funded to a large extent by companies and unions involved in real estate development and construction. See the attached list of donors of \$100 or more to his campaign in the year 2000. And note his signs in this campaign on property owned by big property management companies.

The most important decisions a municipal council makes are decisions about land use. In the public interest, we need councillors who will make such decisions in an impartial way, without being beholden to special interests.

Unfortunately, Marvin is so beholden. His decisions on key issues reflect the source of his campaign finances-- for example, his support for expansion of the urban boundaries into agricultural land on the southeast mountain and his approval of the huge Fortinos store on Main West which will be a body blow to the Westdale business community.

In contrast, Brian McHattie instructed me, when I agreed to become part of his fundraising team, to accept donations from individuals only, not from corporations or trade unions. This we have done. His financial support comes from 150 individuals, whose typical donation is \$100. No corporations and no unions have donated to the McHattie campaign.

Having worked closely with Brian since his campaign launch in May, I can urge you without hesitation to cast your vote for him. He will be a fine councillor, in all respects.

David Hitchcock, Ph.D.

Professor of Philosophy, McMaster University

home address: 18 Cline Ave. S., Hamilton L8S 1W7

block representative, Ainslie Wood Westdale Resident Homeowners Association

former NDP candidate for Member of Parliament (1979, 1980, 1984)

Hitchcock to George

From: "David Hitchcock" <hitchckd@mcmaster.ca>

To: <presdnt@mcmaster.ca>; "Ron Lancaster" <ron2718@netaccess.on.ca>

Cc: <pgeorge@mcmaster.ca>

Sent: Friday, November 07, 2003 7:13 AM
Subject: Re: Re: Request

Dear Ron and Peter,

I put my McMaster affiliation in for identification purposes only.

There was no intention to imply that McMaster University was supporting any particular candidate in the municipal election campaign, nor would anyone have interpreted my message as implying this.

Peter, if I am at fault in relation to the University's policy, please so advise me. I will stand corrected for the future.

David Hitchcock
McMaster '64
Alumni Hall of Fame

Norrie to Hitchcock

<Optical character recognition used to produce electronically-readable copy of original>

McMaster University
Office of the Provost and Vice-President
1280 Main Street West
Hamilton, Ontario, Canada

Tel. 905.525.9140

November 20, 2003

TO: David Hitchcock, Department of Philosophy

FLOM: Ken Norrie, Provost and Vice-President (Academic)
Your Memo to Ward 1 Residents

David,

I recently learned that you circulated a message to residents of Ward 1 urging them to vote for one of the candidates for city council. I write because, among other affiliations, you signed the message as "Professor of Philosophy, McMaster University". The other affiliations—block representative, Ainslie Wood Westdale Resident Homeowner Association and former NDP candidate for Member of Parliament (1979, 1980, 1984)—are certainly relevant and appropriate. The McMaster affiliation is a concern,

however. We have received enquiries as to why the University seemed to be acting in a partisan manner in the election. I realize that you were expressing a personal opinion, and did not intend to implicate McMaster in any way. Still, perceptions are important. In this context, may I remind you of a policy just passed by Senate:

“Further, a member shall not refer to McMaster University if the statement expresses a personal opinion, and that opinion is unrelated to the area of academic or professional expertise of that member”. (Guidelines for Members of the McMaster University Community regarding Interactions with the Media, approved by Senate on February 12, 2003).

These are guidelines for dealing with the media, but the spirit of the policy applies as you were clearly expressing a personal opinion in the message to Ward 1 residents. Thus I ask you to keep this guideline in mind in future communications of this sort.

Thanks, David.

[signed]

KN/mep

APPENDIX C:

Correspondence between Several McMaster Professors, Identified as Professors at McMaster University, and the Hamilton Spectator

December 2003

Jagoda Pike, Publisher
Dana Robbins, Editor
The Hamilton Spectator
Hamilton, Ontario L8N 3G3

Dear Jagoda Pike and Dana Robbins,

It is with sadness and regret that we collectively express our disappointment at recent changes to The Hamilton Spectator. Vibrant and intellectually oriented newspapers, alongside open and autonomous universities, are essential components of a democratic society.

As McMaster University professors we feel that recent changes to The Hamilton Spectator have undermined the newspaper's standing as serious journalism. Some of us will be ending our subscriptions to the paper or no longer buying the paper on newsstands while others of us will be watching the paper over the next few months before deciding how to respond to these developments. All of us are deeply concerned about the direction the paper has taken since your "revolution" of October 1.

For those of us who have enjoyed reading, discussing and even disagreeing with The Spectator over the years, the decision to end our association with the paper is not taken lightly. Our problems with the paper's direction go well beyond any disagreements we may have with particular stories, editorials or the paper's political stance. Many of us have felt that the paper's positions on the Red Hill Valley conflict and on recent local elections and divisive political controversies have suggested a lack of journalistic objectivity and sound judgment.

Many of us feel a nasty tone has developed in the editorials and some news coverage which is further dividing our city. Some of us, in contrast, feel the paper has, in the past, done a decent job of representing the perspectives of Hamilton's people as a diverse community and, despite differences we may have with this or that story or editorial, will continue to read the paper regularly. Reasonable people can agree to disagree about specifics, and this kind of debate makes for interesting letters to the editor and lively public debate. But these debates are only meaningful in the context of a paper in which

journalistic standards and intellectual integrity are front and centre of the newspaper's agenda.

Recent changes, however, have raised serious questions about whether the paper's editorial leadership knows the difference between news and entertainment and the proper line between a journalistic vision and a business plan. Since Oct. 1, investigative reporting has practically disappeared, international coverage has been drastically reduced and the excellent in-depth features that helped *The Spectator* stand out from other local papers in Ontario are simply gone. The new "Go" section, which kicks off with People-esque celebrity blurbs, consists largely of what can only be described as fluff. The business news has declined dramatically, it seems to us, in quality, quantity as well as depth. And the excellent community board editorials have been marginalized to short "sound-bites" on weekends. We see these changes as extremely negative and possibly even worsening in the last two to three weeks. A community and city the size of Hamilton needs a paper where local news, serious analysis and spirited public debate have a valued place alongside lifestyle coverage and boosterism for the local business and political elite. Moreover, the tone of the paper in recent months has become excessively dismissive of members of our community with whom the editors disagree, polarizing rather than bringing together our community at a difficult time. Even those of us who support the Red Hill Expressway have serious concerns about the way opponents of the project were dealt with in the newspaper.

A local newspaper, we understand, has to balance economic realities, differing political views in a community, conflicting demands created by different readership interests and the professional responsibilities held to by the journalism profession. We feel that *The Spectator* has lost that necessary balance in recent months, and some of us can no longer support the paper or encourage our students to read it. All of us would like the paper to return to its strong journalistic standards. We hope this collective statement on our part will go alongside similar actions on the part of local educational, religious and community groups as well as other members of the McMaster community. We feel that you have underestimated the depth of support that exists in Hamilton for the previous *Hamilton Spectator*. Further, we believe you do not fully understand how much disappointment and concern there is in the community regarding recent editorial changes and the anti-intellectual and anti-communal tone you now appear to be promoting. We know of many people outside our profession who feel the same way, and have heard from community members who have read the paper regularly for 40 years who are now no longer subscribing. There is room for making the paper more lively and reaching out to a new and younger readership, but ONLY within the context of a serious journalistic vision for the paper. We hope you will reconsider what were no doubt well-meant changes.

The opinions we express here do not represent the views of McMaster University. As educators at a major Hamilton institution, however, we feel we have a responsibility to speak out on issues related to the general level of scientific, cultural, political and economic debate in our community. And the lowering of this level of discussion as

represented by recent changes in The Spectator has an influence on our efforts to educate students to think critically with some sense of societal responsibility beyond the specific professions and occupations for which they are being trained.

APPENDIX D:

Committee Preparation and Interviews

In order to prepare for a meeting in Hamilton in the Spring of 2004, the Committee undertook, or had undertaken on its behalf by CAUT staff, the following:

- a search of Canadian and United States court documents pertaining to professors' use of their University affiliation
- an examination of the American Association of University Professors (AAUP) website for their statement on university faculty members' relations with media
- a search of University websites in Canada and in the United States for policies on faculty relations with the media
- a search for newspaper articles in which faculty members had stated their University affiliation in articles or letters
- the collection of other relevant documents, including anecdotal comments by faculty regarding the issue at hand, and
- an exposition and review of arguments and problems inherent in the case.

Between January and May, the Committee members exchanged views and information by telephone and e-mail. Having decided on mutually convenient dates, the Committee met for consultations in Vancouver in early May. The principals with whom we wished to meet were identified and e-mail/letters were sent requesting meetings. All correspondents were most gracious and cooperative, and the Committee was able to arrange interviews with each.

McMaster Campus Visit (May 31 - June 2, 2004)

The Committee had the warmest of welcomes at McMaster. People were generous with their time, freely gave their opinions, and were in no way hostile or defensive. We thank all who participated.

The agenda for the McMaster visit was as follows:

Sunday, May 31

- 18:00 – 21:00 Committee dinner meeting and planning session

Monday, June 1

- 08:30 Dr. Ken Norrie, VP (Academic)
- 09:30 Committee meeting
- 10:45 Prof. J. Santa Barbara
- 12:00 Lunch with Faculty Association

- 13:15 Meeting with MUFA
 - Prof. Lorraine Allan, past-president
 - Prof. Ken Cruikshank, immediate past-president
 - Prof. Trevor Chamberlain, president
 - Phyllis DeRosa Koetting, MUFA Executive Director
- 14:45 Prof. David Hitchcock
- 16:00 Dr. Peter George, University President

Tuesday, June 2

- 09:30 Mr. Bruce Frank, Secretary of Senate
- 10:45 Prof. James Quinn
- 12:00 Working lunch, drafting of initial impressions

Appendix E provides detailed notes of interviews with all individuals on June 1st and June 2nd.

New Documents obtained at McMaster

The following documents were supplied to the Committee by University Officers, MUFA Executive, or individual Professors:

- Relevant sections of *The Faculty Handbook*
 - Code of conduct for faculty
 - Appendix A: Procedural Rules for a Disciplinary Hearing
 - Appendix B: Guidelines Concerning the Appointment and Department of Observers at Faculty Disciplinary Hearings
 - Liability of Employees
- Senate documents from December through to the present on the origin and revision of the *Guidelines* under question
- Information document from CURIE, October 17, 2003, listing instances where insurers did not indemnify universities whose teaching employees became participants in defamation suits, with consequential costs to the university⁵
- Letter from University lawyer regarding liability and recommended changes in wording for the *Guidelines*

⁵ The Canadian Universities Reciprocal Insurance Exchange (CURIE) is a reciprocal insurance exchange created by 45 universities across Canada for sharing common property and liability risks. CURIE is an insurance cooperative whose members share claims experience. Losses sustained by one university may affect not only its own premiums but also those of other CURIE members. “On the other hand, good loss experience reduces overall premium costs.” Quotation from the University of Toronto’s description of its insurance against liability, including liability arising from “miscommunication” with the media: URL: <http://archive.finance.utoronto.ca/risk/coverage/> accessed 2004 August 04.

- Letter from Dr. Ken Norrie to Dr. David Hitchcock dated November 20, 2003

APPENDIX E:

Observations and Record of Interviews

- (i) *Joint Committee Agreement*: McMaster University Faculty Association is not certified as a bargaining agent under provincial labour law. Nevertheless, there has developed a formal negotiation relationship between MUFA and the University administration. *The Faculty Handbook*, a set of agreed-upon arrangements between faculty and the administration, has grown to represent what would in other unionized environments be a collective agreement. This Joint Committee agreement contains two important sections relevant to our investigation: a Code of Conduct for Faculty with procedures for disciplinary action, and a policy on Liability of Employees providing for reasonable indemnification of McMaster employees beyond the University's general liability policy.
- (ii) *Faculty Handbook*: In Section F (Conduct of Faculty Members) of the handbook, the subsection on Duties and Responsibilities of Faculty Members states that faculty members "will observe all of the published rules and policies of the University and its legislative bodies." In the next subsection, Procedures for Taking Disciplinary Action, it states that

It is envisaged that these disciplinary procedures will most often be applicable in the realms of teaching, research and university service (e.g., repeated below par performance ...). Should the Chair decide that the case falls within the jurisdiction of another University policy (such as human rights, sexual harassment, research ethics, and consulting), **the procedures set out in those policies shall apply** (emphasis added).

Under the provisions of the *Handbook*, discipline for breaches of policy, should the policy provide for discipline at all, would be initiated by the faculty member's Department Chair (rather than the President) and taken before an internal Disciplinary Tribunal. **Significantly, the *Guidelines* do not provide for disciplinary action.** Without the risk of discipline, can there be a threat to academic freedom?

The *Faculty Handbook* also contains the Joint Committee agreement on Liability of Employees. This liability agreement states that "In the event that an employee is named in a claim for damages or other civil suit ... the employee will be represented by the University's legal counsel or other counsel agreed to by the employee, and the University will pay the legal

costs.” This agreement between MUFA and the University is interpreted by MUFA to mean that the University *cannot* use liability as an excuse for not covering faculty members in a public dispute under the *Guidelines*.

- (iii) McMaster University Faculty Association (MUFA): In the view of MUFA, the *Guidelines* are just that, guidelines only. Since the Senate Policy establishing the *Guidelines* does not contain provisions for disciplinary action in the event of violations by faculty, breeches of the *Guidelines* can only be disciplined under the code of conduct and disciplinary procedures outlined in the *Faculty Handbook*. Furthermore, MUFA argues, in essence, that the University administration would have very little incentive to initiate discipline as it could be seen as an admission of failure on their part to properly monitor faculty behaviour. Should this lead to a legal dispute with an outside person or agency the University would still be responsible for the costs of legal representation for any faculty named in the dispute under the Liability of Employees clause. Thus, even though the amendments to the *Guidelines* may have resulted from legal advice as to the University’s liability and its liability insurance, the *Guidelines* provide no comfort for the University in terms of indemnifying itself against the actions of its faculty.

MUFA also argues that the offending statement in the *Guidelines* is “interpretive,” that the whole policy cannot fall on this statement. The larger context must be invoked, including the specific notion of academic freedom.

Finally, MUFA made the point that the *Guidelines* could be used as an example of what not to adopt—CAUT could cause harm if they emphasize too narrowly the offending statement and fail to interpret the *Guidelines* broadly as intended by the two parties involved.

- (iv) University President: The meeting with the President, Dr. Peter George, was congenial and informative. He described the genesis of the Joint Committee arrangement for negotiating agreements, and then the *Guidelines* on interactions with the media. He took pride in the fact that as a relatively young faculty member he helped establish the Joint Committee and works hard to see that it functions well.

According to Dr. George, no specific case led to the first version of the *Guidelines* in the mid-1980s. The *Guidelines* were modeled on that in practice in the Health Sciences. He also agreed, as we had heard from MUFA, that any violation of the *Guidelines* would have to be processed through the Code of Conduct and a Tribunal of Peers. In fact, since its inception in the University,

no member has ever been challenged and no discipline imposed. In one specific instance of a public complaint, a representative of a major steel company met with the President, concerning published comments made by a faculty member about that member's research, showing that one of the company's products reduced sperm count in mice. In his words, the President told the company representative to "cool it, this is what academics do."

President George described the *Guidelines* as "cautionary" and could not actually think of an example where it would obviously apply. Certainly, the involvement of faculty in the Red Hill Expressway controversy was not a problem.

- (v) *Vice-President (Academic) and Provost*: Dr Ken Norrie described the circumstances leading to the introduction of the amendments to the *Guidelines*. The University solicitor, Randy Bocat, suggested the *Guidelines* should be amended to include other interactions with the media. The administration was worried about the University's legal liability (what President George referred to as the need for Enterprise Risk Management). There has been an evolution in liability laws such that if a professor's comments are controversial the University could be held liable.

The perceived need for revisions of the media *Guidelines* was taken to the Joint Committee (which works "extremely well," according to Dr. Norrie) and then to Senate. The Vice-President denied absolutely that the University, in making the amendment, was looking over its shoulder at grant sponsors such as Dofasco or other public figures.

Vice-President Norrie did not think that the *Guidelines* as presently configured was a threat to academic freedom. The offending statement should not be taken out of context.

Asked why, if the statement carries no weight on its own, it couldn't be scrapped, he replied clearly and forthrightly "it stays." He also agreed that if any discipline were to be attempted as a result of the *Guidelines* it would have to go to the Joint Committee and the procedures outlined in the *Faculty Handbook*.

Finally, Dr. Norrie was unable to describe for us a situation that would constitute a clear violation of the *Guidelines*. Nor, when asked, could he tell us where he would draw the line if professors from different disciplines were to speak out on a controversial issue such as same-sex marriage. We did not find him defensive. Rather he, like others, simply could not imagine the *Guidelines* ever resulting in formal disciplinary action.

- (vi) *Secretary of Senate*: Mr. Bruce Frank described the original impetus for the *Guidelines* on interactions with the media as being “faculty driven.” The Faculty Association sometime in the 1970s was opposed to the things a particular professor was saying about the “research competence” of his colleagues. It took several years and it was not until 1986 that the initial version of the *Guidelines* was adopted. That version was limited to comments made in letters to the editor.

Mr. Frank also commented on the Joint Committee arrangement at McMaster. He said the arrangement works very well but that it is probably not “transportable” to other universities with a different culture and history of faculty/administration relationships.

- (vii) *Individual Professors*: We talked to several individual professors, the first of whom was Dr. Joanna Santa Barbara, a child Psychiatrist. She was called by a journalist who asked her “what she thought” about the change in the *Guidelines* regarding interactions between McMaster faculty and the media. An article in the *Hamilton Spectator*, written in response to the change in the *Guidelines*, included comments by Dr. Santa Barbara. She reported feeling she might be constrained under the *Guidelines* to mention her affiliation with McMaster if talking about child psychiatry, but not to mention it if talking about the war in Iraq.

Dr. Santa Barbara brought up the University’s Alumni Speaker’s Bureau as an example of a University activity apparently at odds with the media *Guidelines*. In this case, the University condones the practice of faculty members speaking out on “issues of interest” and nowhere says that those “issues” must be limited to one’s area of expertise.

Professor Santa Barbara reported being “deeply shocked” by news that the *Guidelines* had already been applied (ref.: letter from Vice-President to Professor Hitchcock, Appendix B).

- (viii) Dr. David Hitchcock received a letter (see Appendix B) from the Vice-President (Academic), and said he saw the letter as a “reminder,” but not an attempt to discipline. It is ironic that it was Professor Hitchcock who transmitted to the McMaster administration a “complaint” from a Mr. Ron Lancaster, who objected to Professor Hitchcock’s use of his McMaster affiliation in signing a nomination form for an NDP candidate. Professor Hitchcock copied the e-mail complaint to President George. Dr George never replied to Dr Hitchcock, but eventually Vice-President Norrie did. This letter worries us, as we find it disciplinary in form, if not in content. In light of the code of conduct and disciplinary procedures at McMaster, we came to think that Professor Hitchcock is, for the moment at all event, quite safe from

administrative interference. But we were left with the extremely worrisome problem of the “reminder”: a “reminder” to a young scholar, or to an academic doing controversial or politically sensitive research, may, of course, have the force of a command: a command to cease forthwith doing that research.

Dr. Hitchcock is of the view that any member of the University community ought to be able to state his or her attachment to the University, even the Stationary Engineer in the Steam Plant. He also mentioned the Alumni Speaker’s Bureau that Dr. Santa Barbara mentioned stating also that professors listed in the Bureau could speak on any topic. Obviously, it would be impossible to disassociate someone from the Speaker’s Bureau from the University if that person were speaking on a topic of interest outside his or her “area of scholarly expertise.”

- (ix) Professor James Quinn, a biologist, does scholarly research directly pertinent to the matter of concern to our Inquiry (effects of pollution on mating systems in birds as well as on germ-line mutation) and his social activism (controversy over the Red Hill Valley Expressway). These activities have the potential of attracting the full force of the *Guidelines* as they are now constituted. He reported to us being bothered by the change in *Guidelines* and feeling he may be “at risk.”

With regard to the Red Hill controversy, Dr. Quinn holds strongly the view that politicians are biased—controlled by business and contractors. Therefore, if academics cannot speak out and “draw the links” to media manipulation, then the public will remain uninformed or worse, misinformed. He sees the new changes as limiting his freedom to speak publicly—that the new *Guidelines* ties his hands. On the other hand, Dr. Quinn admits there has been no reaction, and certainly no recrimination or discipline on the part of the University. When we brought the Red Hill issue up with President George he stated flatly that it was “not a problem.”

With regard to his research on pollution, Dr. Quinn outlined for us a controversy that arose when his research was published showing that pollutants from the Dofasco/Stelco steel mills had effects on mating systems and germ-line mutations. Dr. Quinn answered Dofasco’s criticisms of his work, and at the urging of the Vice-President (Research) met with the company to discuss his research findings. McMaster Media Relations also informed Professor Quinn that the President was going to meet with Dofasco/Stelco. This kind of information could be understandably disconcerting for a faculty member. But when we told Professor Quinn that President George had told a company representative to “cool it, this is what

academics do,” Professor Quinn was pleased. In fact, he told us, his paper had been published in May with nothing but positive press.

Dr. Quinn also presented a cogent description of the connection between his scholarly research on pollution effects in birds and germ-lines and his social activism with regard to Red Hill—how in fact there can be no distinction between private opinions and professional expertise. He *thinks* as an evolutionary biologist. He researches the effects of pollution. The Red Hill controversy is about “more than just a big highway through my neighbourhood, it’s about the children who will be living in the valley below being exposed to potentially dangerous runoff from the Expressway.” It is difficult to deny the force of his argument.