

The Walsh Case at the University of Waterloo

This is a report of the Academic Freedom and Tenure Committee concerning the case of Professor Vivian Walsh, denied the right of a fair hearing at the University of Waterloo.

Introduction

It is a fundamental right in a democracy that a citizen appealing a verdict be given reasonable notice in writing of the time and place of the hearing and a summary of the earlier decisions and the reasons for them. If the appeal board proposes to introduce new evidence during the course of the hearing, it should send the appellant a summary of any material not introduced in any prior proceedings and give him an opportunity to speak to it. The Canadian Association of University Teachers has adopted these principles and framed them in our Policy Statement on Academic Appointments and Tenure. A recent case at the University of Waterloo illustrates the problems associated with the introduction of evidence at a proceeding which at the same time disallows the professor the opportunity to speak to it. This is the case of Professor Vivian Walsh, formerly of the Economics Department at the University of Waterloo.

Background

Professor Vivian Walsh was appointed Visiting Professor to the Department of Economics for 1970-1971. The Department, in the midst of graduate programme development, was at that time appointing a number of senior scholars with international reputations. The Chairman of the Department, Professor Sidney Weintraub, offered Walsh a four-year probationary appointment in the Spring of 1971 and indicated the following Autumn that he was eligible for tenure consideration. Professor Weintraub was replaced as chairman in January 1972 by Professor Robert Mundell, who voted in late 1973 in favour of tenure for Walsh and forwarded a positive departmental recommendation.

In the meantime, however, the government decided to discourage the graduate programme in economics at Waterloo, and the Dean of the Faculty of Arts informed Walsh that "the sort of Department of Economics that Dr. Sidney Weintraub and Dr. Robert Mundell had envisaged is now not possible," and, as a result, that he intended to terminate Walsh's appointment in June 1974.

Nonetheless, the appointment was extended while Walsh appealed the Dean's negative tenure decision to the Faculty of Arts Tenure Committee under recently-adopted procedures, and this committee returned the appeal to the Department for reconsideration. In November 1975 the Department provisionally recommended against tenure and confirmed its decision in early 1976. Professor Walsh appealed once again to the Faculty Tenure Committee but was unsuccessful and at that point appealed to President B.A. Mathews for review of the decision.

At this stage serious procedural errors hindered Walsh from receiving a fair hearing of his appeal.

The President referred Walsh to the Academic Vice-President, Professor T.A. Brzustowski, who in accordance with the new procedures submitted the case to the University Tenure Advisory Committee (UTAC), chaired by himself. Professor Brzustowski wrote to Walsh, inviting him to make "an initial presentation" at the meeting of May 28, 1976. It was Walsh's understanding that all documents pertaining to his case would be shown to him beforehand and that, in view of the fact

that a number of criticisms relating to his teaching appeared for the first time at the 28 May meeting, he expected that he would be invited to appear at a second meeting to refute the new charges. Professor Brzustowski subsequently denied having promised anything more to Walsh other than that the committee would invite him to appear again if it seemed necessary.

On June 22 1976 Brzustowski wrote to Walsh to inform him that UTAC would meet again on 24 June and make its final recommendation on 27 June, but that his presence would not be required. But Walsh was out of town on 23 June and did not receive this message until after the committee had met. At a meeting of 25 June, Brzustowski announced that UTAC had recommended that the appeal be denied on the grounds of his “record as a teacher...and not on his scholarship” and that his performance as a teacher was a cause of concern to a number of senior officials at the university.

Grievance at the local level

Professor Walsh appealed to the Faculty Association, which established a subcommittee to look into the case. A report published on 28 June 1977 noted several serious procedural violations at the UTAC hearing. According to the report, “The committee concluded that the letter dated June 25, 1975 from the chairman of the University Tenure Advisory Committee denying Professor Walsh’s appeal contained non-specific allegations of conduct and/or performance deficiencies which had not previously emerged in the formal tenure evaluation process. The evidence indicated that these allegations were never made explicitly to Professor Walsh and were implied only after termination of the tenure appeal process. The committee also determined that these allegations were a significant factor in the negative decision of the University Tenure Advisory Committee. The investigation of the committee also supported Professor Walsh’s contention that he was not given the opportunity to respond to the allegations. Therefore, the committee concluded that the procedures applied in the case of Professor Walsh violated both the guidelines for the operation of the University Tenure Advisory Committee agreed to by the University in negotiation with the Faculty Association and the guidelines recommended by CAUT. The guidelines accepted by the University specifically state that the faculty members will receive ‘... a summary of any new evidence bearing on the case that will be considered by the Appeal Committee’. The guidelines also state that ‘A summary of new evidence generated during the appeal procedure will be provided to the faculty member without attribution. The faculty member may respond in writing to the new evidence.’ The CAUT guidelines as cited in the Handbook are equally explicit: ‘In conducting a hearing, the appeals committee should give the faculty member...a summary of any material or considerations not introduced in prior proceedings and the opportunity to speak to them’.”

Such shortcomings, argued the report, amounted to an infringement of Walsh’s rights to a fair hearing and ought to be brought to the attention of the President. Further, the report noted that it found neither bias nor procedural error at lower levels of the tenure hearing, but that procedural errors at UTAC effectively denied Walsh due process. In a supplementary report, the subcommittee argued further that the new information which emerged during the review of UTAC played a significant role in the negative recommendation, information which Walsh was not given an opportunity to refute. The President, however, rejected a reconsideration of the case, and in November 1977 Walsh appealed to CAUT.

Grievance at CAUT

Two particular points disturbed the members of the Academic Freedom and Tenure Committee: the Brzustowski letter of 22 June 1976 and the introduction of evidence at UTAC which Walsh was not given an opportunity to refute.

It is President Matthews' contention that the Brzustowski letter did provide adequate opportunity for Walsh to request an invitation to respond to the allegations but that he did not avail himself of that opportunity. The position of the Waterloo Faculty Association is that during his "initial presentation" before UTAC, Walsh had requested a further opportunity to reappear before the committee to respond to the new charges, but that the Brzustowski letter of 22 June states unequivocally that the committee "will not be inviting you to appear again". Further, the Association argued that the 24 hour period between the Brzustowski letter and the meeting does not constitute sufficient notice for response.

After three visits to President Matthews in an attempt to mediate the grievance, the Associate Executive Secretary, Victor Sim, concluded that the administration at Waterloo was indeed "stonewalling" and did not intend to respond positively to CAUT representations.

The Academic Freedom and Tenure Committee thereupon appointed a Committee of Inquiry (Professors William Nelson, chairman (Toronto); Naomi Griffiths (Associate Dean of Arts, Carleton); and Jack Hyatt (Western Ontario), which visited the University of Waterloo on 1 and 2 August 1978 to hear representations from both sides to the dispute and, in September, filed its draft report with the Academic Freedom and Tenure Committee.

The CAUT committee agreed with the Waterloo Faculty Association that a distinction should be drawn between the proper procedures at the departmental and faculty level and the breaches of procedures at UTAC:

"On strict procedural grounds, we must accept this distinction. The essence of the **demonstrable** wrong done Professor Walsh is, we think, to be found in the vague, but serious, allegations against him in Professor Brzustowski's letter to him of June 25, 1976 — allegations which had not come up previously and to which Walsh was given no chance to reply. Further evidence of wrong was the absurdly limited time given Walsh in the letter of June 22 to present material to UTAC at its meeting of June 24, as well as the Committee's disregard of Walsh's earlier request for materials and for a further meeting with the Committee. These breaches of proper procedure violated both CAUT guidelines and those accepted by the administration at Waterloo University itself. And the refusal of the Waterloo administration to consider redress of any kind has clearly compounded the wrong done Professor Walsh."

The committee was of the opinion that "Professor Walsh had excited strong feelings at Waterloo" and that the real issues of his case were obscured.

"It was simply not possible for us to believe that these concerns had not affected the departmental and faculty consideration of Professor Walsh's request for tenure. If these concerns did affect the departmental judgment of Walsh, then their utter absence from the paper record of these proceedings is evidence not of procedural propriety, but of its opposite. And the underlying wrong done Walsh might simply be that lack of candour and straight forwardness prevented him from ever being able to confront the real objections to him. Whether, if he had been able so to confront them, he would have made a better or worse case, no one perhaps will now ever know. His was, after all, not a case for dismissal which would have had to be made by the University, but a case for tenure which he had to make. Collegiality is one of the components of tenurability at Waterloo as elsewhere; perhaps

a good case could have been made against Walsh. The point is, no such case was made. Evasions, vague allusions, administrative arbitrariness — these only confused the real issues and gave Walsh an accumulating grievance against the University.”

The draft was circulated to the principals for comment and, at its November meeting, the Academic Freedom and Tenure Committee adopted the recommendation of its inquiry committee for arbitration of Walsh’s grievance, one which would be binding on all parties. On November 27, 1978, two officers of the CAUT visited President Matthews to discuss this recommendation and to resolve the case. In January 1979 the President wrote to CAUT stating, “...our position remains that there is no valid or reasonable basis for Professor Walsh’s grievance and that we do not accept the recommendation that the dispute be submitted to arbitration”.

The Academic Freedom and Tenure Committee, therefore, has reluctantly concluded that it has no recourse but to publish an account of the case to acquaint members of CAUT with what constitutes, in its judgement, a serious denial of the right of due process at the University of Waterloo for Professor Vivian Walsh.