

CAUT Ad Hoc Investigatory Committee Report

**into the termination of
Dr. Laurent Leduc's participation
in the continuing education
division program on corporate
social responsibility at the
University of St. Michael's College,
the University of Toronto**

Respectfully submitted:

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1. Committee and Mandate

This investigatory committee was set up by the Canadian Association of University Teachers as an ad hoc investigatory committee to examine the termination of Dr. Laurent Leduc's participation in the continuing education division program on corporate social responsibility (CSR), which he helped establish at the University of St. Michael's College (USMC) in the University of Toronto.

The members of the investigatory committee were Esam Hussein, professor and chair of mechanical engineering at the University of New Brunswick and Robert MacDermid, associate professor of political science at York University.

The committee was asked to investigate the actions of USMC in relation to its CSR program and the role of Dr. Leduc within it; to determine whether there were breaches of or threats to academic freedom, and to make any appropriate recommendations.

Correspondence and other documents cited in the report are referred to in square brackets throughout.

2. The Parties

The conflict involved Dr. Laurent Leduc and the continuing education division at USMC in the University of Toronto. Dr. Leduc holds a PhD in Ethics (Systematic Theology), 1993, from USMC and had taught courses with the University of Toronto faculty of arts.

In April 2000 Dr. Leduc agreed, on behalf of his company, Leadership Horizons, to a contract with the continuing education division at USMC to develop both a non-degree credit and a certificate credit program in corporate social responsibility. Dr. Leduc preferred to conduct his relationship with USMC through Leadership Horizons, unlike the personal contractual relationship most Canadian university academics and part-time instructors have with their employers. The CSR program brochure mentioned that Leadership Horizons "designs, develops, and delivers learning programs for Canadian business and institutions. Specializing in leadership style and corporate culture, Leadership Horizons helps organizations appreciate the importance of a multiple bottom line and works with them to increase their capacity as agents of positive change in the world."

The contractual arrangement involved both business and academic matters. To the extent that we are able, we focus our concern in this investigation on academic matters and, in particular, those relevant to academic freedom.

Dr. Mimi Marrocco, the director of continuing education at USMC, agreed to the contract with Leadership Horizons. Dr. Marrocco met frequently with Dr. Leduc during the development and delivery of the first session of the CSR program. She met with Dr. Leduc and the instructors to review program content and student assignments, and initiated a student evaluation of the first session of the program. It is our understanding from interviews and documents that Dr. Marrocco sought other partners for the CSR program and tried to develop other continuing education possibilities that at first Dr. Leduc understood to involve himself and Leadership Horizons.

Dr. Marrocco is a member of the USMC Continuing Education Council, an advisory body that reviews and approves continuing education programs.

Dr. Leduc interacted with the CSR program's advisory board, the Continuing Education Council and instructors (known as core faculty), who delivered parts of the program. At the inception of the CSR program the advisory board was a mixture of one tenured academic, a part-time university instructor, several busi-

ness executives, experts in business ethics and a representative of the Conference Board of Canada.

External to the university, Dr. Leduc interacted with the Niagara Institute¹ and the Conference Board. The Conference Board was billed as a partner with USMC and Leadership Horizons in the development of the CSR program.

One source for the conflict appears to have been a donation by Imperial Tobacco that was in part directed to support the CSR program. An acquaintance of Dr. Leduc's, Dr. Bruce Buchanan, became aware of the contribution to the program from Imperial Tobacco and in conjunction with Dr. Leduc, other members of the program advisory board and the Non-Smokers Rights Association, drew public attention to the donation.

We have avoided directly judging the appropriateness of the acceptance of a donation from a tobacco company. We assessed, however, the impact of such a donation on the academic climate and on academic freedom. In essence, our focus was on the effect of external factors on academic freedom in the insecure academic work environment of continuing and professional education.

Dr. Leduc's academic involvement with USMC also included a visiting scholar appointment with the Elliott Allen Institute for Theology and Ecology (EAITE), within the faculty of theology at USMC.

The parties involved are listed below, along with reference to those individuals interviewed and those contacted who declined to be interviewed:

- **Advisory Board, CSR Program**
Bob Willard, member
- **Conference Board of Canada**
George Khoury cancelled a scheduled interview
- **Continuing Education Division**
Mimi Marrocco, director, declined to be interviewed
- **Core Faculty**
David Simpson, Anne Kemp
- **Elliott Allen Institute for Theology and Ecology**
Stephen Dunn, founding and former director
Dennis Patrick O'Hara, director
- **Faculty of Theology**
Anne Anderson, dean
- **Friend of Dr. Leduc**
Bruce Buchanan
- **Laurent Leduc**
- **Leadership Horizons**
Laurent Leduc, director
- **Non-Smokers' Rights Association**
Garfield Mahood, executive director
- **The University of St. Michael's College**
Richard Alway, president, refused to be interviewed

Individuals selected for interviews were those who, in our view, had some academic involvement in the CSR program, or direct knowledge of the issue. It was a deliberate decision on our part not to examine business-related issues as we saw that as outside the scope of our mandate.

3. The Process

Both members of this ad hoc investigatory committee have some experience with professional and academic freedom issues. Professor Hussein has taught for many years in the training program for operators of the Point Lepreau Nuclear Power Station in New Brunswick. Professor MacDermid has studied, among other things, the effect of corporate donations on the political system. Both members are active in their local faculty unions.

In keeping with the terms of reference, the investigators have tried to focus on academic freedom and to avoid the complex business arrangements between USMC, Dr. Leduc and his company, Leadership Horizons. However, the impact of these issues on the exercise of academic freedom was taken into consideration.

After reviewing the background material made available to the committee by CAUT, both Dr. Leduc and USMC president Richard Alway were invited to submit names of individuals the committee might wish to interview. Dr. Alway declined^[1] and Dr. Leduc suggested several names. The ad hoc investigatory committee compiled a list of individuals to interview that was representative of each side of the dispute. Dr. Marrocco initially agreed to meet with us but eventually declined on the advice of her solicitor.^[2] Her decision meant we were unable to speak with the person who worked directly with Dr. Leduc and to some extent supervised his development and delivery of the CSR program, and was the signing authority for all related financial matters. On the other hand, the dean of the faculty of theology, Dr. Anne Anderson, was very cooperative and arranged for us to meet with the current director of EAITE, Dr. Dennis Patrick O'Hara, who had not responded to our request for a meeting.

Interviews were conducted between May 24 and May 28, 2004 in Toronto. The interviews were conducted either at the Delta Chelsea Hotel (Stephen Dunn, Anne Kemp and David Simpson), at the interviewee's office (Anderson, O'Hara and Garfield Mahood), at York University (Bob Willard), or at the interviewee's private residence (Buchanan and Leduc). Interviews extended from one to two hours.

4. The Events

Based on the interviews and the documents made available to us, we are able to reconstruct the circumstances surrounding this conflict as follows:

Dr. Leduc approached the continuing education division at USMC with a proposal for developing a continuing education program on corporate social responsibility. In April 2000 Dr. Leduc wrote to Dr. Marrocco, confirming an agreement on the new certificate program. This and subsequent contracts were between the USMC continuing education division and Leadership Horizons, a company owned by Dr. Leduc.

In July 2000 Dr. Leduc met with the Conference Board of Canada and in mid-September of the same year, it became a partner in the program.

Dr. Leduc tried, through Leadership Horizons and continuing education at USMC, to include the Niagara Institute as an additional partner in the CSR program. In December 2000, Dr. Marrocco wrote to Dr. Leduc^[3] that "the current profit-sharing partnership with Leadership Horizons is specific and limited to the development and delivery of the Certificate in Corporate Social Responsibility." This appears to have made Dr. Leduc feel apprehensive about his relationship with Dr. Marrocco, as he saw this might result in him and his company being excluded from further partnership opportunities.

Prior to the first CSR session in February 2001, Dr. Leduc disagreed with Dr. Marrocco's suggestion that his theological credentials should be listed in the CSR program description. He felt his theological credentials should not be a prominent part of the CSR program brochure as the program was oriented towards attracting students from the business world.

In December 2000 Dr. Leduc learned that Imperial Tobacco had made a large donation to USMC that he understood would be used to support the CSR program. Dr. Leduc informed Dr. Marrocco that, in his view, this would affect the credibility of the program.

Between November 2000 and February 2001 Dr. Leduc negotiated with USMC over an acceptable contract between the continuing education division and Leadership Horizons. The discussion included, among other things, how the parties would split tuition payments and the size of program development fees.

The CSR program was first offered in February 2001. During the first session Dr. Leduc felt there was tension between himself and Dr. Marrocco. Dr. Leduc felt slighted by the informal and verbal process of student course evaluation conducted by Dr. Marrocco in the presence of the instructors. Dr. Leduc felt his performance had been adversely affected by the many logistical issues of the first weekend of the program.

In late February 2001 Professor Stephen Dunn agreed to mediate between the continuing education division and Leadership Horizons, over disagreements about how Dr. Leduc's company would be paid. Dr. Leduc understood he was to be paid a percentage of enrolments. A new contract was agreed to in March 2001.

In June 2001 the process of redesigning the CSR program started.[4] Dr. Leduc, who was not able to attend the meeting, felt he was "increasingly marginalized." Dr. Leduc believed his company's role in developing course content, facilitating sessions and coordinating the program had been ended.

In July 2001 the director of continuing education wrote to Bob Willard [5], a member of the CSR advisory board, stating the response of the participants to the first offering of the CSR program "was characterized by interest and engagement." The letter also indicated that an animator (Stephen Scharper) was hired for subsequent sessions of the CSR program and that Dr. Leduc was to complete a web-based version or component of the course.

In July 2001 Dr. Marrocco, in writing to advisory board member Willard [5], confirmed Imperial Tobacco had donated money for the "development of new program initiatives in continuing education, including the Certificate in Corporate Social Responsibility." The Imperial Tobacco donation was also announced in the fall 2001 edition of the USMC alumni newsletter: "The Certificate in Corporate Social Responsibility, initiated in collaboration with the Conference Board of Canada and Leadership Horizons, has grown to include a web-based component on 'Foundational Issues in CSR,' a development made possible by the generous financial contribution of one of our alumni, Robert Bexon (7T5) of Imperial Tobacco Ltd."²

In October 2001 Dr. Leduc wrote to president Alway requesting a meeting to "help in resolving important outstanding issues relating to Leadership Horizons' partnership with the University of St. Michael's College." [6] Dr. Alway advised that the issues should be discussed with Dr. Marrocco.[7]

The second session of the program was presented in November 2001. Following the weekend session, Dr. Leduc proposed an assignment for those completing the certificate about a tobacco company giving a donation to a university to set up an international centre for corporate social responsibility.[8] The assignment referred, indirectly (via websites), to a donation made by British American Tobacco to Nottingham University to establish an international centre for corporate social responsibility. According to Dr. Leduc, Dr. Marrocco

and the session coordinator initially thought the assignment was appropriate, but wanted to consult with other instructors. Dr. Marrocco, according to Dr. Leduc, eventually concluded the assignment was not appropriate and an alternative assignment was substituted. It is our understanding the other instructors did not dissent from Dr. Marrocco's recommendation.

In January 2002 Willard resigned from the program's advisory board because of the acceptance of funding from Imperial Tobacco.[9]

In April 2002 a "Full and Final Settlement and Release" was agreed to by both Dr. Leduc and USMC. An unsigned version with a February 2002 date had previously been exchanged.

In September 2002 dean Anderson introduced Dr. Leduc to the University of Toronto Libraries as a visiting scholar with an appointment until August 2003.[10] Professor Dunn, then the director of EAITE, requested that Dr. Leduc be granted visiting scholar status because of his voluntary work with the institute and his appointment to its advisory committee.

On Nov. 5, 2002 the Non-Smokers' Rights Association issued a statement made available to the media entitled "Imperial Tobacco Limited and the University of St. Michael's College in the University of Toronto: Background Comments on Tobacco Funding of the Certificate in Corporate Social Responsibility Programme."

In January 2003, in response to inquiries from Dr. Leduc, Dr. Anderson wrote another letter, clarifying the nature of the appointment, requesting the return of faculty stationary, and notifying Dr. Leduc that the director of EAITE had removed his name from the institute's website as he was no longer active in institute affairs.[11] According to the new director of EAITE, Professor O'Hara, Dr. Leduc's name was removed from the institute's website as part of a general redesign that removed outdated information, such as the defunct advisory committee of which Dr. Leduc had been a member.

On Feb. 25, 2003 a letter protesting the donation from Imperial Tobacco was sent to Dr. Robert Birgeneau, president of the University of Toronto. The letter was signed by 10 individuals including two former CSR advisory board members (Willard³ and Marilyn Laiken) and Dr. Leduc. In March 2003 the *CAUT Bulletin* published an article on the issue.⁴

Early in 2003 president Alway formed a committee to "investigate aspects of the institutional questions raised by public objections to the USMC's acceptance of a gift in 2001 from Imperial Tobacco." The committee reported in June 2003 proposing a policy for accepting corporate donations.[12]

On May 23, 2003, Dr. Leduc sent a \$20,544 invoice to dean Anderson about a feasibility study pertaining to the ecological education leadership program for EAITE.[13] Dean Anderson replied on June 17, 2003, returning the invoice with the view that Dr. Leduc had "already billed \$21,603.92" for his work and was paid. The letter also informed Dr. Leduc he had "no agreement from EAITE to carry on 'partnership' conversations or otherwise with any body for which [Leduc] can expect to be paid by EAITE." [14] Dean Anderson and Professor Dunn have explained this work was done and paid for by the Passionist Community⁵ under the authority of Dunn. The Passionist Community was not connected to the EAITE except through Professor Dunn's involvement in both.

In April 2004 president Alway requested that Professor Paul Perron "conduct an independent inquiry into the circumstances surrounding the discontinuance on April 2, 2002 of the services of Leadership Horizons and its principal, Dr. Laurent Leduc, to the continuing education division of this university." [1]

On May 27, 2004, after agreeing to be interviewed by CAUT's ad hoc investigatory committee, Dr. Marrocco informed the investigators her lawyer had advised her that Professors Hussein and MacDermid "have neither a mandate from nor jurisdiction over St. Michael's or me (Dr. Marrocco), if you deliver a

report no qualified privilege attaches. This means that, if you proceed and any statement about me in your report is defamatory, then I would have the right to sue for damages.”[2]

On Sept. 23, 2004 Professor Perron’s report found “that academic freedom was not involved in the matter but that there was a flaw in a commercial contract.” The report went on to say “the disagreement was fundamentally commercial and not academic in nature, but there was obviously an academic component involved in the delivery of an education course. Academic freedom was not transgressed, but the partnership as well as the roles, responsibilities and final decision authority of the partners was badly defined.” The public portion of Professor Perron’s report amounted to two pages. A further unknown portion was provided to Alway for his confidential information and contained “details concerning the information I gathered, and the business transactions that pertained to the dispute.”[15]

5. Further Background

5.1 USMC Continuing Education

Many of the courses offered by USMC’s continuing education division have a spiritual or religious dimension in their titles, and most fall into three broad groupings: science, philosophy and theology; spirituality, ethics and pastoral care; and, literature. The division also offers programs or courses that provide a professional credit and, if desired, an academic credit in the form of a certificate.

Certificate programs at Ontario universities offer an undergraduate level credential that requires an instructor with the appropriate expertise and academic qualifications to construct the course and assess the work of the students.

“The University of Toronto School of Continuing Studies offers a growing number of Certificates in Continuing Studies, all of which are reviewed and approved by the Vice-President and Provost of the University of Toronto. To earn a certificate from the school, a student must complete a number of courses in a field of study within a given period of time (in most cases three to five years). A certificate from the School of Continuing Studies is not a degree from the University of Toronto. To earn a certificate, students must successfully complete a university-level program of study and pass rigorous academic evaluation.”⁶

The cost of taking a non-credit course in continuing education at USMC, with as much as 12 hours of class time, is usually between \$100 and \$150. More intensive courses have higher tuition.

Continuing education also offers a master’s degree program in Catholic leadership in collaboration with St. Michael’s faculty of theology. Readers not familiar with the University of Toronto’s history and its federation of religious universities and colleges will not know that USMC describes itself as a “Catholic University, [that] is committed to the study of the Christian tradition within a context of faith and to fostering the creative engagement of that tradition with the widest range of academic disciplines as well as with other traditions both religious and secular...”⁷

5.2 The Corporate Social Responsibility Program

In 2001 USMC added the certificate in CSR to its continuing education division programs. The certificate differed from other continuing education programs and courses in having a business focus, and in charging business school tuition rates of about \$9,600 for the full certificate program. The program brochure described four weekend-long sessions to take place in February and November of 2001 and February and November of 2002. There was also an on-line component that took place between sessions.

The CSR program is both a non-credit program and a certificate program. Students have the option of taking the courses without an academic credit or following the courses and completing extra work for a university certificate in CSR. The certificate is granted "to candidates who participate in a total of three required modules and one elective, who demonstrate an understanding of the principles of CSR and who successfully complete a number of assignments, both written and oral."⁸

The 2001 program brochure described the certificate in CSR as a "partnership" between USMC, continuing education in the University of Toronto, the Conference Board of Canada and Leadership Horizons. The current program website says the "Certificate in Corporate Social Responsibility is awarded by the University of St. Michael's College and the Conference Board of Canada..."⁹

The Conference Board of Canada website describes it as: "the foremost independent, not-for-profit applied research organization in Canada. We help build leadership capacity for a better Canada by creating and sharing insights on economic trends, public policy issues, and organizational performance. We forge relationships and deliver knowledge through our learning events, networks, research products, and customized information services. Our members include a broad range of Canadian organizations from the public and private sectors."¹⁰ The Conference Board's own board of directors includes senior executives of Canada's major corporations and is funded by many of those corporations. The Conference Board has published a number of papers on corporate social responsibility and in 2004 published its first Annual National Corporate Social Responsibility Report. Imperial Tobacco Canada is listed as one of the supporting sponsors of the report.

5.3 Teaching in Continuing Education

Understanding the employment policies that govern teaching in continuing education at USMC requires knowledge of several documents. Contracts with full-time faculty at the University of Toronto are described in a Memorandum of Agreement between the Governing Council of the University of Toronto and the University of Toronto Faculty Association. The University of Toronto Faculty Association is not a certified bargaining unit so the memorandum does not have the status of a collective agreement. It does, however, contain a clause on academic freedom.

The academic freedom of all faculty in the "university community" is further protected by the "University of Toronto Statement on Freedom of Speech," contained in the Manual of Staff Policies Academics/Librarians that says:

"In policies approved by the Governing Council, the University community has held that the essential purpose of the University is to engage in the pursuit of truth, the advancement of learning and the dissemination of knowledge. To achieve this purpose, all members of the University must have as a prerequisite freedom of speech and expression, which means the right to examine, question, investigate, speculate, and comment on any issue without reference to prescribed doctrine, as well as the right to criticize the University and society at large."

Whether instructors in continuing education and especially those teaching in certificate programs can make claims to academic freedom is an important part of this report. We take it that full-time and part-time instructors and indeed all academic staff have full and rightful claims to academic freedom in teaching and research. We discuss this understanding in more detail in a following section of this report.

5.4 Dr. Leduc's Employment Contract

Dr. Leduc agreed to two memoranda of understanding: the first between his company, Leadership Horizons, and USMC's continuing education division dated March 21, 2001, and the second between these two partners and the Conference Board of Canada's Canadian Centre for Business in the Community. Neither of these agreements appears to have been signed by any of the parties, although Dr. Leduc is of the opinion the parties agreed verbally to the contracts. We understand that neither of the draft contracts included a reference to academic freedom.

One important question in this inquiry was Dr. Leduc's contractual status. The CSR program was both a continuing education division program and a university certificate program. Dr. Leduc was hired so that a course would be instructed by someone with university teaching credentials — in this instance a PhD. Dr. Leduc's contract explicitly said he would instruct and supervise certificate students and maintain the academic standards required for the awarding of a certificate by the University of Toronto. This is an important point because it establishes Dr. Leduc's role as an academic supervising the granting of a university credential or certificate requiring university-level courses. Even if one argued that academic freedom did not extend to those teaching continuing education courses, Dr. Leduc was specifically employed to ensure students fulfilled the qualifications for a certificate program.

6. Academic Freedom

The central question of this ad hoc investigatory committee was to determine whether there were "breaches of or threats to academic freedom" accorded to Dr. Leduc in the course of developing, coordinating and teaching in the CSR program and certificate in the continuing education division at USMC in the University of Toronto.

6.1 What Is Academic Freedom?

Definitions of academic freedom are typically found in collective agreements, such as the Memorandum of Agreement between the University of Toronto and the University of Toronto Faculty Association:

"The parties to this Agreement acknowledge that the University is committed to the pursuit of truth, the advancement of learning, and the dissemination of knowledge. To this end, they agree to abide by the principles of academic freedom as expressed in the following statement: academic freedom is the freedom to examine, question, teach, and learn, and it involves the right to investigate, speculate, and comment without reference to prescribed doctrine, as well as the right to criticize the University and society at large. Specifically, and without limiting the above, academic freedom entitles faculty and librarians to: (a) freedom in carrying out their activities; (b) freedom in pursuing research and scholarship and in publishing or making public the results thereof; and (c) freedom from institutional censorship. Academic freedom does not require neutrality on the part of the individual nor does it preclude commitment on the part of the individual. Rather academic freedom makes such commitment possible."¹¹

The CAUT Policy Statement on Academic Freedom explains its importance in teaching and research, emphasizing its centrality in the search for knowledge:

"The Canadian Association of University Teachers is dedicated to the promotion and protection of academic freedom. The common good of society depends upon the search for knowledge and truth and its free expression. Academic freedom is essential for these purposes. Academic freedom does not re-

quire neutrality on the part of the individual. Rather academic freedom makes commitment possible.

“Academic staff, like all other groups and individuals, are entitled to enjoy recognized civil, political, social and cultural rights. Therefore, all academic staff must enjoy freedom of thought, conscience, religion, expression, assembly and association as well as the right to liberty and security of the person and liberty of movement. They must not be hindered or impeded in exercising their civil rights as citizens, including the right to contribute to social change through freely expressing their opinion of state policies and of policies affecting higher education. They must not suffer any penalties simply because of the exercise of such rights.

“Academic staff are entitled to the exercise of academic freedom. Academic freedom includes the right, without constriction by prescribed doctrine, to freedom of teaching and discussion, freedom in carrying out research and disseminating and publishing the results thereof, freedom in producing and performing creative works, freedom to engage in service to the institution and the community, freedom to express freely their opinion about the institution, its administration, or the system in which they work, freedom from institutional censorship and freedom to participate in professional or representative academic bodies.

“Academic staff must not be forced to teach against their own best knowledge and conscience or be forced to use curricula and methods contrary to national and international human rights standards. Academic staff must play the predominant role in determining the curriculum and assessment standards.

“All academic staff must have the right to fulfil their functions without discrimination of any kind and without fear of repression by the state or any other source.”¹²

Both of the preceding definitions include teaching as part of academic freedom. We understand this to mean the freedom to determine course content, how courses will be conducted and how students will be evaluated. Academics are hired because of their expertise in a field of knowledge. The freedom to determine the process of teaching is rooted in this command of a body of knowledge. The ability to determine what is to be taught and how it is to be taught arises from this expertise. That expertise is the reason for employment at a university that protects academic freedom. Any constraints on this freedom to teach can only originate from within the community of scholars that are experts in the field and teachers in the university. As a community, they may establish expectations and practices that members of the community may follow.

6.2 Who Can Claim Academic Freedom?

The question is more complicated than it first appears. During the course of our investigation we asked people what they understood academic freedom to mean, how academic freedom is protected or guaranteed and who has the right to make claims to academic freedom. The answers they gave to these questions were often related to their position within the university. People in administrative positions within universities or within faculty associations tended to see academic freedom in relation to specific contractual statements or collective agreements or in relation to academic tenure. Although academic freedom and the status of tenure are often linked, most definitions separate the two. Tenure is a contractual relationship, the requirement that cause is demonstrated before dismissal, as compared to the ability to hire academic staff on short-term contracts without tenure. Tenure obviously entrenches academic freedom by protecting academics against hasty discipline that may follow on controversial statements. Although tenure reinforces academic freedom, it is the university that guarantees academic freedom to all those who teach and research within its walls.

Over the past 20 years the percentage of professors hired on short-term contracts has increased to the point where it is not uncommon to have a significant number of a program's courses taught by academically-qualified faculty who are hired on either a per course basis or a full-time contract that has a specific termination date in the near future. Are qualified academics in contingent employment situations extended the same academic freedom as tenure stream faculty? Although some academic freedom guarantees are found in collectively-bargained contracts that may not extend to contingent employees, to our knowledge, no university has made a distinction between academic freedom extended to short-term and tenure stream faculty. Universities have not said at any time that some professors have the protection of academic freedom and others do not. Such a position would be difficult to defend and would be an open admission that some faculty do not enjoy the freedom to speak and write critically.

The collective agreement between the University of Toronto and CUPE 3902, which represents some part-time lecturers and graduate student teaching assistants as well as other employees, contains no specific academic freedom clause and makes only passing reference to it in defining sexual harassment as something "that exceeds the bounds of freedom of expression or academic freedom as these are understood in university policies and accepted practices, including but not restricted to those explicitly adopted."¹³

Universities are also increasingly relying on adjunct, honorary and post-retirement (sometimes unpaid) appointments to contribute to research programs. Such appointees should also have the protection of academic freedom while performing academic duties. The limited term employment of teachers and researchers is not conducive to claims of academic freedom. Those who wish to have employment continued are not likely to make statements that challenge conventional understandings or challenge the goals and directions of the university. As the number of faculty with short-term contracts grows, this is an issue that deserves much more attention.

6.3 What Courses Are University Courses?

For some time, universities have been interested participants in non-degree courses and programs in continuing education. Such programs have traditionally been bridges to the wider community. Some may also have become opportunities to return profits to support courses and programs.

Does academic freedom extend to those who teach continuing education courses? Such distinctions are not made in academic freedom clauses. Academic freedom is rightly claimed by all people who are considered to be academics, regardless of their contractual status. If academic freedom is not extended to part-time faculty and those teaching continuing education courses, then administrators should make this clear to both teachers and students. If teaching by part-time faculty or teaching in continuing education programs is not protected by academic freedom, then we should expect faculty to be less motivated to engage in teaching innovations, and to be less critical in their teaching, given the lack of institutional protection.

6.4 Teaching and Academic Freedom

Academic freedom in teaching means courses and knowledge cannot be completely reduced to a curriculum or a sequenced group of ideas, but must be continually open to reformulation, through reinterpretation, through the addition of new ideas and the removal of others. The right to employ one's expertise in the design of a course is an academic freedom as is the right, once hired or paid by the university, to have the freedom to present one's understanding and ideas about a topic in the classroom without constraint. It is the freedom to introduce new ideas and research into teaching and the free-

dom to reformulate existing bodies of knowledge in new ways. Finally, it is the obligation to question conventional approaches to subjects.

Academic freedom pertains to all aspects of teaching in the university, including decisions about course content, how it is presented in the classroom and how students are evaluated. Course content and form may be decided through discussion between academics with knowledge and expertise in a field. It is the instructor's freedom to decide questions about course design individually or to submit to collective decisions with others, but reserving the right to dissent. Were this freedom not present, then all teaching could be reduced to a curriculum from which no dissent would be possible.

6.5 Freedom to Set Assignments

The freedom to determine the ways in which students are assessed and to gauge a student's success in acquiring, understanding, using and critiquing knowledge are central elements of academic freedom. Attempts to standardize evaluation or to make it subject to group evaluation by academics and non-academics challenges the freedom to invent new pedagogies and to understand learning in new ways. Academics that privilege the importance of the use of knowledge may wish to evaluate students in situations where that knowledge is put to real use. Medical students learn not only a set of ideas but also how to apply them in clinical situations. This same approach to evaluation is used in many other disciplines and particularly in business and law schools where the case study predominates as a form of pedagogy. Using methods of assessment that draw upon a student's experience may be particularly relevant in teaching adult students, who can apply ideas from the classroom to experiences beyond it, enabling a critique of their own experiences and an understanding of the application of the knowledge they are in the process of acquiring. The freedom to determine forms of student assessment is not just a matter of academic freedom but also a requirement for an instructor to respond to the diversity of learning styles.

Decisions about the modalities of teaching, the pedagogy, the conduct of classes, the relationship between instructor and student, and the form of evaluation are all elements of academic freedom, which is the freedom to determine how best students can learn in addition to what they should learn.

6.6 The Freedom to Challenge Conventional Norms Backed by Powerful Interests

The conventional ideas of many disciplines are backed by powerful supporters within and outside the academy. Academic freedom protects those who challenge conventions and who speak out, to either explain or challenge the relations of power that are behind conventional knowledge and the social positions that have grown up around those conventions. Academic freedom is this right to speak truth to power. One might even say obligation to speak that truth in return for some form of protection against the retribution of the powerful. This is a freedom that citizens outside of academia do not share, for they are open to the reprimands of those who supply their livelihood and subject to silencing or self-silencing in return for the maintenance of that livelihood. The division of interest and opinion between employers and employees means that freedom to speak from and about the workplace, and even outside it, may be curtailed or absent.

Since others cannot share the protection of the university, academics have an obligation to challenge conventional views on behalf of others. Academics must have the freedom to be curious about unanswered questions and about incomplete or unsatisfactory answers. They must be free to pursue research without direction from an employer or powerful individuals or organizations within society.

7. Findings

The dispute between Dr. Leduc and USMC raises questions about business relations and personal conflicts, and about academic freedom in continuing and professional education. Though we are chiefly concerned with academic freedom, we raise additional questions for the sake of completeness.

7.1 Business Matters

These were not directly addressed by this committee, and were settled between the parties. However, Professor's Perron's inquiry (initiated by president Alway), indicated "there was a flaw in a commercial contract."^[15] The portion of Professor Perron's report that may have explained the nature of this flaw was confidential.

7.2 Imperial Tobacco Donation

This committee did not address the appropriateness of this donation. USMC formed an internal committee (led by dean Anderson) to develop a policy on institutional donations.^[12]

7.3 Academic Freedom

7.3.1 Professor Perron's Inquiry ^[15] — Professor Perron was asked to investigate whether Dr. Leduc's academic freedom had been "transgressed." Unfortunately, Professor Perron's two-page report explains neither the reasoning nor the evidence behind his conclusion that "academic freedom was not involved in the matter" and that "academic freedom was not transgressed." He found "there was a lack of consensus about a product to be delivered and by whom and how, which lead to a dispute and to the eventual breakdown of a commercial relationship. The disagreement was fundamentally commercial and not academic in nature but there was obviously an academic component involved in the delivery of an educational course." The report finds "academic freedom was not transgressed but the partnership as well as the roles, responsibilities and final decisional authority of the partners were badly defined." Professor Perron concludes his findings by writing "I am not qualified to assess if the treatment of the proposed course materials in the program was appropriate, but the second, third and fourth sessions of the program in Corporate Social Responsibility were vetted and approved by the academic committee with one dissenting voice — Laurent Leduc's — at the second session." Professor Perron's brief report casts Dr. Leduc's relationship with USMC as a commercial agreement. We do not disagree that an apparently unsigned, but verbally agreed to, commercial agreement or contract existed between Leadership Horizons, Dr. Leduc's company, and USMC. The contract was for the creation and teaching of a continuing education program and a university certificate program. We do not disagree that there was a dispute about the terms of the contract, what they meant, who was owed what, who owned what, and if the contract could be changed or altered. However, the contract was about the creation and delivery of an academic program by an instructor, who Professor Perron does not, tellingly in our view, deny has the right to academic freedom. All academics have contractual relationships with universities. A signed agreement or a collective agreement does not replace or negate academic freedom. All qualified instructors teaching courses within a program offered by a university must be able to claim academic freedom. A dispute about a contract to teach a course will almost inevitably raise issues of academic freedom. In our view, this dispute involved the important freedom to decide how students should be assessed without reference to non-experts. Professor Perron does not mention this in his report.

7.3.2 Imperial Tobacco's Donation — We know some of the differences between Dr. Leduc and USMC stemmed from his belief that a donation to the CSR program had been made by Imperial Tobacco Canada. He indicated to us that during his period of employment with USMC, he had questioned Dr. Marrocco about the source and use of the donation. We also know that when Dr. Leduc was no longer involved with the CSR program, he drew the donation to the attention of the Non-Smokers' Rights Association and participated in a broader campaign to publicize the involvement of tobacco companies in universities. We could not find evidence proving Dr. Leduc's objection to the Imperial Tobacco donation was connected to his treatment by USMC.

7.3.3 Determining the Form of Student Evaluation — The dispute about academic freedom arose from the replacement of an assignment proposed by Dr. Leduc.[8] The assignment asked that students to examine the ethical questions involved in a real world case of British American Tobacco Company making a contribution to a corporate social responsibility program at the University of Nottingham. It may be that Dr. Leduc presented this assignment as a challenge to test the assertion that the Imperial Tobacco donation had no direct impact on the USMC CSR program. In Dr. Leduc's view, the assignment was replaced without a proper explanation. Dr. Marrocco refused to meet with us, and as such we do not know her reasons for replacing the assignment. The authors of this report agreed that the decision to block the assignment proposed by Dr. Leduc raised serious questions of academic freedom. Dr. Marrocco's refusal to cooperate with this inquiry deprived us of the opportunity to obtain her perspective on events. The authors also believe the preparation of the program and its delivery was a team teaching effort, coordinated by Dr. Marrocco. That Dr. Leduc submitted the assignment to Dr. Marrocco for approval shows he accepted her role as the program coordinator. When several instructors are involved in the same course, no single one of them has the right to impose his or her will on the others — there must be some give and take. According to Dr. Leduc, no reasonable explanation was given for rejecting his proposed assignment, although we understand the other instructors did not dissent from Dr. Marrocco's recommendation. But in a team-taught course, consultation with other instructors via the course coordinator is expected. Every instructor deserves, and has the right to receive, sound reasons for the denial of a proposed course activity, including introducing an assignment. In this regard, Dr. Leduc's academic freedom was infringed upon.

7.3.4 Team Teaching — Where more than one individual is responsible for creating and delivering a course, issues of academic freedom in the choice of content and how it is delivered may arise. This will partly depend on the extent of collaboration and the relationships between the collaborators. It is our impression that team-taught courses are increasing and may be even more common in continuing education environments. If the latter is the case, the director of the program, or someone without expertise in the field, may be able to influence the content and delivery of the program. This may be a greater concern where course directors are on short-term employment contracts. Academic freedom may be difficult to assert in team teaching. There are no clear guidelines on handling academic freedom issues when teaching as a part of a team. CAUT should develop model policies for exercising academic freedom in team teaching. Team teaching in continuing and professional programs poses an additional challenge to the practice of academic freedom. The process of decision making in the CSR program was not clearly defined. Who selected the core faculty, what topics core faculty taught and how students enrolled in the certificate program were evaluated seems to have been a mixture of individual and group decisions with Dr. Marrocco exercising some authority over all of these areas.

7.3.5 Contractual, Professional and Business Relationships — Although it can be argued that contractual relationships are legal matters, there is an understanding that courses offered and research done in the university context carry in the minds of students and academics the implicit presence of a disinterested, truth-driven environment. Academic freedom should be maintained whether the instructor is or isn't bound by a business contract and as long as the teaching is done under the auspices of an academic institution. CAUT's policies should assert the principle that academic freedom is not limited by contractual arrangements in professional and continuing education programs (in the same manner that academic freedom should not be infringed upon by research contracts).

7.3.6 The Context of Continuing Education — Continuing education courses that have a professional development element or a university certificate, as was the case for the CSR program, attract students because such non-credit courses benefit from being connected to the reputation of a university. The courses are often taught by staff with short-term contracts. In the absence of statements to the contrary, we believe all instructors, and particularly those with normally accepted university-level teaching qualifications, should be protected by academic freedom even, or perhaps especially, when teaching continuing education courses. All teaching in a university classroom in university courses must be protected by academic freedom. Academic freedom in continuing education also protects students and gives them a safe environment in which to express their views and opinions. CAUT needs to develop model policies, and procedures for hiring instructors in continuing and professional education programs and redressing their grievances, conflicts of interest, evaluation and protection from retributions.

7.3.7 Visiting Scholars, Adjunct Faculty, Unpaid Instructors and Researchers — The status of visiting scholars and their rights and freedoms at their host institution are often unclear. Dr. Leduc was, after a period, asked to return faculty of theology stationary, but his status as a visiting scholar and his library privileges continued. The dean asked for the return of faculty stationary, so that Leduc could not speak on behalf of the faculty. In our view, it is unlikely an external observer will see correspondence signed by a visiting scholar as a statement by an institution. It is more likely to be seen as an indication the author has some academic credibility. There was a plausible explanation for removing Dr. Leduc's name from the EAITE website, as many others were removed at the same time. However, during a tense period, this further increased Dr. Leduc's feeling of alienation. CAUT is urged to develop policies on the rights and responsibilities of affiliated unpaid scholars (in a manner analogous to that developed to protect the academic freedom of graduate students).

7.3.8 Use of Academic Credentials — Dr. Leduc alleged he was pressured to declare his theological credentials. If true, this is an unreasonable request since the common practice is to state the degree without the specialty. However, professionals usually add the abbreviation of their professional registration after their name. This is usually optional in the academic environment and it should be left to the individual to choose how to indicate their credentials.

8. Summary

There are many issues entangled in the dispute between Dr. Leduc and USMC. Differences grew from how business and operational practices developed and from the fact the parties had different conceptions of their roles. The practice of contracting with a company rather than an individual made relationships less clear and open to differing interpretations. The writing and rewriting of contracts without formally signing them contributed to a lack of clarity in roles and expectations. Different views about the effect of the Imperial Tobacco donation on the CSR program further complicated the relationship. When combined, these aspects created an unhealthy and chilly climate for the conduct of a collaborative endeavor.

The dispute with USMC raised the important question of whether academic freedom applies to professional and continuing education programs offered by universities. Our view is that it certainly does. What makes a university an attractive place for such courses is the vigor, independent thinking and intellectual leadership expected of academics, otherwise, participants would opt for programs offered by the private sector. But protecting the academic freedoms of instructors on short-term contracts and outside regular academic courses and normal academic hiring practices and contracts is a challenge in a period where universities are increasingly using short term and “flexible” employment practices and accepting, if not encouraging, “entrepreneurial” forms of delivering courses and programs that try to evade usual labour practices. These practices can effectively, if not intentionally, limit academic freedom. Moreover, there are no clear and immediate procedures to appeal or grieve decisions made by the employer in this short-term employment environment.

Differences of opinion between Dr. Leduc and USMC over his roles in affiliated programs and institutions raised more general questions about the roles and responsibilities of adjunct and honorary unpaid faculty. Do they also enjoy academic freedom? If so, what measures are there to ensure their freedom is protected? Our view is that when performing university duties, whether paid or unpaid, the principles of academic freedom should prevail.

9. Conclusions and Recommendations

Waning government support for higher education has forced many universities to explore ways to supplement their funding by expanding into the area for professional and continuing education. Although this further enhances the role of universities within society, it poses a number of challenges, and even threats, to the integrity of the academic endeavour. The concept of for-profit education has introduced business arrangements that have the potential to curtail academic freedom. In attempting to ensure the financial success of such programs, universities and instructors may wish to avoid offending their “clients” from the business sector. The involvement of contract staff in such professional education programs can also restrain the ability of instructors to express their views and ideas. Without proper safeguards, the involvement of contract teaching staff may create an unhealthy institutional culture with an imbalance of power between the employer and the temporary, sessional employees. Professional education programs also involve team teaching, with its complicating effect of clash of values and approaches.

The continuing shortage of public funding has increased the involvement of adjunct, honorary (or even retired) unpaid (or symbolically paid) faculty. The academic freedom of these affiliated faculty members should be protected if universities are to continue to be trusted sources for independent and critical thinking.

9.1 Recommendations for CAUT

- CAUT should develop model policies or guidelines to assert that the principle of academic freedom is not limited by contractual arrangements in the context of professional and continuing education programs (in the same manner that academic freedom should not be infringed on by research contracts).
- CAUT should develop model policies or guidelines for exercising academic freedom in team teaching environments.
- CAUT should develop model policies or guidelines for hiring instructors in continuing and professional education programs and redressing their grievances, possible conflicts of interest, evaluation and protection from retribution.
- CAUT should develop model policies or guidelines on the rights and responsibilities of affiliated but unpaid scholars (in a manner analogous to that developed to protect the academic freedom of graduate students).
- CAUT should continue to encourage faculty unions to include part-time faculty where this is not the case, or otherwise help in ensuring that they are covered by contracts that contain academic freedom clauses and the means for grieving and enforcing those rights.
- CAUT should investigate universities' reliance on corporations to fund specific courses and programs and how this may affect academic freedom.
- CAUT should investigate the practice of engaging an instructor through a contract with a company. How widespread is this practice and what threats does it pose to academic freedom, hiring procedures, collegial review of course and program content, collective contracts and a number of other very important issues?

9.2 Recommendations for the University of Toronto and USMC

- The University of Toronto and USMC should devise a policy for cooperating with CAUT inquiries into cases involving alleged violations of academic freedom. Ignoring or obstructing an independent inquiry hurts the university's reputation in the wider academic community.
- The University of Toronto and USMC should review the practice of engaging corporate entities rather than individual instructors to teach continuing education or degree or certificate credit courses and should make the preservation of academic freedom a central focus of that review.
- The University of Toronto and USMC should review the way part-time continuing education instructors are hired. Our inquiry found that Dr. Leduc's contract was not signed by an official of the university. Moreover, his written contract was revised on at least one occasion. The contract's lack of clarity led to misunderstandings on both sides.
- We believe that there needs to be a much clearer statement of the academic freedom of instructors in continuing education courses. In our view, continuing education should not be permitted to trade upon the values of the university without making its commitments to academic freedom explicit. The University of Toronto and USMC should provide guidelines to continuing education instructors that discuss academic freedom and develop a process for allowing complaints to come forward and be resolved in an impartial and timely manner. This will enhance the credibility of their continuing education

programs, and provide reassurance to instructors that their freedom in the classroom is respected and protected.

- Both institutions should devise a policy for protecting academic freedom in courses with multiple instructors. Program directors need to be advised that their role in the classroom does not exceed that of any other instructor, even when acting as coordinators.

10. References

10.1 Cited Documents

Correspondence and other documents referred to in square brackets throughout the report are listed below:

1. Alway to MacDermid, re: CAUT ad hoc investigatory committee, April 7, 2004.
2. Marrocco to MacDermid and Hussein, May 27, 2004.
3. Marrocco to Leduc, Dec. 5, 2000.
4. Kemp and Leduc, e-mail exchange, June 2001.
5. Marrocco to Willard, July 10, 2001.
6. Leduc to Alway, Oct. 4, 2001.
7. Alway to Leduc, Oct. 29, 2001.
8. reflection paper, assignment proposed to November 2001 session.
9. Willard to Marrocco, resignation, Jan. 18, 2002.
10. Anderson to Robarts Library/ Kelly Library, Sept. 5, 2002.
11. Anderson to Leduc, Jan. 15, 2003.
12. Report of the Committee on Institutional Donations on the Collegium of the University of St. Michael's College, June 27, 2003.
13. Leadership Horizons to Elliott Allen Institute of Theology and Ecology, invoice, May 23, 2003.
14. Anderson to Leduc, June 17, 2003.
15. Alway to MacDermid, with copy of Perron's report, Sept. 30, 2004.

10.2 Endnotes

1. The Niagara Institute is part of the Conference Board of Canada. It is a private educational institution that offers leadership skills training to the business community.
2. *DoubleBlue*, University of St. Michael's College Alumni Newsletter, vol. 39:2, fall 2001, p. 25.
3. Resigned in January 2002.
4. www.caut.ca/en/bulletin/issues/2003_mar/news/stmikes.asp.
5. The Passionist Community is a Catholic religious order that maintains the Centre for Ecology and Spirituality.
6. <http://learn.utoronto.ca/uoft/professional/certificates.asp>.
7. www.utoronto.ca/stmikes/about/mission.html.
8. www.utoronto.ca/stmikes/csr/0506program.html.
9. Ibid.
10. www.conferenceboard.ca/Default.htm.
11. Article 5: Academic Freedom and Responsibilities.
12. www.caut.ca/en/policies/academicfreedom.asp.
13. Collective agreement between the Governing Council of the University of Toronto and the Canadian Union of Public Employees, Local 3902, p. 3.