

## **THE ABOUNA CASE AT THE UNIVERSITY OF CALGARY**

This is the final and complete report of the Committee of Inquiry appointed by the CAUT to investigate the case of Dr. George Abouna, transplant surgeon in the University of Calgary's Faculty of Medicine.

The Committee of Inquiry was composed of Dr. Peter Freeman, Professor of Law at the University of Alberta, and Dr. Kenneth Leighton of the Department of Anaesthesia in the Faculty of Medicine at the University of British Columbia.

The Committee's report was adopted with minor changes by the Academic Freedom and Tenure Committee and so stands as the official report on the case.

At its annual meeting on May 16, on the basis of the report submitted by the AF&T Committee, the CAUT Council voted to censure the Board of Governors of the University of Calgary for violating the academic freedom of Dr. Abouna.

### **Introduction**

We were asked by the Academic Freedom and Tenure Committee of the Canadian Association of University Teachers to act as a committee of inquiry into the matter surrounding the non-renewal of Dr. George Abouna's contract with the University of Calgary. More specifically the terms of reference of this inquiry are as follows:

- 1. To comment in general on whether or not it is appropriate for a university to make a decision concerning the continuation of a faculty appointment which is based, in whole or in part, on the views, opinions or decisions of individuals or bodies representing institutions outside the constituent university which may not be governed by procedures and standards found within the university.**
- 2. To examine the circumstances surrounding the decision of the University of Calgary not to renew the appointment of Dr. George Abouna, in the Division of Surgery of the Faculty of Medicine and to determine whether or not the decision was fairly taken and reasonable in view of the understanding which is alleged to have existed between Dr. Abouna and Dr. McPhedran when the former accepted an appointment at Calgary.**
- 3. To determine to what extent the University's decision was based on an evaluation of Dr. Abouna's research competence, teaching ability and service to the university community and to what extent it was based on an evaluation of his professional activities outside the university.**
- 4. If it is determined that the decision not to continue the appointment was based, in whole or in part, upon the reasons underlying the decision of the Board of Management of Foothills Hospital to revoke Dr. Abouna's hospital privileges, the committee is asked**

**to comment on the fairness and equity of a university decision based on such reasons.**

We decided that the procedure for the inquiry would be informal and that we would meet with anyone who wished to discuss the matters raised by these terms of reference. We met with the President of the University, the Dean of Medicine, the Chairman of the Division of Surgery, representatives of the T.U.C.F.A., present and former members of the Faculty of Medicine, other interested members of the university community, and of course, Dr. Abouna. In all we interviewed 25 people in person or by telephone. We corresponded with two former members of the Faculty and they did not reply. We believe that the information we received enables us to respond to the questions asked of us and that further interviews with additional people or the same people would not add anything to our inquiry.

We are acutely aware of the difficulty of making absolute judgments as a result of information received in an investigation such as ours, but we believe no one would have benefited from a more adversarial approach, nor do we believe the information we received would have differed significantly. We would also state that we make no attempt to draw legal conclusions or give legal opinions concerning any individual or institutional action. We have attempted to direct ourselves to an evaluation of a University's action towards a member of its academic community and to measure that action against what we believe to be the necessary standards for dealing with individuals within a university community.

## **Facts**

A summary of the relevant facts will be helpful. This summary, of course, must represent our viewpoint and some facts will no doubt be omitted. However, this is inevitable when the amount of material received by us is considered.

Dr. George Abouna was hired by the University in the fall of 1973<sup>1</sup> with his appointment to take effect April 1, 1974. According to the formal appointment document this appointment was to be for a period ending June 30, 1976. The appointment letter contains other pertinent information to which we will make future reference. His appointment was to be a “ ‘fulltime limited term’ board appointment on the teaching faculty as an Associate Professor in the Faculty of Medicine’s Division of Surgery.” Dr. Abouna was brought to the University in late May for interviews with Dr. McPhedran and other members of the Faculty. His actual arrival in Calgary to take up his position was May 3, 1974. Dr. Abouna’s expected duties were spelled out by Dr. McPhedran in June 1973<sup>2</sup> and were to include the following:

“**Duties** — Research approximately 50% **Resident Teaching** — and teaching Clerks — approximately one hour per day

**G.I. Curriculum** — responsibility for “liver unit”. Involves preparation and one week of almost total devotion to curriculum.

**Clinical activities** — patients in Ambulatory Care Clinic one-half day per week and operating room approximately one-half day per week.

**Research** — support in the form of seed money to approximately \$7 or \$8,000.00 per year  
— research technician

**Secretary** — cannot supply full time secretary according to University regulation but will provide secretary without second user initially — with full understanding that she may be shared in the future. If this is necessary we will make every effort to have you share a low secretary user.

**Renal Transplant Team** — to become a member of the transplant team including being on call on occasions, and helping with or carrying out shunts and transplants.

— Dr. B.M. Churchill to be the surgical director on the Renal Transplant Team. There is a major need for another academic urologist in Calgary, and if such is to be attracted he must also be offered a position on the renal transplant team. This will obviously dilute this clinical involvement of all members of the team.

Finally, may I say that we all recognize how we can benefit from your training and expertise. There is at present a harmonious happy relationship and we are anxious to maintain it. I am sure that this is our mutual objective and can easily be maintained.”

There is a handwritten “P.S.” to this letter which states “Bernie read this letter and annotated in these words: “Good, this **will** work.” “initialled”

Dr. Abouna accepted this offer<sup>3</sup> with the request that it not be effective until July 1, 1974. This was acceptable to the Faculty. The beginning date was again changed to April 1, 1974 and later to April 22, 1974.

Dr. Abouna proceeded to take up his duties on the Faculty of Medicine in May 1974. Beginning the fall of 1974, friction began to develop between Dr. Abouna and members of the transplant team. One June 2, 1975 organ transplantation was “temporarily” suspended at the Foothills Hospital.<sup>5</sup> On June 4, 1975 Dr. McPherson recommended to the Medical Advisory Committee of the Foothills Hospital that Dr. Abouna’s privileges be reduced by deleting “the transplants, or admit patients for such procedures.” On June 19, 1975<sup>6</sup> the suspension on hepatic transplantation was removed in order for Dr. Abouna to carry out a transplantation on a specific patient.

These recommendations were processed through the hospitals appeal procedures and resulted in the following statement being issued September 23, 1975.

“The Board of Management met this morning, September 23<sup>rd</sup>, to hear the appeal of Dr. George M. Abouna concerning the reduction of his privileges to conduct renal transplants at the Foothills Hospital. Present also at the hearing were Dr. Abouna and his counsel and Dr. N.T. McPhedran and his counsel. After full consideration, not only of the hospital’s obligation to deliver health care in Southern Alberta, and more specifically the needs of the Renal Failure Program, the Board has concluded that, in the interest of the affected patients, both present and future, it is essential that an effective renal transplant team be part of, and available to, this important regional program. It is obvious to the Board that such a team is not functioning adequately at this time. It is also apparent that the issue is not simply “personality conflict.”

The considered recommendation of Dr. McPhedran, the Director of the Department of Surgery,

accepted by the Medical Advisory Committee and affirmed by that Committee after a full appeal hearing, that the renal failure team cannot function with Dr. Abouna as one of its members, was fully reviewed. The Board now confirms that reduction of Dr. Abouna's privileges, by deleting there from privileges of performing renal transplants or admitting patients for future renal transplants. Dr. Abouna has been so advised.

The Board also announced that it expects to receive, by the latter part of October, a recommendation from the Medical Advisory Committee on the reestablishment of transplantation procedures."

On October 16, 1975 the following telegram was sent to Dr. Abouna from the Foothills Hospital:

"This telegram is to advise you of the contents of two letters which have been sent to your office under Dates of October 15<sup>th</sup> and October 16<sup>th</sup>.

#### **Letter of October 15**

This will advise you that the Medical Advisory Committee, at the special meeting held on Friday, October 10, passed a resolution to the effect that it be recommended to the Board of Management that your medical staff appointment be revoked and cancelled. Under the terms of the Medical Staff Bylaws you are entitled to request an appeal hearing before the Medical Advisory Committee.

#### **Letter of October 16**

This is to advise you that at a special meeting of the Board of Management held on October 15<sup>th</sup> the Board received a recommendation from the Medical Advisory Committee to the effect that your medical staff appointment be revoked and cancelled.

Herewith I provide you with a copy of the Board's decision in respect to the Medical Advisory Committee's recommendation: "That the appointment of Dr. George Abouna to the medical staff be cancelled and revoked." This revocation and cancellation is effective immediately. If you have in-hospital patients that require your attendance I recommend that you discuss their care with the director of your department."

On October 17<sup>th</sup> the following statement was made to the media by Foothills Hospital:

"...it is equally clear after careful consideration that the operations and objectives of the Hospital in the delivery of patient care, and particularly the Renal Failure Program have been seriously damaged by the discord, disruption and controversy of recent months. With the needs of the present and future patients foremost in mind and on the recommendation of the Medical Advisory Committee, this week the Board of Management cancelled and revoked the membership of Dr. Abouna in the Medical Staff of the Foothills Hospital. This action revokes all Dr. Abouna's privileges of practice and he can no longer admit or treat patients at the Hospital. It should be noted that the appeal procedures set forth in the Medical Staff Bylaws of the Hospital are available to Dr. Abouna in respect of this action."

(This is a portion of a more complete statement).

The withdrawal of Dr. Abouna's privileges was met with a great deal of media attention, protest, picketing, etc. It involved public figures both at the municipal and provincial level. There is no doubt that all this activity was significant and was a significant ingredient in the later decisions made concerning Dr. Abouna's University appointment.

After having his privileges revoked Dr. Abouna devoted his time full-time to his duties at the university since he was unable to obtain hospital privileges elsewhere in Calgary.<sup>7</sup> It is obvious that he spent considerable effort and funds seeking to reverse the decision of the Foothills Hospital.

This matter with the Foothills has been the subject of much litigation. The judgments of the court and the transcripts should be examined for a more detailed statement of the facts of the relationship between Dr. Abouna and the Foothills Hospital.

In order to carry out his clinical function and to be a member of the renal transplant team Dr. Abouna required a license to practice medicine in Alberta as well as hospital privileges at the Foothills Hospital.

An effort was made to have Dr. Abouna's license to practice his specialty withdrawn, but this also was quashed as the result of a Court action.

On June 30, 1976 Dr. Abouna's appointment with the University of Calgary ended. Three months prior to that date he was advised by the President that a renewal or extension of his contract had not been recommended, and that the appointment would not be renewed.

Foothills is a teaching hospital for the Faculty of Medicine and the medical school is physically attached to it. The legal relationship between the hospital and the university was not viewed as entirely satisfactory since neither the medical school nor the university have representation on its Board as of right, however the de facto relationship is quite extensive. Dean McLeod is presently a member of the Board, and the Division heads within the Faculty of Medicine are the Department Heads within the Hospital for their specialty. Foothills also makes a significant financial contribution towards the salary of the clinical appointments within the faculty. We received the distinct impression from both Dr. Cochrane and Dr. McLeod that the relationship between the university and Foothills has not yet reached the stage they would prefer and they were very concerned about anything that might interfere or damage this relationship.

This report is concerned with the circumstances surrounding the non-renewal of Dr. Abouna's University appointment, and only incidentally with the withdrawal of Dr. Abouna's privileges at the Foothills Hospital, particularly insofar as that may have influenced the University decision. Nevertheless, the same personnel in the Departments of Surgery and Medicine were involved in the events at both institutions, and the substance of the issues which arose at the hospital presumably entered into consideration of the renewal of Dr. Abouna's University appointment.

The principal allegation made against Dr. Abouna was that he disrupted the function of the transplant team. There was conflict between Dr. Abouna and some nephrologists concerning control of the post-operative care of transplanted patients. Some of the members of the transplant group, particularly certain senior surgeons and nephrologists, stated that they could not or would not continue to work with Dr. Abouna. It should be noted that Dr. Abouna has a strong personality and temperament. In addition to critics, he also had stalwart supporters among his colleagues and associates at all levels. It is clear that Dr. Abouna was determined to develop and maintain a rigorously high standard of care in the transplant unit. His angry responses to perceived shortcomings inevitably trod upon sensitive toes.

These issues were aired in Dr. Abouna's suit against the Foothills Hospital, and the evidence presented there must be assumed to have played a part in the adverse decision taken by the University. The trial division of the Supreme Court of Alberta ruled that the withdrawal of Dr. Abouna's privileges at the Foothills Hospital was wrongful and invalid on procedural grounds. In his decision, Justice MacDonald pointed out that "the rule of natural justice requires a notice of the charges or complaint, a notice of hearing, and an opportunity to answer the charges or complaint." The fact that this had not been done raised a question in the mind of the Judge as to the possibility of improper motives on the part of those responsible for the improper procedures.

It is ironic that one of the major reasons offered for the withdrawal of Dr. Abouna's privileges at the Foothills Hospital was that he exerted an improper influence on patients and undermined their confidence in the physicians operating the renal program. Justice Macdonald accepted the view that undermining the confidence of patients should be considered a breach of professional ethics, and if done on false grounds, would constitute professional misconduct. Yet the Medical Advisory Committee of the Foothills Hospital when considering the withdrawal of Dr. Abouna's privileges in October 1975, was presented with a chart reporting to show an unfavorable comparison between the results of Dr. Abouna's transplant record (operative mortality, incidence of post-operative complications) and that of other North American transplant surgeons. This chart subsequently was cited in a press release issued by the hospital Board. This chart and Dr. Abouna's record subsequently were subjected to audit by eminent independent experts. Justice MacDonald agreed with their conclusion that the chart was false. Their analysis indicated in fact that Dr. Abouna's record compared favorably with that of his peers elsewhere and his results were superior to those prevailing in Calgary before his arrival. Other evidence introduced in this proceeding attested to Dr. Abouna's praiseworthy reputation as a transplant surgeon and the high professional regard which he enjoyed among his peers at other North American institutions.

Dr. Abouna's research accomplishments also had been the object of public disparagement. As the result of a separate action taken by Dr. Abouna, an out-of-court settlement was reached in which these adverse comments were withdrawn and his integrity as a research scientist of good reputation and his standing as an academic surgeon acknowledged in a formal letter of apology. When Dr. Abouna's university appointment was brought into question, he repeatedly requested an independent expert evaluation of his record of academic and professional performance.

After meeting with Dr. Cochrane and receiving his letters of March 23<sup>rd</sup> and April 6<sup>th</sup>, Dr. Abouna

on April 19, 1976 requested reasons from Dr. Cochrane for the non-renewal of his appointment. Dr. Cochrane's reply<sup>8</sup> was as follows:

“Dear Dr. Abouna:

I am responding to your letter of April 19<sup>th</sup> in which you request that I provide reasons for the decisions not to offer you a new contract.

“After careful analysis and assessment of the needs and objectives of the Faculty of Medicine, the decision was made that your services were no longer required.

Yours sincerely,  
W.A. Cochrane”

A special meeting of the Faculty of Medicine Faculty Council was called on March 31, 1976 to consider the following matters:

1. That the Faculty of Medicine recommends that ‘limited term’ contracts be restricted to visiting professors, sessional instructors, professional associates, and post-doctoral teaching fellows.
2. That academic members of this Faculty at present holding ‘limited term’ contracts who are not visiting professors, sessional instructors, professional associates, or post-doctoral teaching fellows (a) should be considered for ‘initial term’ contracts without undue delay, and (b) where a recommendation from a Division Head is against continuation of an individual contract on an ‘initial term’ basis, the Dean shall forward this recommendation to an Academic Appointment Review Committee for advice.”

There was also a letter dated April 28, 1976 (Appendix) signed by ten members of the faculty requesting an impartial committee to conduct a review of the decision to renew or not renew Dr. Abouna's contract. The full text of the letter is as follows:

“We have learned that Dr. Abouna's appointment with the University of Calgary will not be renewed until it expires in June 1976, on your recommendation.

Abouna was appointed as an Associate Professor on a “limited term” contract.

As you know, he believed that he had reasonable expectation his contract would be renewed.

The Faculty Handbook contains (section 3.6.1, page 1-6) a section on the responsibilities and composition of Academic Review Committees. In this paragraph it states “...in every case relating to an appointment ‘without definite term’ or the renewal of an appointment as an Associate Professor or Professor, the Dean/Director shall forward the recommendation of the Department/Head to an Academic Appointment Review Committee for advice...”.

In this case, we are aware that both of you and the Head of Surgery have been personally involved in the matter of Abouna's loss of privileges in the Foothills Hospital. It seems to us particularly important that you have the advice of an independent Academic Review Committee on the renewal or non-renewal of his University contract.

Therefore, we urgently request that an impartial Committee be convened to conduct such a review in accordance with the recommendation in the Handbook. We suggest that the members of this Committee be approved by the executive of TUCFA."

The matter of impartial review had been raised at a May 12<sup>th</sup> meeting of Faculty Council<sup>9</sup> as the following excerpt from the minutes indicates: —

**“Limited — Term Appointments**

Dr. Preshaw said that the regulations governing limited-term appointments made no reference to such appointments at the Associate Professor level and there was, therefore, some doubt whether such appointees were being or had been treated in a fair manner. It would be more satisfactory if an Academic Appointment Review Committee were to constitute an appeal mechanism.

Although notice of motion was normally required, he nevertheless wished to introduce a motion on this matter. Dr. Rowlands moved and Dr. Beck seconded a motion “That the standing rules be suspended for this item.” The motion was put to the vote and **DEFEATED**. Following Dr. Beck's request for a count, 13 were for the motion and 36 against. The Dean said that he would accept a notice of motion from Dr. Preshaw, but the latter indicated that he would attempt to obtain sufficient signatures for a Special Faculty Council Meeting in the near future.”

The minutes of the special meeting provide as follows: —

“The Chairman said that this Special meeting had been called on the written request of 12 faculty members. The two motions to be considered had been circulated with the notice of the meeting. Dr. Beck proposed and Dr. Goren seconded the following motion: “That the Faculty of Medicine recommends that ‘limited term’ contracts be restricted to visiting professors, sessional instructors, professional associates and post-doctoral teaching fellows.” Dr. Preshaw, speaking for the motion, said that limited term appointments were held by some faculty at the Associate Professor level. The history of limited term appointments and the so-called 80-20 rule showed that limited term appointments were not meant to apply to “soft money” positions. These measures seemed rather intended, in association with certain other measures, to permit a reduction in the number of faculty members during periods of university budgetary short-fall. While limited term appointments did not normally imply any university commitment beyond the end of the stated term, in the case of full-time limited term appointments at the associate professor level there was nonetheless an implied commitment which did not apply to the categories listed in the motion.

The Chairman pointed out that limited term appointments constituted a mechanism that permitted recruitment and appointment of faculty when university-funded positions were not available. Dr. MacCannell said that limited term appointments might be restricted to those persons who serve the Medical School in one small area only and should not apply to those who contribute significantly

to teaching, research and service. Dr. Baumber proposed and Dr. Lorscheider seconded the following amendment “That the words ‘where those appointments are 100% university-funded’ be added at the end of the motion.” After a brief discussion the amendment was put to the vote and **CARRIED**. The motion as amended was then put to the vote and **CARRIED**.

Dr. Beck moved and Dr. Preshaw seconded the following motion “That academic members of this faculty at present holding ‘limited term’ contracts who are not visiting professors, sessional instructors, professional associates or post-doctoral teaching fellows: a) should be considered for ‘initial term’ contracts without undue delay and, b) where a recommendation from a Division Head is against continuation of an individual contract on an ‘initial term’ basis, the Dean shall forward this recommendation to an Academic Appointment Review Committee for advice.” Dr. Beck said that this motion was linked to the previous motion, which had however been amended before being carried, but he felt that the new motion could stand on its own. In view of recent events, and especially with an inadequate appeal procedure, a decision regarding present holders of limited term appointments should be made in the very near future and the participation of an Academic Appointment Review Committee would be beneficial.

A number of members considered that the two parts of the motion were in fact two separate motions and should be considered separately.

A “straw vote” showed the majority against dividing the motion. Dr. Guenter said that if the motion was carried, it would in effect be changing the rules concerning limited term appointments in midstream and this was to be deprecated. Dr. Wyse proposed and Dr. Read seconded a motion “That the motion be tabled.” This was put to the vote and **DEFEATED**. After further discussion the original motion was put to the vote and **DEFEATED**.

A motion for the adjournment proposed by Dr. Hollenberg and seconded by Dr. Guenter was carried, and the meeting adjourned at 5:30 p.m.”

There was no formal review as requested although Dean McLeod did canvass several members of the Faculty prior to making his recommendation.

Dr. Abouna’s appointment document indicated that 50% of his time was designated for research and it was agreed by all parties that he was a productive researcher and a prolific publisher. Nevertheless, it was the opinion of the head of Surgery that the university appointment should be terminated largely because of antagonism from some other faculty members who also were involved in the dispute at Foothills Hospital.

An academic appointee in a clinical department normally would have justification in expecting more support from his academic head for the continuance of his research and academic pursuits, regardless of any conflict arising in the area of professional practice. That the support was not provided is further evidence that the academic Head of Surgery was peculiarly constrained in his freedom of action by the attitudes of the private practitioners in his department. This it would appear also had a bearing on the fairness of the way in which Dr. Abouna’s appointments were

handled. In spite of denials to the contrary, personality conflicts do seem to have entered into the decision concerning Dr. Abouna's academic status. This is not consistent with normal and fair academic practice and is contrary to CAUT guidelines.

Another significant factor in this situation is the University of Calgary's appointment policy. We refer to the "80/20 guideline" which states:

The 80/20 Guideline refers to the Board's policy of selective non-replacement of regular, full-time Board appointments terminated through attrition, which reads as follows: That...the University adopt a policy of 'selective non-replacement' of full-time regular Board appointments terminated through attrition, and in order to implement this policy at the level of the University Budget Committee and various academic administrative offices, including those of Department Heads, as a guideline the sum of tenured and probationary staff shall approach 80% of the teaching complement exclusive of GTA's; accomplishment of the guideline shall not be at the expense of GTA funding; departures from the guidelines may take place only with the approval of the Personnel Relations Committee of the Board of Governors.'

The above policy effectively places up to 20% of faculty in the category of 'limited term' appointees. In order to ensure the recruitment of top quality staff under 'limited term' appointments, the Dean's Council felt it necessary for the University to be able to offer such appointees 'fringe benefits' which would enhance the attractiveness of the appointments. Accordingly, the Board of Governors subsequently approved a recommendation from the Personnel Relations Committee that 'fringe benefits' be extended to persons employed on full-time 'Limited term' Board appointments of 12 months' duration or longer on the same basis as they are made available to regular, full-time Board appointments of 12 months' duration or longer on the same basis as they are made available to regular, full-time Board appointees. This appointment category has become known as the 'full-time limited term' appointment.

In February of 1975, the Board of Governors approved a recommendation from Deans' Council and the Personnel Relations Committee which modified the 80/20 Guideline by permitting Departments with more than 80% regular staff to recommend the 'initial term' reappointment of staff members who have completed a 'full-time limited term' appointment, without the requirement of approval by the Personnel Relations Committee. This modification reads as follows:

That when a "full-time limited term" appointment (normally of three year's duration) expires and a subsequent appointment is to be offered to the same person in a unit which has more than 80% of its members in the tenured or tenurable class, then the subsequent appointment may be a probationary one, implying consideration for appointment without definite term, it being understood that candidates for appointment without definite term normally require five year's previous service.

At the time the 80/20 Guideline was introduced, the University was entering a period of uncertain student enrolments, having just seen its dramatic growth of the late 1960's come to a sudden halt.

Because government funding was tied to student numbers, the Board was concerned about its ability to meet obligations to regular, full-time staff in the event of further enrolment declines. Its option was intended to ensure that, over time, up to 20% of the University's academic staff would be on 'limited term' appointments (i.e. no obligation of renewal or extension beyond the stated term) so that there would be some method, however crude, of responding to financial exigencies.

While this relaxation of the Guidelines reduced budgetary flexibility somewhat, the Board was advised that the revision was necessary to enhance the University's ability to attract and retain high calibre staff.

In March of 1975, the General Faculties Council passed a motion asking the Board of Governors 'to remove the 80/20 Guideline with respect to further appointments at the University of Calgary and, in the event of the removal of 80/20 Guideline, arrive at a policy decision with respect to clarifying the appointment of those people currently on terminal appointments.'" Council's request was considered by the Personnel Relations Committee, but was rejected at the January 15, 1976, meeting of the Board of Governors, where it was decided that the 80/20 Guideline should be retained.

These guidelines brought about the type of "full-time limited term" appointment offered to Dr. Abouna. They are set out in greater detail in the Faculty Handbook.

Dr. Abouna, since the time of the non-renewal of his contract, has been seeking an academic appointment elsewhere and has been unsuccessful. The result is that a recognized surgeon is apparently unable to practice his specialty in Calgary or elsewhere and that an academic surgeon is unable to pursue a full time career within a Faculty of Medicine.

With this somewhat brief coverage of the relationship between Dr. Abouna and the University of Calgary, we will now attempt to answer the questions directed to us by the Academic Freedom and Tenure Committee.

**1. To comment in general on whether or not it is appropriate for a University to make a decision concerning the continuation of a faculty appointment which is based, in whole or in part, on the views, opinions or decisions of individuals or bodies representing institutions outside the constituent university which may not be governed by procedures and standards found within the university.**

The full-time limited term appointment arose as a result of the so-called 80/20 policy. This policy is an attempt to control the number of tenured appointments. We are not aware of how many of these appointments there were but what information we do have indicates that for the academic years 1974/75 and 1975/76 there were 22 such appointments, 10 being from the Faculty of Medicine. Of these 10 appointments 3 were not renewed and none of these received peer review. It is believed that these three contracts were not renewed by the University rather than the individual faculty member declining to remain<sup>10</sup>.

The Calgary Faculty Handbook clearly indicates that limited term appointments are intended to be

used only for relatively junior appointees. Whatever justification may be offered for this 80/20 rule, its application to an appointment as senior as that of an Associate Professor in a clinical department of the medical school was inappropriate and regrettable. At the University of Calgary, it is generally understood that the 80/20 rule was introduced in an attempt to provide budgetary flexibility should financial exigency arise. The potential which tenure quotas introduce for weakening conventional protections for academic freedom is clearly illustrated in this case. There is no suggestion that any financial stridency was involved in the decision not to renew Dr. Abouna's appointment. (In fact a replacement was actively sought). Instead the 80/20 rule was employed here in a fashion that even its sponsors and proponents did not intend.

If it should be argued that removal of the Foothills component of Dr. Abouna's salary would have meant an increased University Component were his appointment to have been renewed, and if the University genuinely could not find this money (and there is no evidence that this was the case), then the fair thing would have been to offer Dr. Abouna the continuance of his academic appointment with only the University component as his stipend. We cannot accept the view that continued appointment should have been withheld because of this discomfort Dr. Abouna's presence might have occasioned to those with whom he had had disputes.

Quotas on tenure or tenurable positions have been of some concern to the CAUT in the past. In this case the result of the quota is the full time limited appointment. The CAUT Handbook states on page 45:

- “7. Appointments are of the three classes
- (i) those that confer tenure
  - (ii) those that confer probationary status on the candidate, implying that at the end of a stated period the university will either confer tenure on him or discontinue the appointment;
  - (iii) those made in some exceptional cases, where a university may find it necessary to make appointments with a contractually limited term, carrying no implication of renewal or continuation beyond the term and no implication that the appointee is on probation for a permanent appointment.”

and further on page 49 is:

- “B. 1. Contracts for limited terms are undesirable except for special purposes and should not be substituted for probationary appointments.”

In our opinion exactly what the CAUT guidelines intend to prevent has happened. Both Dr. Abouna and Dr. McPhedran agreed that in their discussions prior to the offer of appointment being made, the type of appointment was discussed. Dr. McPhedran explained that the limited term appointment was necessary for budgetary reasons and that “if everything worked out” a future appointment would be made, leading to a continuing appointment. The difference is over the interpretation of “if everything worked out.” The university's present opinion is very clear. They argue that the formal

appointment letter is a binding document and that document clearly states:

“This appointment carries with it no commitment respecting continuation of employment beyond June 30, 1976”

and therefore any commitment made by Dr. McPhedran would have no effect. Dr. Abouna’s contention that this was dismissed as a mere formality, received some support from other members of the Faculty who indicated that this was the way they viewed these appointments. The figures provided earlier would indicate that except for the Faculty of Medicine this appears to be the case. Dr. Abouna’s statements to us and the notes he has of his conversations with Dr. McPhedran definitely indicate that the significance of the 2 years appointment was downplayed<sup>11</sup>. That the appointment was expected to be a continuous one is implicit in a number of ways (e.g. the five year budget for the transplant unit which Dr. McPhedran prepared in anticipation of Dr. Abouna’s appointment). It is clear that both Dr. Abouna and the University were making a substantial investment in the transplant project and it is unreasonable to conclude that at the time of Dr. Abouna’s appointment either he or the University regarded their arrangement as temporary or contingent in any real sense.

The extent of the legal relationship between Dr. Abouna and the University of Calgary should be determined, elsewhere. However, there is no doubt that Dr. Abouna took certain actions as a result of his understanding of the arrangements. In our opinion it is illogical for a senior academic or medical specialist to do what Dr. Abouna did in accepting the appointment at Calgary, if he understood that all he was offered was a two year appointment with no expectation of a continuing relationship.

There are certain ambiguities within the appointment letter, the university policy and the Handbook which would confuse the average faculty member (if he bothered to read them). For example, see section 3.6.1 of the Faculty Handbook. The appointment letter states that:

“This offer of appointment is made with the understanding that you are not under any obligation, legal or otherwise to return to or take up employment elsewhere at the end of the contract term specified in this letter”.

While the Board of Governor’s Manual specifies:

“That when a ‘full time limited term’ appointment...expires and a subsequent appointment is to be offered to the same person in a unit which has more than 80% of its members in a tenured or tenurable class, then the subsequent appointment may be a probationary one, implying consideration for appointment without definite term, it being understood that candidates for appointment “without definite term normally require five years service.””

Our point is that considering all the surrounding circumstances, the action taken by Dr. Abouna in coming to Calgary rather than accepting the other appointments offered must clearly suggest that the better action by a university would have been to ensure that the decision to not renew the

contract, of a person of Dr. Abouna's stature and profession, was both correct and fair not just within its legal obligation. In other words, peer review. The recommendation of Dean McLeod was taken after consultation with other members of the Faculty but we believe this was neither adequate nor equitable.

In addition, to the possible commitment made outside the appointment letter, and the ambiguity in the appointment documents, there is the question of clinical appointments within a medical faculty. It is our understanding that the clinical appointment is common to medical schools. Although there is nothing in the appointment letter that required a license to practise or hospital privileges, we believe that it is expected that removal of hospital privileges will cause difficulty if the faculty member is expected to teach within the hospital environment. We understand that it is possible for clinical appointments to exist without the individual having hospital privileges. Should the removal of the hospital privileges mean that in all cases the university appointments automatically cease? We do not believe so.

The relationship between a university and its teaching hospitals appears to be a matter of concern from the point of view of the ability or the permission to practise in the hospital. These are the so-called "privileges" which formed a major part of the early problems concerning Dr. Abouna. It would seem proper that the attitude of the university should be clearly expressed to clinical appointees when first appointed. Thus, if the terms of the appointment demand that the individual exercise his clinical (i.e. bedside) skills in the particular university hospital, this should be stated in the terms of appointment. In addition, the criteria and methods of appointment should be listed, e.g., possession of suitable medical qualifications and the constitution of the credentials or other authorizing committee. It is important that the possibility of an individual losing one and retaining the other appointment (ie. university or hospital) must be entertained if separate appointments are to be made and suitable provisions for handling such an event should be arranged and made known to potential appointees. It is, perhaps, true to say that had these been taken and made manifest, the entire problem with and for Dr. Abouna might have been averted.

The "closed" nature of the Foothills Hospital in Calgary makes the question of hospital privileges even more significant since an authority other than a committee of his peers has the final word in judging whether a medical practitioner (who is fully qualified in all other respects) in fact is granted privileges. In other words a properly qualified doctor does not have an automatic right to hospital privileges in a particular hospital. These privileges are renewed annually and although the renewal is normally a formality it is possible for them to be revoked or not renewed. When this is considered, the effect of the University of Calgary's decision upon the faculty member is even more significant and demanding of impartial review. The matter is compounded when it has been determined by the courts that the hospital acted improperly. The same situation would have faced the university if the hospital had simply let the privileges of Dr. Abouna expire.

The letter of Dr. McPhedran to Dr. Abouna indicates that in addition to duties within the hospital, Dr. Abouna was to devote approximately 50% of his time to research and to assume some teaching duties. It is clear that in his case a portion of Dr. Abouna's responsibilities could be carried out without hospital privileges. If this were to be done that portion of his salary provided by the

Foothills Hospital would be lost. The loss of these funds was considered important to Dean McLeod and in his opinion such an appointment was a luxury the Faculty could not afford. It became apparent to us after our conversations with Cochrane, Dean McLeod and Dr. McPhedran that the relationship with Foothills Hospital, the downtown medical practitioners, and the part-time clinical faculty was of great concern to them, and that this concern exerted considerable pressure on them. We have no evidence of direct interference from without the faculty, but do believe that the attitudes of the profession outside the faculty, the Board and administration of Foothills Hospital, and the community were significant influences.

We must emphasize that Dr. Abouna found himself in a difficult position due to all these forces. What we heard indicated that his university work was satisfactory. However, the support that an academic would expect from his peers and supervisors when confronted by non-university criticism was not provided. This becomes more important when it is appreciated that 50% of his time was to be devoted to research.

We do not think it appropriate for a university to make a decision concerning the continuation of a faculty appointment based on the decisions made outside the university. Having said that, we do appreciate that this can not be absolutely applied to clinical appointments, particularly those where it is essential that the faculty member have hospital privileges. We do believe that the status of full time clinical members of faculties should be clarified. New appointees should be clear as to the relationship with other bodies be they hospitals, licensing bodies, or governments. We do not believe that this was clear to Dr. Abouna at the time of appointment.

The information received by us was that he was one of the few academic clinicians doing significant research. This research was part of his duties and this would imply that the university should have made a decision concerning Dr. Abouna based on accepted standards of academic evaluation, and according to the Handbook. We received enough indications about the competence and quality of his research to indicate that he was entitled to such an independent evaluation separate from the controversy, antagonism, etc. of the events at the hospital.

**2. To examine the circumstances surrounding the decision of the University of Calgary not to renew the appointment of Dr. George Abouna, in the Division of Surgery of the Faculty of Medicine and to determine whether or not the decision was fairly taken and reasonable in view of the understanding which is alleged to have existed between Dr. Abouna and Dr. McPhedran when the former accepted an appointment at Calgary.**

This has been answered in our response to 1.

**3. To determine to what extent the University's decision was based on an evaluation of Dr. Abouna's research competence, teaching ability and service to the university community and to what extent it was based on an evaluation of his professional activities outside the university.**

If we could ignore the hospital decision and the interpersonal conflicts within the clinical area the

representations to us portrayed Dr. Abouna as a good, competent, prolific, demanding, collaborative researcher, who had limited opportunity to teach, particularly within the undergraduate program, but who appeared to be competent in this area. He was a faculty member who made normal contributions to Faculty committee work. In other words, a prima facie case was made for the continued appointment of Dr. Abouna. When the hospital situation, the funding of the Faculty, the relations with the profession, the publicity, the conflicts within the Division of Surgery are all added to the picture, the least the University should have done, if it considered it could not or ought not withstand or ignore these pressures, was to provide for an independent evaluation of Dr. Abouna's contribution to the University. We are not competent to decide whether the Faculty of Medicine required someone of Dr. Abouna's capabilities but this sentiment was expressed to us by several Faculty members. We should also add that their information indicated that it was only in the clinical area that there was significant disruption and that the research in which Dr. Abouna was involved in other areas was not interfered with, although everyone was aware of his situation.

**4. If it is determined that the decision not to continue the appointment was based, in whole or in part, upon the reasons underlying the decision of the Board of Management of Foothills Hospital to revoke Dr. Abouna's hospital privileges, the committee is asked to comment on the fairness and equity of a university decision based on such reasons.**

This question has already been partially answered. We do believe that the decision taken by Foothills influenced the University's decision and that this resulted in Dr. Abouna not receiving a fair and equitable evaluation according to accepted academic standards. We find it hard to believe that those directly involved could not be influenced by this external pressure surrounding the case. We have not gone into the decision of the hospital since this was the subject of continuing litigation at the time we were in Calgary. We don't believe that it is necessary to delve into the actions or reasons for the actions of the hospital. Instead our role is to evaluate the action of the University of Calgary when it was faced with the decision of the hospital in light of the duties of Dr. Abouna and the interrelationship between the Faculty of Medicine and Foothills.

## **Conclusion**

1. If it were to be determined that the legal relationship between Dr. Abouna and the University was not one that automatically terminated June 30, 1976 we do not believe he received a proper evaluation.
2. Even if such a determination were not made, we believe the external pressures upon the University, the Faculty and the involvement of the Dean and the Head of the Division of Surgery in both the University and the Hospital decision, the obvious personal conflicts within the clinical areas and among the members of the transplant team required the University to ensure that there was an independent review of Dr. Abouna's performance either as provided by 3.6.1 of the Handbook or by an ad-hoc procedure. This is particularly relevant when part of the duties of a faculty member are related to duties performed within an outside institution. It is even more significant when the effect of the decision has the consequences it has had in this case. We do believe that these consequences could have been foreseen.

3. We do believe that the “80/20 rule” was a convenient answer to a difficult situation since no mention was made of financial stringency within the Faculty of Medicine other than the withdrawal of the Foothills contribution.

In closing it should be mentioned that extensive negotiations transpired between the CAUT, the University and Dr. Abouna prior to our involvement and that except for the settlement with Dr. McPhedran, they were not successful.

At one point in the spring of 1977, a recommendation for Dr. Abouna’s reappointment was placed before the Board of Governors of the University but rejected on the ground that it was not genuine because it did not envision the restoration of Dr. Abouna’s full academic and professional functions.

We would also advise that we appreciated the co-operation received from Dr. Cochrane, Dean McLeod, Dr. McPhedran, Richard Vanderberg, and Walter Zwirner of TUCFA and those members of the University community who took the time to meet with or talk to us.

We appreciated as well the co-operation of Dr. Abouna and found particularly helpful the extensive documentation provided to us. This documentation enabled us to better understand the situation.

All of which is respectfully submitted this 7<sup>th</sup> day of June A.D. 1978.

**P.L. Freeman**  
**K.M. Leighton**

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### **Endnotes**

1. Letter of appointment, dated November 26, 1973.
2. Letter dated June 5, 1973, McPhedran to Abouna.
3. Letter dated June 18, 1973 Abouna to McPhedran.
4. Letter dated February 27, 1974, McPhedran to Abouna.
5. Memorandum dated June 2, 1975, Coombs.
6. Letter dated June 19, 1975, McPhedran to Coombs. Memorandum dated June 20, 1978, R. Coombs.
7. Memorandum dated February 25, 1976, Abouna to Cochrane.
8. Memorandum dated April 21, 1976, Cochrane to Abouna.

9. Minutes of Faculty meeting held on May 12, 1976.
10. Letter dated February 8, 1978, R. Vanderberg. Letter dated February 21, 1976, R. Vanderberg.
11. Notes of telephone conversation, dated June 5, 1973.