

THE WEBBER CASE AT MEMORIAL UNIVERSITY

This is the final and complete report of the CAUT Committee of Inquiry which investigated the case of Professor Marlene Webber of the School of Social Work at Memorial University of Newfoundland.

The Committee of Inquiry was headed by one of Canada's leading political scientists, Professor C.B. Macpherson of the Department of Political Economy at the University of Toronto. The other members of the committee were Professor Jack Weldon, former chairman of the Economics Department at McGill University, Professor Dale Gibson of the Faculty of Law at the University of Manitoba, and Professor Olga Favreau of the Department of Psychology at the Université de Montréal.

The committee's report was adopted without change by the Academic Freedom and Tenure Committee and so stands as its official report on the case.

The AF&T Committee presented the report to the CAUT Board of Directors of November 3, 1978. On the basis of the report, the Board passed a vote without dissent to recommend to the CAUT Council the censure of the President and Board of Regents of Memorial University.

At its annual meeting on May 16, the CAUT Council censured Memorial University for gross infringement of academic freedom over the case of Professor Webber.

Establishment of the Committee

The Committee was established by the CAUT on the recommendation of its Academic Freedom and Tenure Committee in response to a request by the Memorial University of Newfoundland (MUN) Faculty Association and Professor Marlene Webber. Professor Webber was an assistant professor in the School of Social Work on a two-year probationary contract. After being notified, at the end of November, 1977, by the Director of the School that he intended to recommend that her contract not be renewed, she appealed to the MUN Appeals Committee in January 1978. The Appeals Committee upheld the Director's decision in March, and the non-renewal was thereafter confirmed. She then appealed to CAUT.

The present committee was instructed to inquire into the whole sequence of events and to advise whether the criteria and the procedures used at various stages were proper.

Actions of the Committee

1. We studied the copious documentation provided to us in advance of our visit to the University. This included copies of:
 - correspondence between the appellant and University administrators and others both before and after the Appeals Committee hearings;
 - statements made, following the Director's notification of intention to recommend non-renewal, by University administrators and the appellant and others, to the University community and the outside media;
 - documents presented to the University Appeals Committee;
 - the Report of the Appeals Committee.

2. With the full cooperation of the University administration and the Faculty Association we visited the University on June 14 and 15 and had two full days of interviews with those we wished to meet and others who wished to meet us. We interviewed the President of the University, the Vice-President (Academic), the Vice-President (Professional Schools and Community Services), the Chairman of the Appeals Committee, the appellant, the advisors both of the appellant and the Director of the Appeals Committee hearings, the President and other executive members of the Faculty Association, and several faculty members who wished to be heard for their views both pro and con the non-renewal.
We were not able to interview Dr. Thompson, the Director of the School of Social Work, who was out of the province then, nor were we able, as we sought to arrange, to interview him in July, as he was unable to meet us then at the only place (Montreal) where it was feasible for our committee to meet at that time. But since we had had, in addition to the documentation, all information we had sought from his advisor at the hearings and from the vice-presidents, we believe that his views and actions have been adequately represented to us.
3. Following our meetings at MUN we have, on the basis of the documentation and our analysis of the additional information acquired in the interviews, prepared the following report.

Events leading up to Professor Webber's appeal to the University Appeals Committee

1. Professor Webber, who was appointed an assistant professor in the School of Social Work in 1976 for a two-year probationary term, was notified by a letter from Dr. Thompson, the Director of the School, dated November 29, 1977, that he intended not to recommend the extension of her appointment, which would "therefore terminate on August 31, 1978". No reason for the decision was given in that letter.
2. On December 2, in an interview on CBC Radio and Television News, the Director is reported as saying "I felt that Miss Webber's beliefs, and the activities that stem from those beliefs, were not in the best interests of the School". In the same interview, in response to the question "Have you had any input from government on this whole case right now?" he is reported as relying, "Not directly", and "Indirectly yes".
3. On December 5, in an interview on CBC Television "Here and Now", Dr. Harris, the Vice-President (Academic), gave it as his understanding of the "government input" that officials of the provincial government had said that they did not want Professor Webber to teach in an in-service certificate course provided by the university at the request of the government; he believed however that this was not a significant factor in the Director's non-renewal decision.

Asked if the decision was based on Professor Webber's teaching ability, he said no, his understanding was that she was a good teacher. Pressed on the possible role of her political beliefs and activities in the non-renewal decision, Dr. Harris is reported as saying, "Miss Webber is not teaching in an ordinary academic department...She is teaching in a school which is training people who are going to work in a certain system and that system is predicated on certain assumptions which we call a democratic democracy and the people

who are so trained have to work in that system and be part of it". And further, although he did not know what she taught in the classroom, "All I know is that her activities lead us to believe that she is committed to the overthrow of the system under which our school exists and (by) which our freedoms are protected. And...we are not satisfied, I am not satisfied, that is the sort of person whose contract should be renewed".

4. The formal statement of the reasons for the non-renewal recommendation was given in a letter dated December 6 from the Director to Miss Webber. The full text is as follows:

Dear Miss Webber:

I refer to your request of December 5, 1977 for reasons as to why I am not recommending that your provisional appointment as Assistant Professor in the School of Social Work be extended.

The School of Social Work of MUN has a certain basic philosophy which is predicated upon the existence of a democratic form of government freely elected by a majority of the electorate. Its mandate is derived from this philosophy and is supportive of and is in turn supported by the existing political framework within which the University has developed and continues to function. This mandate also dictates that one of the prime objectives of the School is to train provincial agencies and to meet other local and provincial needs. Your political activities have indicated considerable divergence from the philosophy and purposes of the School and your involvement both on and off campus with a political movement which is totally inimical to and destructive of the system upon which our government is based, necessitates my decision not to recommend an extension.

In reaching my decision, I have considered that you have failed to respect the fact that your profession, and the University may be judged by your statements, since both your statements and activities have tended to reflect adversely upon the School and the University.

I trust this clarifies my position on the matter.

Yours truly,
J.V. Thompson
Director

5. A further statement was made by Dr. Harris, the Vice-President (Academic), in a press release dated December 9. After outlining the preliminary nature of the non-renewal recommendation and the appeal possibility open to Professor Webber, the press release continues:

"The University denies that 'political beliefs' as such is the reason for Dr. Thompson's recommendation. Professor Webber is one of a number of individuals on campus now, in the past and probably in the future, whose political beliefs differ from those held within the existing political system under which our government and the University operate. The University does not practice, discrimination on the basis of race, nationality, religion, sex, marital status, or political belief.

The University cannot accept, however, that a person may use the position he or she occupies within the University and more particularly within the classroom to propagate political beliefs, of whatever nature they may be.

Professor Webber, in fact, espouses and *actively promotes* a political doctrine which has as its objective the overthrow of our system of Government by revolutionary means. In advocating such methods, Professor Webber clearly demonstrates her incompatibility with the School in which she holds a provisional, two-year contract, and just as clearly sets at naught those responsibilities that go with the freedoms that her terms of employment guarantee”.

6. On December 12, Dr. Bruneau, the Vice-President (Professional Schools and Community Services), notified Professor Webber by letter that since he concurred with the position taken by Dr. Thompson he intended to recommend non-renewal unless she exercised her right to appeal within thirty days. In the same letter he said that he was in agreement with Dr. Harris’s press release of December 9.
7. It was in these circumstances that Professor Webber made her formal appeal, in a letter to Dr. Bruneau of January 5, 1978.

The Role of the University Appeals Committee

A five-member Appeals Committee to consider Professor Webber’s appeal was appointed on January 10, 1978. It was appointed in accordance with the established practice, that is, appointed by the chairman of the standing University Appeals Panel, whose members are elected by the faculty. Established practice also required that the members of each appeals committee take an oath of confidentiality, and that its hearings be held in camera, with only the appellant and his/her advisor and the respondent (in this case Dr. Thompson) and his advisor present in addition to the committee members and the committee secretary.

The Appeals Committee held hearings on five separate days between February 7 and March 8. Its report was sent to the appellant and the respondent on March 30.

A statement by Professor Webber and her advisor (Professor Clark), addressed to “the MUN Community”, was issued on April 4. In view of the gravity of the charges made by Professors Webber and Clark, who were of course present at all the hearings and were not bound to confidentiality, we inquired closely in our various interviews about the amount and type of evidence considered by the Appeals Committee. We inquired also into the procedure (which was reported to that committee) used by the Director of the School in soliciting information on which to base his recommendation as to renewal or non-renewal.

The members of the Appeals Committee were unable, because of the confidentiality requirement, to speak freely about its work, and the tapes of the hearings had been erased. However, the chairman of the Committee was able to answer some of our questions, as were others who had been present at all or part of the hearings.

Our conclusions about the work of the Committee, as well as about the prior statements by the Director and the Vice-President, are given in the following section.

Findings

1. We find that the reasons given by the Director of the School for his recommendation of non-renewal (in his letter of December 6) and by him and the Vice-President (Academic) in their earlier public statements are wholly unacceptable by any standard of academic freedom, and inconsistent with the guarantee of freedom of political belief set out in the official University policy statement “Terms and Conditions of Employment”. We say more about this in section 7, below, as part of our consideration of the propriety of the various grounds.
2. The only accepted grounds for non-renewal are inadequate scholarly or teaching competence or service to the University and the community. These were not then alleged.
3. The Director and the other administrators he consulted appear to have recognized the impropriety or inadequacy of the original ground soon after December 6. As early as December 9 the Vice-President (Academic) stated in his press release: “The University cannot accept...that a person may use the position he or she occupies within the University and more particularly within the classroom to propagate political beliefs, of whatever nature they may be”.
4. This was the first intimation that any fault was found with Professor Webber’s performance in the classroom. She had not been informed of any complaints about her teaching. One such complaint had been made much earlier, by a parent in a letter to the President. The contents of this letter had been passed on to the Director who had, as was his right, done nothing about it. (It is, in our experience, proper and desirable for a dean or director to protect a member of his faculty from attacks which he considers incompetent or irrelevant.)
5. By the time of the appeal hearing the emphasis was rather on the charge that she was misusing the classroom to propagate her political beliefs, although something was still made of her extra-curricular activities. Dr. Thompson’s case to the Appeals Committee, as summarized in its Report, was that “the political activities of the appellant (1) reflected adversely on the University and/or the School of Social work, (2) made her and the School incompatible, and (3) interfered with her teaching and professional duties in several ways”. And the majority of the Committee accepted Dr. Thompson’s contention that “her usefulness to the School is extremely limited because of the very narrow and imbalanced perspective which infiltrates almost every activity in which she engages”, and found this an adequate reason for non-renewal.
6. Thus the grounds for non-renewal put forward at one time or another were:
 - (a) that Professor Webber expressed political beliefs contrary to or destructive of the established democratic system;
 - (b) that her expression of beliefs tended to cause concern to the government of Newfoundland;
 - (c) that her expression of beliefs caused some members of the public to think ill of the University;
 - (d) that her expression of her beliefs limited her usefulness to the School;
 - (e) that she used the classroom to inculcate her political beliefs in her students, or used her position to influence her students unduly.

7. As to grounds (a), (b) and (c), we have no doubt that Professor Webber's beliefs, as a sympathizer with, though not a member of, the Communist Party of Canada (Marxist-Leninist), were contrary to the established political system, and that her expression of them might cause concern to some members of the government and did cause concern to some members of the public and of the University administration. But as grounds for non-renewal we find them wholly inadmissible. The assertion or defence of those grounds is a direct contravention of the very principle of academic freedom. Guarantees of academic freedom are intended to prevent the use of just such grounds, and guarantees are worthless if such grounds are allowed.

Those grounds, although not relied upon at the Appeals Committee stage, had been so widely publicized as the original grounds for the non-renewal that they could not have been absent from the minds of the Committee, and must hence be considered to have been prejudicial to the appellant.

If not further ground had been offered, the Appeals Committee ought to have reversed the non-renewal decision out of hand.

8. Ground (d) is so vague as to be of little value. The only reported respect in which the appellant's political views might be thought to limit her usefulness to the School was the reported unwillingness of provincial government personnel to have her teach in the certificate course given by the University for government social service employees. The fact that she had never been asked, nor had herself asked, to teach in that course may be held to be irrelevant. But if that is the meaning, or part of the meaning, of ground (d), that ground is also inadmissible. A university should not offer courses which give an outside body the right to veto the university's assignment of teachers.
9. Ground (e) was introduced at the Appeals Committee stage. There is no mention of it in the only formal statement the appellant had had up until then (i.e., the Director's letter of December 6). The introduction of new ground at that stage was improper, in that it shifted the onus (which is indeed, in a non-renewal case, properly on the appellant) from having to show that the grounds given in the letter were a denial of academic freedom, to having to show that she had not abused her professorial position. She did, perforce, then try to show this at the Appeals Committee hearing. In our view (see paragraph 10, below) she did this as satisfactorily as could be done at such short notice. But her case was unfairly handicapped. That she did not satisfy the majority of the Appeals Committee may be attributed in part to their having (as is clear from the Report) entertained (wrongly in our view) the new ground as already implied in the original ground, and in part to their having admitted other inadmissible or contested grounds, e.g. her limited usefulness to the School.
10. We are agreed that, apart from the procedural objection stated in paragraph 9, if the charge in ground(e) were substantiated by evidence at the hearings, that would have been adequate ground for non-renewal. But we do not find that it was substantiated. On the contrary, it was established to our satisfaction (a) that Professor Webber left her students in no doubt as to her own views and acknowledged that because of the strength of

those views, she would have difficulty giving a completely balanced presentation of the material in her courses; that is, she alerted them to the bias which was bound to affect her presentation of her own and others' analysis of the material (In our view, every conscientious teacher should do no less and, beyond ensuring by reading assignments or in other ways that students encounter opposed positions as presented by opponents, need do no more to guard against indoctrination.); (b) that her course outlines assign a wide range of readings, many antithetical to her own views; (c) that she frequently brought guest speakers into the classroom to represent points of view different from her own; (d) that she did not use her position as teacher and examiner to favour those who expressed agreement with those views: indeed we were told (not by her) that she gave low marks to those who reproduced her views without an adequate reasoned argument, in contrast to those who produced reasoned arguments for an opposed position; this we should expect of any good teacher.

11. In view of all this we do not accept the allegation that she abused the classroom.

It is not clear how much of this evidence was known to or considered by the Appeals Committee. Our only information is that they gave little weight to the class evaluations of Professor Webber, which were remarkably favourable. Class evaluations compiled from responses to questionnaires are, of course, however anonymous the student respondents, not hard data, but they were the main data available about her teaching by those who had knowledge of it. Other data available were reports of a few individual student complaints made to other members of the faculty, a few students letters of complaint introduced at a late stage in the hearings, and the testimony of a colleague who had taught a course jointly with Professor Webber, which did not support the allegation of misuse of the classroom.

12. We find, therefore, that ground (e), the alleged abuse of the classroom, is not substantiated. Accordingly we find that none of the grounds offered to justify the non-renewal of Professor Webber's appointment were proper and adequate grounds.
13. We find that no attempt was made by the Appeals Committee to inquire into the flatly contested allegations of fact presented to them (e.g., that she sold her Party newspaper in the classroom; that she organized, and coralled students into, study groups; that all her course materials were communist), which appears contrary to the practice of previous appeal committees, and we hold this to be an inexcusable omission.
14. We find further that Dr. Thompson's review of Professor Webber's qualifications before his recommendation of non-renewal was defective. The normal procedure was for the Director to consult the tenured members of his faculty. There were seven tenured members. He consulted six, but not a seventh who was known to be in favour of a renewal. Of the six, two were in favour of renewal and four were opposed to it. Thus the whole tally should have been three in favour and four (two of whom had only been on campus at the same time as Professor Webber for a few months) opposed.

We do not suggest that Dr. Thompson concealed these facts, but he did refer, in his opening

statement to the Appeals Committee, to “the majority of the faculty” of the School being in support of his view, and filed a memorandum dated December 12, signed by eight members of the faculty of the School, including non-tenured members, supporting his decision. We do not know what weight the Committee gave to this show of support. But the reference in their Report to the degree of concern “by the Director of the School, by the several tenured faculty members in the School, and by the Vice-President of Professional Schools” suggests that they may have had a faulty impression of the facts.

Summary of findings

1. The first four of the grounds for non-renewal should not have been offered or defended by any member the administration at any time. That they were so offered and defended was a serious abrogation of the guarantee of academic freedom set out in the official MUN policy document, and was prejudicial later to the appellant.
2. Compared to the use of these grounds, procedural shortcomings may seem of much less importance. But procedures become important in connection with the fifth ground. On this it was the duty of the Appeals Committee to test at least the allegations of fact that were made and controverted at the hearings. We find that they made no effort to do so.
3. The Director’s failure to consult one of the tenured faculty in the School, one who was known to be in favour of renewal, probably made no difference to his recommendation. Nevertheless it was improper, and inconsistent with his claim (in his opening statement to the Appeals Committee) that he had “followed the proper evaluation procedure”.

Review of procedures

We think that the current appeal procedures are susceptible to some improvement, and while we are not competent to make exhaustive proposals, we do suggest that the following changes should be considered:

1. The requirement that appeal hearings be held in camera, since it is intended for the protection of appellants, should be dropped in any case where an appellant requests open hearings.
2. When the decision of an appeal committee is not unanimous, the dissenting member or members should not be expected to sign the report; and minority reports should also be permitted.
3. The impartiality of each appeal committee would be more evident if the appointment of Appeal Panel members to each committee were done by *rota*; and the Panel might be enlarged, to reduce the burden on individual members arising from absences on leave and the possible need for the panel serving several committees at the same time.

4. The possibility of submitting cases to binding arbitration should be explored.
5. The guidelines concerning the appeals committee proceedings should be revised to remove the present presumption that a negative decision is to be expected.

Note by the Academic Freedom and Tenure Committee on the onus of proof

The Board of the CAUT has adopted the position that the onus of proof in non-renewals and denials of tenure should be on the university administration. There is an evidentiary responsibility on the faculty member to assemble those materials which are within his powers to obtain and to present to the appropriate committees, but the onus of proof that a person is not fit to be renewed or tenured should be on the university administration.

However, in this case, Memorial University places the onus of proof on the individual. This was defined by the Appeal Committee so that Professor Webber could not adequately meet the onus requirements unless she could prove that the original recommendation was not made in good faith or after appropriate consultation with other professors. This is an even higher standard of proof than is imposed on the Crown in criminal prosecutions. The Academic Freedom and Tenure Committee believes that she should have been called upon, by an ordinary preponderance of evidence, to show that she is a capable teacher and scholar who meets her administrative and community obligations. We understand that the evidence presented both to the CAUT Committee and to the Memorial Appeals Committee established that she met these criteria and that the Administration made no real attempt to deny this.

When, however, the Administration charges serious wrong-doing, then it is clear that the onus is on the Administration to prove its charges. The view of the CAUT Committee of Inquiry was that no such charge was proved.

22 September 1978