

CAUT Ad Hoc Investigatory Committee Report

Trent University & the Denial of Professor George Nader's Reappointment

This report considers academic freedom as it applies to university administrators. It ably draws conclusions about the Trent University administration and Professor George Nader before the closure of Trent's Peter Robinson College, and shows how the question of the academic freedom of administrators is central in this case. CAUT's Academic Freedom and Tenure Committee considers that the academic freedom of university and college administrators is a crucially important matter, and thanks the investigatory committee for its report. The present document is a first step in thinking about academic freedom for administrators, and the committee plans to draft a policy statement thereon. The committee welcomes commentary arising from the report.

1. Introduction

In 2001, Professor George Nader was denied reappointment as principal or “master” of Peter Robinson College. The search committee had recommended by a six-one plurality, with two abstentions, to name Nader to the post, and he had stated his willingness to serve.

This event followed a period of controversy during which the survival of Peter Robinson College was in question. Over the preceding two years, Nader did what he could to persuade the university not to close the college. Along with others, he acquired the support of the university’s senate, faculty association, students, staff and members of the public. Further, he worked to ensure a judicial review of the college’s closure, once the decision had been ratified by Trent’s board of governors. In short, he criticized the policy of the Trent administration.

In late 2000, Trent university president Bonnie Patterson and vice-president Graham Taylor reprimanded Nader for his activities as a public critic of the administration’s policy. In the summer of 2001, Nader’s reappointment as principal was refused.

2. Background

2.1 Trent & its colleges

On Nov. 12, 1999, Trent’s board of governors agreed to president Patterson’s proposal that her administration be authorized to close or to relocate Peter Robinson College and Traill College — the university’s two downtown colleges.¹ The proposal struck some members of the Trent University community as paradoxical. They said it came from an administration previously committed to residential colleges closely tied to the city and region of Peterborough. The founders of the university thus chose to situate two colleges and additional administrative functions of the university in the central city, rather than on Trent’s main riverside campus. Significant numbers of the Trent University community could not see how the new arrangement fit with Trent’s historic commitments.

Administration arguments for closure or re-configuration of colleges rested on financial and political criteria. The expense of running these two colleges, it was claimed, warranted sale and/or relocation. Sale or relocation would produce one-time income for Trent,² and put an end to a plentiful supply, or more accurately a potential supply, of red ink.

Opponents of the colleges’ closures or re-configurations alleged the administration wanted the Government of Ontario to look favourably on Trent. If the administration closed the colleges, the critics said, it would look as if Trent were pursuing “efficiencies.” Especially if the cuts were visible and sustained, Trent would demonstrate it was making maximally “good use” of public funds. Queen’s Park might thus distribute large grants to Trent under the SuperBuild programme of that day.³

Indeed, by May 2000, Trent’s administration knew the Government of Ontario would fund new arts and science facilities at Trent, and rumour had it the university would receive somewhere between \$26 and \$33 million. That funding would be a key feature of a five-year scheme to acquire \$70 million for capi-

tal development. On one interpretation of Ontario politics, Trent would receive maximum funding in return for the adoption of an appropriate “business model.”⁴ By the spring of 2000, college closures or transformation were consistent features of Trent administration planning.

Trent University faculty members, students, and members of the public were divided from the outset as to whether relocation, or closure and sale of Peter Robinson and Traill were financially, administratively, or (most of all) educationally justifiable. Support for the idea was to be found among members of the Trent administration, board of governors, some senators, occasional writers of letters to the local press, as well as some faculty and students.

Opponents of the college closures, energetic and possibly in the majority, believed the demise of any colleges would amount to the undermining of Trent’s historic mission.⁵ This same opinion was shared by the Trent University Faculty Association.

CAUT supported a judicial review application seeking an order to quash the Nov. 12, 1999 resolution of Trent’s board, which purported to authorize the closure, sale, or relocation of Trent’s two downtown colleges. The applicants, members of Trent’s teaching faculty, claimed the resolution infringed the exclusive jurisdiction of Trent’s senate, conferred by the Trent University Act, to control, regulate and determine the educational policy of the university.⁶

The application was denied. In a split decision, the Ontario Court of Appeal dismissed an appeal to overturn the Divisional Court’s denial of judicial review: *Kulchyski v. Trent University*, [2001] O.J. No. 3237 (Ont. C.A.). The Supreme Court of Canada refused leave to appeal that decision.

A “business analysis” of the closures, submitted Nov. 22, 2000 to the board by Nader argued that even on a strict cost benefit basis, closure made little sense.⁷ Meanwhile, the stu-

dent press and, eventually, the daily press were sceptical of the administration's schemes. For the purposes of the present report, it does not matter whether opponents of the administration plan were or were not in the majority, as the point at issue has to do with a key participant's academic freedom in the matter.

(In the event, Peter Robinson College was closed, some of its operations moved to the main Trent University campus, and its traditional centre of activity, Sadleir House, sold. Traill College has continued to operate in its old location, under new policies and mandates.)

2.2 Professor George Nader

Between summer 1999 and autumn 2001, Nader — then principal of Peter Robinson College and a tenured faculty member at Trent University — was centrally important in discussions of the administration plans for Peter Robinson College. His views were made known through letters and memoranda to university officials, contributions to proceedings of the senate and board (including "open letters" to the board),⁸ organization of a society devoted to the survival of Peter Robinson College in its traditional home, communications with the press, public utterances and through communications with interested colleagues at Trent.

Nader, acting as master of Peter Robinson College, was often the conduit for messages from the Peter Robinson College community of faculty, staff and students. It was Nader who, on Sept. 29, 2000 forwarded the text of a motion passed by the Peter Robinson College Council, a representative and advisory body concerned with the college's administration and internal life. That motion called for a continuance of the college's existence in its traditional location in downtown Peterborough.

The present inquiry could not tell whether Nader's work as transmitter of college council motions led the administration to presume he was in some sense a troublemaker. The reason for uncertainty on this point is that president Patterson chose not to participate in this ad hoc inquiry and instructed her administration not to participate [Appendices E, G and M]. Subsequently, Tim Quigley wrote to Patterson to indicate the inquiry was concerned less with the reappointment of Nader and more with academic freedom as it pertains to senior administrators [Appendix F]. Patterson said that neither she nor vice-president Susan Apostle-Clark would be available to meet with the committee when its members travelled to Peterborough [Appendix G]. She suggested contacting Apostle-Clark to arrange an alternative date and time for discussing the issue. The latter did not reply when Quigley tried to contact her to arrange a conference call.

Among organizations supporting Nader's work at Trent, in Peterborough, and elsewhere, were the Trent University Faculty Association and CAUT. Trent University professors Peter Kulchyski, Ian McLachlan and Andrew Wernick, with the support of CAUT, applied for judicial review to reverse the decision to close Peter Robinson College.

The faculty association also launched an unsuccessful grievance on behalf of Nader on Aug. 13, 2001, relying on its collective agreement clause on academic freedom.⁹ The griev-

ance was not pursued because Nader had not been a member of the faculty association at the time of the claimed abridgement of his academic freedom. Although CAUT's Academic Freedom and Tenure Committee is not concerned or entitled to pursue a grievance in the matter, it seeks to answer questions raised by the terms of reference to this ad hoc inquiry.

Nader's term as principal of Peter Robinson College ended June 30, 2001,¹⁰ but in the two years leading up to that moment, he worked to further discussion of the college's educational tasks and goals and to press for the college's survival — in its traditional home, although possibly with revised goals and objectives.

Throughout, as we show later (sec. 4), Nader relied on evidence and data that were publicly accessible to all interested persons.

Nader's communications offered a view of Trent's past and future that differed markedly from the administration's view. This difference became explicit at minuted public meetings of the board (of which Nader was a member), in minutes of the senate, in correspondence to which we have made reference and in interviews carried out by this inquiry in February 2005. The difference was plainer still in administration letters sent to Nader in 2000–2001.

2.3 Failure to reappoint

On June 30, 2001, the vice-president (academic), Graham Taylor, wrote to Nader "... to thank you for undertaking this task over the past five years. I know that you have a strong commitment to the college and I appreciate that. I want to assure you that our goal is to ensure that Peter Robinson College continues to be a vital part of Trent University at its new location on the Symons [that is, the main] campus. Once again, I wish to thank you for your work as Master of the college and wish you the best for your future activities."¹¹

Nader was now to return to full-time academic work as a member of the university's geography department.

Taylor's civilly written message presumed the sale and relocation of Peter Robinson College. But for our purposes, it is even more significant for its background.

The administration had moved to discourage Nader from continuing his public criticism of administration policy on the matter of Peter Robinson College's closure and relocation by twice reprimanding him in letters written in the fall of 2000 [Appendices B and D].

2.3.1 Vice-president Taylor's letter of reprimand — Vice-president Taylor opened his reprimand [Appendix B] with a predictable charge, that Nader was conflating his academic and administrative roles: "... until recently it appeared to me that you were making an effort to differentiate between the expression of those views as an individual member of the Trent community and your responsibilities as an appointee of the Board of Governors as Principal of the College. But I now perceive that not only do you seem to be conflating those roles but you are making statements to the public media, purportedly in your role as Principal, that must be recognized as detrimental to the well-being of the university."

We do not accept that a frank criticism of administration policy “must be recognized as detrimental to the well-being of the university.” Nader’s activities might be interpreted as embarrassing to the administration, but an administrative embarrassment is not the same thing as a deed or word act “detrimental to the well-being of the university.”

The question remains, did Nader’s activities harm Trent University?

Taylor pressed his case, noting that Nader was a trustee of the “Friends of Trent Colleges,” an association set up to raise, and did raise, “funds on behalf of the legal action taken by several Trent faculty against the Board of Governors of Trent University, which was the subject of a judicial review earlier this week.”

He noted that the judicial review “has been costly for the university,” but admitted that Nader was within his rights as an individual “to support these actions.” He went on to say that he objected to Nader’s use of his title (master, or principal of Peter Robinson College) in the course of fund-raising activity, and to Nader’s use of “the facilities of Peter Robinson College.”

We find no ready justification to see an academic-administrative title (“master” or “principal”) as fundamentally different from the title “professor.” Trent’s official statement on the “Duties of a Residential College Head” [Appendix H, and especially points (a), (e), (g)–(k)] provides a list of obligations and responsibilities with considerable academic importance and impact.

Therefore, we find that Taylor’s distinction between academic and administrative duties, in the case of a residential college head, erred by making that headship an administrative matter only.

As a result of our inquiry over the course of two days of interviews with persons directly acquainted with the events of 1999–2001 (among them a member of the board of governors, staff members, students, academic colleagues and Nader himself) we concluded there was no evidence that any expenses were charged to the account of Trent University in order to do the work of “Friends of Trent Colleges” (on the use of college facilities, see 3.3.1 Use of resources, on page 6).

We did not attempt what might be called a “forensic audit,” not having relevant expertise. Nor do we recommend such an audit be done. All we do is assert that Trent funds were not misdirected to the “Friends of Trent Colleges.”

It is obvious that as principal, Nader may have had a degree of political influence vis-à-vis the Trent community and Trent alumni. We found no evidence that Nader relied on that influence to undermine or to weaken his university.

Taylor went on to make a charges about Nader’s use of “confidential” documents: “With regard to the ‘open letter’ which you recently sent to the Board of Governors of Trent University ... the preparation of this document does not constitute in any way a part of your duties as Principal of Peter Robinson College and it is inappropriate for you to present it to the Board as if it was prepared by you acting in your capacity as Principal ... I am informed that in the distribution of this material, a confidential list of addresses of members of

the Board of Governors was used in order to selectively distribute the document in advance of formally sending it to the Finance and Property Committee of the Board. This represents an improper use of confidential information which was provided to you in your capacity as Principal of the College and it must not be repeated.”

It strikes us as odd that Trent University governors’ addresses are confidential. If this address list was not a central cause of Nader’s denial, then Taylor’s mention of it is a kind of “window-dressing.”

In a significant remark, Taylor wrote of Nader’s public release of financial data and calculations: “In the material attached to the ‘open letter,’ you use source material prepared by the Physical Resources Department for the Capital Strategy proposal to the Board of Governors last fall. Included in that source material which you cite, is information relating to the market value of certain Trent properties. This material was prepared on a confidential basis for the review of the Board Audit and Finance Committee, and was sent to the Ontario government with the request that it remain confidential, a request that was honoured. I do not know how you acquired this information, but your inclusion of it in the attachment to your ‘open letter’ which has now not only gone to the Board of Governors but many other people in the university and possibly to the public media, can potentially have a detrimental impact on the finances of Trent University.”

We note Taylor had access to these “confidential” data and could not understand how Nader acquired access. Nader informed us he obtained this information from the human resources department. When he obtained it, there was no indication that it was confidential.¹² Once released, data and evidence are not the private property of administrators. Nader’s use of them is in the grand tradition of collegial debate about the purposes and functioning of the university. We say again: this may have embarrassed the administration, but surely it did not prevent the administration — then or later — from closing Peter Robinson College, or from obtaining large provincial grants.

2.3.2 President Patterson’s letter of reprimand — On Oct. 26, 2000, Patterson wrote to Nader, reiterating Taylor’s point on the question of financial data [Appendix D]. She turned then, following on her direct reprimand, to the question of the appointment of a new principal for Peter Robinson College: “Over the next few weeks, I have asked Vice-President Taylor to meet with the fellows of Peter Robinson College to discuss immediate and longer-term issues including the College Head search for Peter Robinson College that will need to take place later this year. He has, I know, talked with you about his expectations of you in your role as head of the college this year as preparations are made to consolidate on the Symons Campus. I hope that for the sake of the College and the University as a whole, and in particular our students, you will fulfil your role as expected and allow progress to be made on transition issues in the months that remain of this academic year.”

In any ordinary academic circumstance this letter, and particularly the paragraph we cite, would constitute a reprimand

and would lead to a reasonable inference: that Nader's reappointment was in doubt.

2.3.3 Refusal to reappoint — In an electronic message of April 24, 2001, Matthew Naylor (chair of the Peter Robinson College head search committee) welcomed the news that Nader was prepared to accept a two-year reappointment as principal of Peter Robinson College.

On May 6, 2001, vice-president Taylor wrote to Naylor (e-mail) to say that "I do not think this is an appropriate recommendation and I would ask the committee to consider its options more thoroughly."

We come to a crucial point of evidence, Nader's notes of a June 26, 2001 meeting with the president and vice-president of the university [Appendix J]. According to those notes, the president offered three reasons to deny Nader's reappointment:

- Nader's opposition in published reports and public statements, to the board's capital development plan;
- His role as a trustee of the Friends of Trent Colleges; and
- That students and faculty were divided on the matter of relocation, and that, therefore, the college should be relocated.

She noted that the chair of the board agreed with her on the denial of Nader's reappointment.

Her last assertion does not square easily with documents on the views of Peter Robinson College faculty and council

members. On Sept. 5, 2000, the fellows of Peter Robinson College had *unanimously* "reaffirmed their commitment to maintain and foster the development of Peter Robinson College at its present town location" — long before the meeting described in Appendix J.

On July 17, 2001, 15 faculty members and professional librarians of Peter Robinson College reaffirmed their wish that Nader serve a second term as principal of Peter Robinson College.

The day after, an article by Julie Smyth appeared in the *National Post*, whose headline captured fairly exactly the tenor of these events: "Criticism of Trent led to demotion: professor; University ignores committee's advice to reinstate academic." That same story mentioned an analogy between Nader's denial of reappointment and other cases where faculty members' criticisms of administration policy had landed them in difficulty. The question was, of course, whether Nader was an academic in the usual sense, or merely an administrator. In mid-2001, those questions were left in abeyance, awaiting the present inquiry.

On one procedural point, there can be no doubt: the search committee for a head of Peter Robinson College was merely advisory to the president of the university. Patterson had the right to deny Nader's reappointment, and she did. We, on the other hand, ask whether her action constituted an infringement of Nader's academic freedom.

3. Inquiry Procedures

3.1 Appointment of the committee

The committee was appointed by CAUT's Academic Freedom and Tenure Committee in October 2003. Wayne MacKay, then president of Mount Allison University, was appointed along with William Bruneau and Tim Quigley. MacKay later indicated his inability to participate and efforts were made to locate another senior administrator, preferably a president, of another Canadian university who would serve. In the end, it was decided the two-person ad hoc committee of Bruneau and Quigley should conduct the inquiry.

We had access to substantial documentation, but were prevented by other commitments from visiting Trent University until early 2005. As we have noted, president Patterson was invited to participate, but as Appendices E, F, G, M, and the discussion in section 2.2 demonstrate, she declined those invitations. Former vice-president academic Graham Taylor also declined to be interviewed [Appendices K and L].

3.2 The committee's visit to Trent University

We travelled to Peterborough to meet with various individuals on Feb. 8 and 9, 2005. We interviewed 10 individuals: George Nader, David Morrison, David Tough, Constantin Boundas, Ken Brown, Daryl Bennett, Derek MacIntosh, Ken Field, Stefan Bilaniuk and Ian McLachlan. On Feb. 9, Andrew Wernick spoke at length by telephone with William Bruneau.

Some interviews were conducted at the main campus of Trent University while others took place at Sadleir House, formerly an integral component building of Peter Robinson College, at a distance from the main campus.

Extensive notes were taken by both committee members. We also debriefed to ensure we both had heard the same information and to clarify our observations and conclusions about each interview.

Subsequently, we did research on academic freedom and the extent to which the doctrine is applicable to senior university administrators. Quigley engaged the services of Jeff Howe, a law student, to assist with this task.

3.3 Summary of the interviews

The following is a brief summary of the substance of the interviews that were conducted.

Nader, who teaches statistics and geography, was the first interviewee. He set out his version of the sequence of events that led to his not being reappointed and provided a great deal of information and documentation. Of most significance, he described the extent of the opposition to the closure of Peter Robinson College, how he came into possession of the financial information referred to in Section 2.3.1, his desire to be reappointed, and the fact that the principal position is an academic appointment by the senate. Indeed, he likened the position to that of a department head in an academic department.

Morrison is an international studies professor and former director of Trent's international program. He is also an ex-dean of arts and science and a former vice-president academic. He indicated he accepted with regret the "cabinet solidarity" that was a part of those senior administrative positions, but thought the positions of principal and director should be considered middle management positions.

Morrison also has been chair of the site development and space utilization committee, a committee of the senate and advisory to the president and board. Although he was away for most of the Peter Robinson College controversy, he remained in contact through e-mail and provided an affidavit for the judicial review application. His committee had rejected the proposal to close Peter Robinson College, but was overruled by the president, a decision he viewed as “unprecedented.” He also described how he was berated by Taylor, then vice-president academic, and was threatened with external and internal reviews of his programme, and scrutiny of his expense claims, because of his opposition to the closure of Peter Robinson College.

Morrison agreed with Nader’s behaviour because he saw the latter’s responsibility as securing the best interests of his college and that it was Nader’s duty to oppose the closure if he felt it was not an appropriate action. The colleges had traditionally been viewed as academic communities, rather than merely dormitories. He also opined that academic freedom accrued to academic administrators, at least below the level of the president’s executive (the various vice-presidents and the deans of arts and science and graduate studies). Indeed, he recalled that, when he was dean of arts and science, Nader, then associate dean and principal of Blackburn College, had publicly disagreed with him on a financial issue. Although he had disagreed with Nader, he had not questioned his right to speak out. Morrison also said college budget information was available to anyone.

Tough has been at Trent University for 12 years in a variety of capacities, including editor of the student newspaper and senior don of Peter Robinson College. He had previously been a graduate student and was a graduate students’ association representative on the committee to appoint the principal of Peter Robinson College. He was active in opposing the closure. He noted a motion was passed by the fellows of Peter Robinson College to empower Nader to do everything he could to stop the closure. He said it became clear to him during the appointment process that Nader’s opposition to the closure was a major factor in the senior administration’s decision not to reappoint.

Boundas is a retired professor of philosophy. He considered that Nader had a duty to oppose the closure and to report on the financial situation. He also stated that historically, the colleges had often passed resolutions for consideration by the senate, the board and the administration. He considered that academic freedom was not divisible according to type of duties in the university and that it should extend as far as to vice-presidents and associate vice-presidents.

Brown, Bennett and MacIntosh were interviewed together at their request. Brown had been a student at Peter Robinson College and worked at the Trent University IT department for 17 years. Bennett served on Trent’s board from 2000–2004, but was not reappointed. He said he believed his non-reappointment resulted from his opposition to closure of Peter Robinson College. MacIntosh had been a student in cultural studies and was housed at Peter Robinson College, although a student in Champlain College. He served as student representative on Trent’s board from 1998–2000, on the senate from 1998–2001 and

as president of the students’ association during 2000–2001. All three had opposed the closure of Peter Robinson College and supported Nader’s efforts in this regard. All believed Nader’s conduct was appropriate under the circumstances.

For example, while on the board, Bennett had asked for a report from Nader and encouraged him to circulate it. Nader had asked to appear before the board on the issue, but was refused. Petitions came to the board from members of the Trent community, with 200 signatories favouring closure and 1,500 in opposition. Bennett later learned from the provincial government that closure of Peter Robinson College was not a condition of funding under the SuperBuild program. He also asserted that, to his knowledge, the failure to reappoint Nader was the first time a selection committee’s recommendation was not respected.

3.3.1 Use of resources — Field and Bilaniuk, respectively the past president and then-president of Trent University Faculty Association, were interviewed together with their agreement. They said Nader’s duties included advocacy on behalf of Peter Robinson College and that his was an academic appointment. They also opined that use of facilities and resources of the university would be a normal feature, or consequent, of academic freedom. They saw a direct connection between the centralized managerial style of governance at Trent and what they saw as violations of academic freedom.

McLachlan has been a professor at Trent University since 1970 and served as principal of Peter Robinson College from 1977–1982. He is also a former member of the board and was one of the applicants in the application for judicial review. He was absent during some of the controversy concerning the closure, but supported Nader’s actions. He viewed the principal’s position as an academic appointment and stated that academic freedom was not divisible according to the job duties of an academic appointee. He strongly asserted that the principal of a college had an advocacy role in respect of that college.

Of particular significance, he referred to a similar controversy during his tenure as principal of Peter Robinson College, in which he had widely distributed a document, like Nader, and had had it published in the student newspaper. No challenge had been made to his right or authority to do so. In his opinion, the documents used by Nader were in the public domain. Moreover, he indicated that a part of an academic’s responsibility to the university consists of using university resources to exercise academic freedom. Finally, he indicated that the selection procedures for the position of principal were almost identical to those for the selection of an ordinary faculty member.

Wernick, who was also one of the applicants in the judicial review case, was unable to attend the interviews and participated by telephone. His recollection of events was consistent with that given above. He noted the Trent administration’s derogation of the senate and other academic decision-making bodies during the period 1999–2001. His views suggested it made little sense to distinguish sharply between administrative and academic aspects of the Peter Robinson College closure. He said administration action moved inappropriately into the academic domain during the events of 1999–2001.

4. Findings & General Discussion

- Nader is a tenured academic holding an academic teaching appointment at Trent University before, during and after the key events discussed in this report (1999–2001).
- Nader’s work as principal of his college was academic in scope and purpose. His responsibility for the care of students and colleagues had a primarily academic and educational character, although his educational responsibility was expressed in the practical terms of an entire college program for the social and educational development of Peter Robinson College’s students.
- The president’s and vice-president’s letters of reprimand show the Trent administration was not disposed to reappoint Nader, because of his determined criticism of administration policy. The evidence in Nader’s “notes” [Appendix J] further illustrates and supports this view. As Taylor’s Feb. 8, 2005 letter suggested [Appendix K], there may have been other reasons for the administration’s decision not to reappoint Nader. Of this we cannot be certain, as president Patterson refused to see us or to allow her officials to speak to us. Later efforts to speak to the vice-president academic met with failure [Appendices F and G]. We reason on the basis of what we know or were permitted to know. There is, however, evidence his reappointment was denied because of his criticism of the administration and we could find no evidence showing this was not the case.
- At no point did Nader’s public utterances materially threaten the ability of the Trent administration to make policy or to execute it. Nader relied in public on no “secret” materials. He betrayed no administration secrets and told the public nothing that any determined member of the public could not have found out for herself. In the end, despite his efforts, Peter Robinson College was closed.
- CAUT policy is explicit on a relevant feature of academic freedom: academic colleagues should face no material penalty for criticizing administration policy. This inquiry is satisfied that Nader was, as principal of Peter Robinson College, at all times an academic. His ability to influence administration policy and decision making was limited, much the way a department head’s powers and influence are limited.
- University administrators need not rely on power, authority and hierarchy to make their underlings do as they are ordered. Subordinates can be relied upon to carry out administration policy, even if those very subordinates are openly critical of policy, *if and when policy has been developed and agreed in open and reasonable ways, and on usual standards of due process.*
- A reasonably open administration will not be paralyzed by internal dissent, whatever nay-sayers may claim. Nor is an administration’s authority lessened in a participatory system of university governance.

5. Concluding Arguments & Recommendations

5.1 Was Nader’s work as principal of Peter Robinson College essentially academic in character?

The primarily academic character of Nader’s work as principal is reminiscent of the usual roles of department heads, associate deans and deans in Canadian universities. All such persons should have, because of their primarily academic work and academic responsibility, the right to criticize policy — even if they are obliged to carry out that policy — without fear of reprimand or punitive changes in their conditions of employment.

5.2 Was Nader’s academic freedom infringed?

Nader’s academic freedom was infringed by the imposition of the administration’s reprimands in 2000 and by a subsequent and consequent refusal to reappoint him as principal of Peter Robinson College.

It is an uncontroversial proposition that academic administrators enjoy the rights and protections of academic freedom in their creative, scientific and teaching work (understanding “science” to mean “organized knowledge”). It is sometimes thought that an academic doing administrative work does not and cannot enjoy those same rights. By contrast, we argue the demarcation between academic and administrative work in universities is a moveable one, and that it is not possible to divide academic and administrative activities into spheres that are protected by academic freedom rights and those that are not.

The position of principal was an academic appointment that carried the responsibility to advocate on behalf of the college. It is difficult to assess whether such advocacy is primarily of an administrative character or of an academic character, inasmuch as the two roles are intertwined. It is significant that McLachlan — a former principal — said he engaged in nearly identical behaviour to that of Nader’s, but without repercussions to his academic career. The only distinction we see between the two cases is in the university administration’s attitudes to criticism and dissent. In any case, a college principal, like a departmental chair and an associate dean, is not part of the senior administrative cabinet. Even if those in more senior positions are constrained in criticism of senior administrative decisions with which they disagree, a college principal is not nor should he be.

5.3 Was there evidence that Nader was denied reappointment for just cause?

We found no such evidence in the public record or in confidential documents provided to us (and referred to in this report). The senior Trent administration (president and vice-president academic) declined to discuss the issue with us. If evidence of “denial for just cause” exists, we couldn’t find it.

The evidence in hand gives prima facie grounds that Nader’s employment as principal came to an end because of his public criticism of administration policy and practice.

5.4 It might be argued that “just cause” for denial of reappointment would have been this: that Nader’s criticism disabled administration policy making and/or practice. Did Nader’s criticism have this disabling effect?

Nader’s criticism in no way disabled administration policy making nor did it permanently impede execution of administration policy. Indeed, the proof is in the pudding: Peter Robinson College was closed and moved. One reason why Nader’s criticism may be so understood is a matter of record: Nader may have embarrassed the president and her administration, but he did not and probably could not stop them. This last fact suggests Nader operated at a level of administrative authority requiring the protection of academic freedom.

We also assert academic freedom protection should accrue even where the criticism of a faculty member inhibits or disables the policy making of the university. One can readily imagine circumstances where criticism of an ill-conceived policy should occur. It might serve the useful purpose of preventing a university from making an egregious error. At the very least, the criticism should provide the opportunity for the university to justify its position so that it might attract support from those convinced by its arguments. Dissenting positions therefore provide a valuable service to policy makers and should be protected by academic freedom.

This is not to suggest academic freedom is without limits. Like its constitutional sister, the right to freedom of speech, legitimate constraints may be placed upon the freedom. Such legitimate constraints should, however, be few in number and are justifiable only where a competing right or public interest exceeds the importance of freedom of speech and academic freedom. For example, the most senior members of the administration who help to form the president’s cabinet, and who may have met and collectively taken a position, may be more constrained in their ability to publicly oppose that position. Although it is not necessary for academic freedom to be protected in a collective agreement between a faculty association and a university, it often is. The collective agreement at Trent University has the following provision:

1.2.3 Academic Freedom

The common good of society depends upon the search for knowledge and its free exposition. Academic freedom in universities is essential to both these purposes in the teaching function of the university as well as in its scholarship and research. Academic staff shall not be hindered or impeded in any way by the University or the Association from exercising their legal rights as citizens, nor shall they suffer any penalties because of their exercise of such legal rights. The parties agree that they will not infringe or abridge the academic freedom of any member of the academic community. Members of the academic community are entitled, regardless of prescribed doctrine, to freedom in carrying out research and in publishing the results thereof, freedom of teaching and of discussion, freedom to criticize the University and the Association, and freedom from institutional censorship. Academic freedom does not require neutrality on the part of the in-

dividual. Rather, academic freedom makes commitment possible. Academic freedom carries with it the duty to use that freedom in a manner consistent with the scholarly obligation to base research and teaching on an honest search for knowledge. The claim of academic freedom shall not excuse members from meeting the duties and responsibilities set forth in IV.1.1 (i) and IV.1.2 (i) of this Agreement, provided that the allocation of such duties and responsibilities in accordance with IV.2.1 and IV.2.2 shall not conflict with principles of academic freedom.

Thus, had he been in scope of the Trent University Faculty Association, Nader would have been protected from sanction by the university administration. But no one would suggest faculty in a non-unionized university would not be entitled to academic freedom. To do so would, among other things, invite censure from CAUT and the Association of Universities and Colleges of Canada. Why, then, should a mid-level academic administrator not also be entitled to criticize his university and to be protected from repercussions to his career for doing so?

It may be inappropriate for an administrator to make public criticisms of administration policy using secret, confidential and or privileged material gathered by administration as a basis for later action. This type of material is restricted normally to the very highest levels of a university’s administration — the president and her vice-presidents and their immediate, non-academic staff assistants. We need not express an opinion on this possible constraint on academic freedom because Nader did not use secret, confidential or privileged materials.

5.5 Do senior university administrators enjoy the protection of academic freedom?

Strictly speaking, this question need not be answered, given the purposes of this inquiry. We have concluded that Nader ought to have been protected and that his academic freedom was violated by the actions of the administration. Nevertheless, it is an important question and one on which we wish to express an opinion.

Our research has shown that the question of whether senior administrators have this protection has attracted little serious attention. Because academic freedom has not typically been exercised by senior administrators, some might presume it does not apply at that level. But that view does not hold up to scrutiny. If we are correct that academic positions are not divisible into components — some protected by academic freedom and some not — then it is equally true that even those whose positions are largely administrative but nevertheless academic in nature should also enjoy this protection. Thus, we conclude that all academic employees of an institution should enjoy the protection of academic freedom except where there may be legitimate constraints placed upon its exercise.

A further consequence is that even a university president should be protected should she publicly disagree with a decision made by her board. Indeed, such a disagreement would both affirm the ultimate legal authority of the board to govern a university and affirm that all its academic employees can speak freely without fear of recourse.

We acknowledge that a vice-president (academic) or vice-president (finance) who publicly undermined her president, referring to privileged arguments and documents (even where those materials were not used in final decisions), might expect to be reprimanded and/or disciplined. That might be the practical result, should such a situation occur. Nevertheless, we believe that, even then, academic freedom ought to protect against discipline for good-faith criticism. Whether discipline might be incurred for the use of privileged information is another matter, but the criticism itself must be immune from sanction. It might be that such an official would think herself honour-bound to resign her position if she no longer had confidence in the president. But she should not be subject to discipline.

5.6 Does a university, as a corporate entity, have academic freedom?

The university, as a corporation, does not have academic freedom. It ought to have institutional autonomy, but this does not mean the corporate university has academic freedom rights. Indeed, an argument that the university-as-a-corporation has academic freedom could never make sense, since the corporate, or “business” aspect of the university is explicitly concerned with matters of money, power, administration, property and the like. It is not concerned with teaching, service and research, as its academic citizens surely are.

5.7 Should a policy on academic freedom protection for senior university administrators be developed?

The CAUT/UNESCO/AUCC academic freedom policies (allowing criticism of administration) permit and invite the conclusion noted above. That said, their policies say little about whether, and to what extent, academic freedom applies to senior administrators. This leads us to recommend that CAUT and AUCC, perhaps jointly, should study this issue and develop a policy that enshrines to the fullest extent possible academic freedom protection for senior university personnel.

5.8 Should there be a remedy for Nader?

We reiterate that Nader’s academic freedom was infringed by the university’s actions in this case. The question of his possession of academic freedom is much clearer than that for university officials higher in the hierarchy. There can be no doubt his was an academic position, that advocacy was a part of his responsibility, and that he suffered negative consequences for the exercise of his right to speak out. We accept, however, that passage of time and closure of Peter Robinson College make Nader’s reinstatement as principal impossible.

In the circumstances, we consider that the university administration should apologize to Nader for infringing his academic freedom. We leave it to CAUT to consider whether sanctions against Trent University should be taken if an apology is not forthcoming.

Respectfully submitted: **Dr. William Bruneau**, University of British Columbia, Vancouver, BC
Dr. Timothy Quigley, University of Saskatchewan, Regina, SK
March 2007

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1. For the board’s decision and reasons, see Ontario Divisional Court, Superior Court of Justice, between Peter Kulchyski, Ian McLachlan and Andrew Wernick, applicants and Trent University, respondent: Court File No. 41/2000, “Factum of the Respondent,” Part I.
 2. Respondent’s briefs, files 2–9, *loc. cit.*
 3. “Trent Gets Superbuild Funds,” Peterborough Examiner, May 11, 2000, p. A1. President Patterson would not say she saw a link between college closure and the acquisition of SuperBuild funds. On the other hand, her administration worked to close the colleges in the face of massive opposition in the university, and despite opponents’ evidence that no savings would result from closure. In the absence of any other strong reasons, members of the university and of the public (including journalists, it would seem) concluded there was a connection in the administration’s view between (a) college closures and (b) the acquisition of new provincial money. It was thus in the administration’s “interest” to see the colleges relocated or sold, although the term “interest” might be variously understood.
 4. Trent in the end received significant funding under the SuperBuild program. Peter Robinson College was, of course, closed and Sadleir House sold. Sadleir was the main building of a cluster. The later fates of these buildings were various. Most were put up for sale in the summer of 2001 and sold in early 2002. The townhouses — the main student residence complex — were sold and then leased back. Sadleir was eventually acquired via student levy. A new college (Gzowski College) was built on campus, but most Peter Robinson College members found themselves eventually at Trill and Lady Eaton Colleges. Officials claimed Peter Robinson College would “migrate” to campus; those same officials now say the college was closed. There was heated debate in early 2001 whether to retire the name “Peter Robinson College.”
 5. Ontario Divisional Court, Superior Court of Justice, between Peter Kulchyski, Ian McLachlan and Andrew Wernick, applicants and Trent University, respondent: Court File No. 41/2000, “Applicants’ Factum.”
 6. Ontario Divisional Court, Superior Court of Justice, between Peter Kulchyski, Ian McLachlan and Andrew Wernick, applicants and Trent University, respondent: Court File No. 41/2000, “Applicants’ Factum,” p. 1.
 7. George Nader, “A Business Analysis of Trent’s Residence Operations: Revenue, Cost and Profit by College and by Campus Based on Audited Data for the 1999–2000 Budget Year,” photocopied document, Peter Robinson College, Nov. 22, 2000. For minutes of the meeting of the board at which the “business analysis” was discussed, see www.trentu.ca/secretariat/bogdec1-00.html.
 8. The text of the first of Nader’s two “open letters” to the board is contained in Appendix A. In addition to the “Business Analysis,” *op. cit.*, see Nader’s “The SuperBuild Plan and the Capital Development Strategy: An open letter to the Board of Governors,” photocopied document, Peter Robinson College, Sept. 8, 2000.
 9. The relevant collective agreement clause is 1.2.3, in the Collective Agreement between the Board of Governors on behalf of Trent University and the Trent University Faculty Association (Peterborough: Trent University, 1999).
 10. In a letter dated July 12, 1996, M. Fraser Wilson, then vice-president of administration and university services at Trent University, offered Nader the position of principal of Peter Robinson College for the period Jan. 1, 1997 to June 30, 2001. Nader accepted that offer.
 11. Letter, Graham Taylor/George Nader, both at Trent University, June 30, 2001.
 12. We were able to confirm the information was publicly available from Trent’s human resources department. We walked up to the front counter of the department in February 2005, asked about the matter, and were told the information was available.

Appendix A. Professor Nader's letter to the board (September 8, 2000)

An open letter to the Board of Governors, Trent University,

As head of Peter Robinson College, which has been slated for closure in the SuperBuild Plan and the Capital Development Strategy approved by the Board on 12 November 1999, I would like to bring to your attention the likelihood of serious financial consequences from the decision to relocate the downtown colleges to the Symons Campus.

The SuperBuild Plan, if fully implemented, will place Trent in financial jeopardy by **increasing our** financial indebtedness and by **reducing** our capacity to maintain current enrolment and revenue levels. Moreover, there is currently no budgetary crisis at the colleges: as a result of the completion of college restructuring, an increase in the college fee, and the growth in enrolment, the college budget will be balanced in 2000–01. Compared to the colleges, the SuperBuild Plan, itself, is now the more serious financial problem facing the university.

The attached analysis is restricted to the **financial** consequences of the proposed relocation of existing downtown functions; in other words, it addresses only the statutory responsibility and accountability of the Board for financial decisions and does not touch on matters of educational policy. Excluded from the analysis are: (1) some functions (such as college libraries) which might be redundant on the Symons Campus; (2) some academic space which is rented in the downtown by Cultural Studies but which would have to be provided at the Symons Campus; and, very importantly, (3) the substantial amount of additional space required by the Humanities and Native Studies and long recognized by the University. The report amplifies the conclusion stated above: the costs of relocation will far exceed the gains.

There are two possible outcomes of the SuperBuild Plan in its present form:

- If completed as planned, it will lead to the worst financial crisis in Trent's history.
- If completed only as far as funds allow, it will make us unable to maintain current levels of enrolment, especially in the humanities, and will thus equally, but indirectly, threaten our financial viability.

In terms of the SuperBuild Growth Fund there are two modifications to the Board's SuperBuild Plan which will solve (Option 1) or partially solve (Option 2) these difficulties while complying with the Fund's criteria, and I would ask the Board to consider them as soon as possible:

Option 1: Maintenance of the downtown colleges at least at their current levels.

This would permit the funds currently allocated in Build 2000 for the First Peoples House of Learning and Humanities Centre to be used for the substantial increase in space needed by both Native Studies and the Humanities rather than for the replacement of existing downtown college space. This option would (1) satisfy all SuperBuild criteria and objectives, (2) allow planned investment in the sciences to proceed, (3) augment rather than diminish space for Native Studies and the Humanities, and (4) avoid financial indebtedness arising from ineligible expenditures (the relocation of college and residential functions from the downtown colleges).

Option 2: Re-allocation of SuperBuild funds.

In order both to consolidate operations on the Symons Campus and to increase the number of student spaces by 1,080, as specified in the approved SuperBuild Plan, a significant proportion of the funds currently designated for the sciences will have to be re-allocated to the First Peoples House of Learning and Humanities Centre. This might achieve the required growth in our overall enrolment capacity but it would be less desirable than Option 1 since it would not only fail to meet the needs of the sciences but also result in substantial financial indebtedness arising from the relocation of college and residential functions.

I believe that by modifying Trent's SuperBuild Plan along the lines of Option 1 we will not only protect the university from financial risk but also achieve the primary goal of the Plan: increasing our capacity to provide additional student places for the double cohort and beyond by building on our strengths in both the sciences and the humanities. To this end, I ask you, as a Board member, to examine the attached report and to review the financial justification for including the closure of the downtown colleges in the SuperBuild Plan.

Yours sincerely,

George Nader

cc: President's Executive Group; Senate; Faculty Board; Site Development and Space Utilization Committee; Senate Budget Committee; Steering Committee, Build 2000; Build 2000 chairs: Humanities Facilities; First People's House of Learning; Science Facilities; College/Residence Life.

Appendix B. Vice-president Taylor's letter to Nader (September 21, 2000)

Dear George,

I have become increasingly concerned about your actions with regard to the controversy over the Capital Development project insofar as they relate to your role as Principal of Peter Robinson College. Up to this time, I have not taken any formal action, in part because I recognize that you have genuine and deeply-felt convictions on the subject of the relocation of Peter Robinson College, and because until recently it appeared to me that you were making an effort to differentiate between the expression of those views as an individual member of the Trent community and your responsibilities as an appointee of the Board of Governors as Principal of the College. But I now perceive that not only do you seem to be conflating those roles but you are making statements to the public media, purportedly in your role as Principal, that must be recognized as detrimental to the well-being of the university.

As I have stated to you before, I do not contest your right as a faculty member at Trent to express your views on these matters. At the same time, however, you hold an administrative appointment made by the Board of Governors of the university which you should recognize involves certain constraints on your public conduct in your capacity as Principal of the College as well as on the use you may make of the resources of the College.

It has come to my attention that in an external website set up by the "Friends of Trent Colleges, reference is made that "cheques [in support of this group] should be ... sent to trustee Professor George Nader, Peter Robinson College, Trent University, Peterborough, Ontario K9J 7B8." The "Friends of Trent Colleges" is an association set up, as I understand it, to raise funds on behalf of the legal action taken by several Trent faculty against the Board of Governors of Trent University, which was the subject of a judicial review earlier this week. You are of course aware that the Board of Governors endorsed the President's proposed Capital Development strategy last year, so that the decision which these faculty challenged reflects the authority of the Board under which you hold an administrative appointment at Principal of Peter Robinson College. You should also be aware now that the judicial review upheld the authority of the Board of Governors in this matter. In addition, you know that the action initiated by these three (now two) faculty members has been costly for the university and has been detrimental to the reputation of the university. As an individual, if you choose to support these actions, that is your business, but it is inappropriate for you to formally associate your position as Principal with this fund-raising activity and to offer the facilities of Peter Robinson College as the place to which contributions to this fund-raising can be addressed. If this activity is taking place now at or through Peter Robinson College, it must cease.

With regard to the "open letter" which you recently sent to the Board of Governors of Trent University (without, I should note, providing for direct copies to be sent to either President Bonnie Patterson or to me), I reiterate that you have the right to express your views as a member of the university community. But the preparation of this document does not constitute in any way a part of your duties as Principal of Peter Robinson College and it is inappropriate for you to present it to the Board as if it was prepared by you acting in your capacity as Principal. Furthermore, you used the resources of the College in the preparation and distribution of this document which is an inappropriate use of College facilities and resources. I am informed that in the distribution of this material, a confidential list of addresses of members of the Board of Governors was used in order to selectively distribute the document in advance of formally sending it to the Finance and Property Committee of the Board. This represents an improper use of confidential information which was provided to you in your capacity as Principal of the College and it must not be repeated.

In the material attached to the "open letter," you use source material prepared by the Physical Resources Department for the Capital Strategy proposal to the Board of Governors last Fall. Included in that source material which you cite is information relating to the market value of certain Trent properties. This material was prepared on a confidential basis for the review of the Board Audit and Finance Committee, and was sent to the Ontario government with the request that it remain confidential, a request that was honoured. I do not know how you acquired this information, but your inclusion of it in the attachment to your "open letter" which has now not only gone to the Board of Governors but many other people in the university and possibly to the public media, can potentially have a detrimental impact on the finances of Trent University. To use this material without seeking prior approval from the Board was not only inappropriate but disregarding of the well-being of the institution for which you work and in which you hold a position of administrative responsibility.

Last week you made a number of public statements to the media about your "open letter" which are not only inappropriate, in that you appear to have made them as if you were acting in your capacity as Principal of Peter Robinson College, but are irresponsible and potentially harmful to the well-being of Trent University, to say the least. Your prediction of "the worst financial crisis in Trent's history," based on a debatable set of hypotheses, was dutifully reported in the media as if it reflected the judgment of a "school official" acting under the direction of the university, which as I have noted is completely false. Statements such as "the cost of a single room in the new residence would exceed \$7,000", reported in the Peterborough Examiner (and I believe reiterated in a televised interview) are based on hypothetical calculations, and represent exaggerations which, however acceptable in the context of a senior common room debate, are quite likely to have a negative impact on Trent's efforts to attract and retain students. I am dismayed that you would express your views in such an irresponsible manner to the public

media and find it hard to believe that you can reconcile the notion that you are acting in the best interests of the university with such reckless and harmful statements.

I hope that you will reflect carefully on the points I am making in this letter. You should be aware that the university administration will now be proceeding with the implementation of the Capital Development program. You will be expected, in your capacity as Principal of Peter Robinson College, to be involved in a constructive and supportive manner in the implementation of that plan.

If you do not believe that you can act within the constraints that I have indicated are incumbent upon you as an academic administrator holding an appointment from the Board of Governors, and if you believe that you cannot act in a supportive way in the implementation of the Capital Development program, then you should consider whether it would be appropriate for you to continue as Principal of Peter Robinson College.

Sincerely,

Graham D. Taylor, Vice-President (Academic) & Provost

cc: B. Patterson, President, Trent University

Appendix C. President Patterson's letter to Nader (October 26, 2000)

Dear George,

Re: Open Letter to the Board of Governors

I am writing at the request of the Board concerning the "open letter" you sent to the Board and published widely in September of this year.

As you know, the Board asked its Finance and Property Committee to review your submission. The Committee, in turn, asked the administration for some assistance with the analysis.

On October 13, 2000, the Finance and Property Committee reviewed your document, an overview of the context within which the decision to adopt the Capital Development Strategy was taken, the original financial analysis that had informed this decision, the actual costs of operating the colleges, changes in the college budget since that time, the potential savings that are to be realized from the campus consolidation and other cost factors relevant to today and the future.

The Finance and Property committee is of the view that your "open letter" warrants no further analysis or discussion by the Board and has asked that this be communicated to you.

Yours truly,

Bonnie M. Patterson, President & Vice-Chancellor

cc: Gary Wolff, Chair, Board of Governors; Len Vernon, Chair, Property and Finance Committee, Board of Governors

Appendix D. President Patterson's second letter to Nader (October 26, 2000)

Dear George,

As instructed by the Board, you were notified of the outcome of their review of your "open letter" to them on the SuperBuild Plan and the Capital Development Strategy. No further analysis or discussion was deemed necessary by them.

As President, I have discussed your analysis with our vice presidents and we are deeply concerned that your intervention has not been fully constructive.

You are aware that the reference group on College Residence Life is expected to submit its preliminary recommendations to the steering committee very soon.

With the first report of the steering group in November, we will be in a position to develop the framework for the partnership sought for residential development informed by their input and recommendations. Clearly the responsible approach that will be taken by the Board and the Administration will be to assess the financial viability of the residential development after we have received and analysed responses to a 'Request for Investment' that will be let publicly. It is unhelpful and reckless to publicly promote a concern amongst our students, that substantive increases in residential costs (i.e., your statement that "the cost of a single room in the new residence would exceed \$7,000") when there is no sound basis for the judgement.

Over the next few weeks, I have asked Vice-President Taylor to meet with the fellows of Peter Robinson College to discuss immediate and longer-term issues including the College Head search for Peter Robinson College that will need to take place later this year. He has, I know, talked with you about his expectations of you in your role as head of the college this year as preparations are made to consolidate on the Symons Campus. I hope that for the sake of the College and the University as a whole, and in particular our students, you will fulfil your role as expected and allow progress to be made on transition issues in the months that remain of this academic year.

Yours truly,

Bonnie M. Patterson, President & Vice-Chancellor

cc: Graham Taylor

Appendix E. President Patterson's letter to James Turk (November 14, 2003)

Dear Dr. Turk,

I have received your letter of October 22, 2003 informing me that CAUT will create an ad hoc investigatory committee.

CAUT's proposed investigation of "the situation of Dr. George Nader and Trent University" and Dr. Nader's failure to be re-appointed to a managerial position would be neither appropriate nor useful. Accordingly, the University will not participate in this exercise.

Trent University celebrates and defends academic freedom. Our decision not to participate in CAUT's investigation in no way detracts from nor lessens the University's commitment to academic freedom.

Yours sincerely,

Bonnie M. Patterson, President & Vice-Chancellor

*cc: William Bruneau, Academic Freedom and Tenure Committee, CAUT; A. Wayne MacKay, President, Mount Allison University
Tim Quigley, Professor, University of Saskatchewan; Peter Dawson, President, Trent University Faculty Association*

Appendix F. Professor Quigley's letter to Patterson (December 30, 2004)

Dear President Patterson,

Re: CAUT Committee re: Academic Freedom & Senior Administrators

Along with Professor Emeritus William Bruneau, I am a member of an ad hoc committee appointed by the Canadian Association of University Teachers to investigate and report on the issue of the extent to which academic freedom accrues to senior administrators within universities. You may recall receiving a letter from Dr. James Turk, Executive Director of CAUT, dated October 22, 2003 informing you of our committee.

Professor Bruneau and I are mindful of your November 14, 2003 reply in which you declined an invitation for Trent University to participate in our investigation. As I understand it, your concern was because the investigation and report related to the issue of the failure to re-appoint Dr. George Nader as a Principal. However, we are much less concerned with that particular event than the larger question of the extent to which academic freedom protection is available to senior administrators.

To that end, Professor Bruneau and I will be travelling to Peterborough on February 8 and 9, 2005 to meet with various individuals to obtain their input about this issue. We are wondering whether you might reconsider your position and agree to meet with us during our time there. If you do not wish to meet with us personally, an alternative might be to meet with the Vice-President Academic or perhaps Associate Vice-President Academic. I would appreciate it if you could provide your response in time for us to make the necessary arrangements.

Thank you for your consideration of our request.

Yours truly

Tim Quigley, Professor of Law

cc: Professor William Bruneau

Appendix G. President Patterson's reply to Quigley (February 2, 2005)

Dear Professor Quigley,

Thank you for your invitation to meet with you and Professor Bruneau when you are in Peterborough on February 8th and 9th to discuss academic freedom as it pertains to senior university administrators.

Unfortunately, neither Vice-President Susan Apostle-Clark or myself are available on those dates. Should you wish to contact Professor Clark to obtain an alternative date and time for a discussion, her office can be reached via phone at 705-748-1011, ext. 1243 or via e-mail at susanclark@trentu.ca.

Yours sincerely,

Bonnie M. Patterson, President & Vice-Chancellor

cc: Prof. Susan Apostle-Clark, Vice-President, Academic

Appendix H. Duties of a residential college head at Trent (December 1995)

The appointment will be for a term of up to five years and will be a .7 [FTE] administrative / .3 [FTE] academic position.

As the leader of the College community, the College Head is expected to maintain a high profile within the College and to represent the College within the University as a whole.

The College Head reports to the Vice-President, Administration and University Services, and has the following responsibilities:

- a) ensures the orderly operation of the College in accordance with University and College policies and procedures; plans and implements programs and services for resident and nonresident students, as well as programs and events (e.g. visiting speakers) that foster the academic life of the College as a whole, both students and fellows;
- b) acts as an advocate or mediator on behalf of members of the College in various circumstances, including dispute resolution and intervention in emergency situations;
- c) ensures that liquor service within the College, including the operation of the student pub, adheres to University policies and procedures and the requirements of the liquor licence act;
- d) appoints and supervises College staff;
- e) participates in the annual budget-setting process for the College Ancillary and Dining Hall Services budgets; manages the individual College budget within the limits set by the annual budget process;
- f) in conjunction with the Department of Physical Resources, develops long-range plans for the maintenance of College buildings and equipment; oversees the maintenance of the fabric of College buildings; in close co-operation with the Vice-President, Administration and University Services, assigns space within the College;
- g) appoints College dons and the College Senior Tutor and monitors their activities in providing services to students;
- h) maintains close liaison with the student services areas of the University (Counselling, Special Needs Office, Health Services, Financial Aid) in order to act as advocate and resource for student members of the College;
- i) sits ex officio on the Committee on Colleges and, as required, on Dining Hall Services Committee and Student Health Services Committee;
- j) sits on various University committees requiring the presence of a College Head (e.g., Human Rights Committee, Ashley Fellowship Committee);
- k) as requested by the President or Vice-President, Administration and University Services, participates in and takes a leadership role on various ad hoc committees, task forces, working groups or University-wide projects.

Appendix I. Procedures for selection of a college head at Trent

Approved by the Senate of Trent University 1996 September 17

1. A committee of eight people shall be chosen to advise and assist the President in the appointment of each college head. Should any member of the search committee decide to stand as a candidate for the position of college head, she/he must resign from the search committee immediately.

2. The committee to be made up as follows:

- 2 fellows of the college, to be elected by the College Council of Fellows;
- 1 staff member of the college, to be selected by the staff of the college;
- 2 students of the college, to be elected by the student body of the college;
- 2 other members, one of whom will be a student from another college, and one to be a fellow from another college, to be

elected by the Senate;

- the Vice-President responsible for colleges, ex-officio, non-voting;
and add
- 1 graduate student and 1 additional fellow of the college in the case of Peter Robinson College search committees.

The committee will receive nominations and applications. In connection with this, the committee may take whatever steps it thinks fit to make widely known the fact that an appointment is to be made. In particular, it is suggested that a letter should go to every member of the college concerned — faculty, students *and* staff — informing them of the opening and inviting both their suggestions as to possible candidates and any comments they might wish to make as to the kind of qualities they think the committee and the President should have in mind in considering candidates for the position.

The committee will, in consultation with the President, review all nominations and applications which it has received and prepare a short list.

Those on the short list will be invited to meet with the committee and with the President. Candidates will have an opportunity to meet fellows and students of the college.

Following these meetings, the committee will make its recommendation or recommendations to the President no later than the end of the reading week in the second term, if possible.

Appendix J. Professor Nader's notes of a meeting at Trent (June 26, 2001)

Meeting with President Patterson & Vice-President Taylor re. college head search committee's recommendation.

The meeting was begun by V-P Taylor who immediately asked the President, to whom the search committee's recommendation was made, to respond to the recommendation.

The President said that, although she had some procedural concerns about the search committee, her decision was based solely on my performance as Master of Peter Robinson College over the preceding two years.

She accepted that, from the point of view of the Peter Robinson College community, I was the preferred candidate. However, my appointment was unacceptable to her and she categorically rejected the recommendation of the Search Committee. She explained at some length the reasons for her decision and her plan for appointing a college head.

First, the President stated that my opposition, in terms of both my reports and my public statements, to the Board's Capital Development Plan during the preceding two years was unacceptable. She argued that, **as college head**, I was a "Board" employee and, as such, I was not permitted to oppose Board policies. The President did not refer to, nor claim that there were, any instances where I might have obstructed, or tried to obstruct, the implementation of any Board policy; instead, my "unacceptable" opposition was described entirely in terms of my public critique of the Capital Development Plan. In effect, I was told that, as college head, I had to support Board policies.

Second, my role as a trustee (one of three trustees) of a trust fund, which had been established to finance a legal action against the Board, was unacceptable because I was a "Board" employee.

Third, the President stated that she believed that there were divisions of opinion among both fellows and students within the college on the issue of relocating the college to the Symons Campus. She indicated that she felt compelled to reject the recommendation "for the sake of the students."

Fourth, the President stated that she had discussed the recommendation with the Chair of the Board and they both agreed that my appointment would be inappropriate.

Fifth, the President indicated that she would proceed to appoint a "manager" for the transition period (i.e., until the completion of a replacement college on the Symons Campus). She indicated that they had already approached a couple of people and hoped to make an announcement in about a week.

Finally, I was asked if I had any questions. Since there was no sign whatsoever of any willingness to contemplate my appointment, I declined both to ask any questions and to rebut the content of the President's statement. Instead, I asked for a letter containing the President's decision and outlining the reasons for the decision by Thursday 24 June 2001 (the last working day of my term as master of the college) and they both agreed to do so.

George Nader

25 July 2001 (from notes written on 26 June 2001 immediately following the meeting)

Appendix K. Former vice-president Taylor's letter to Stefan Bilaniuk (TUFA) & to the CAUT ad hoc committee (February 8, 2005)

Dear Stefan,

I would like to ask you to pass this letter on to the CAUT committee that is at Trent University this week. I do not of course ask you to endorse anything in this letter, but I do want you to be aware of the concerns that I have about this committee's procedures and the scope of its investigation. I appreciate your efforts to help facilitate an opportunity for me to meet with the committee. Upon reflection, however, I have decided not to meet with the committee for the reasons that I will discuss in this letter.

I understand that there was an e-mail message sent to me by Prof. Tim Quigley of the CAUT committee on January 25 with regard to their visit to the Trent campus. I did not, however, see this message until the end of last week after I had contacted you. I would like to point out that I never received any letter or other communication from CAUT inviting me to participate in this investigation nor have I ever received anything indicating the purpose of the investigation or its scope or procedures. It was only yesterday, February 7, 2005 that I saw a letter sent by Mr. Jim Turk, the Executive Director of CAUT, to President Bonnie Patterson dated October 22, 2003 that described the purpose of this investigation which appeared to relate to the matter of Prof. George Nader and the position of Principal of Peter Robinson College. I was informed this morning, however, by the President's office that there was a subsequent letter from Prof. Quigley to President Patterson dated January 19, 2005 indicating that the purpose of the investigation was not to focus on the matter of Prof. Nader but rather to investigate the question of "academic freedom and senior administration at Trent University." Since I never directly received any explanation of the objectives of this investigation, I am unable to ascertain the intent or scope of this investigation or what purpose would be served by my participation. I note in that regard that the letter from Mr. Turk of CAUT to President Patterson on Oct. 22, 2003 states that "Persons interviewed by the committee will be provided with a statement of matters under investigation in advance of the interview." I have received no such statement.

It appears that President Patterson has declined to participate in this investigation. Since I am no longer part of the Trent administration, anything I might have to say on these matters (whatever they are) would reflect my own views as a member of the Trent faculty, and could not be construed to represent the position of the university administration. With regard to the matter of Prof. Nader, any views that I expressed while serving in the administration of Trent University were made in letters to Prof. Nader in September 2000 and August 2001. It would not be appropriate for me to release the contents of those letters to this committee without the agreement of Prof. Nader. If Prof. Nader chooses to share the content of those letters with the committee, I have nothing to add to the observations made in those documents on that particular matter.

I do wish to express my concerns with regard to the ambiguous nature of this investigation and the procedures that it seems to be following. In the e-mail message from Prof. Quigley which I saw last week, it appears that the committee is meeting with a large number of individuals, most of whom, with the exception of Prof. Nader himself and possibly Mr. David Tough, have no direct knowledge of the circumstances involving Prof. Nader as they relate to the position of Principal of Peter Robinson College. At least one of the individuals to be interviewed is a former employee of Trent who was not a faculty member nor a member of senior academic administration at Trent, and it is unclear to me how that person's input would relate to the subject of academic freedom and senior administration at Trent University. The process appears to me to be a "fishing expedition" to see what controversies might be dragged up rather than a serious effort to address issues that confront academic administrators in trying to work through complex and sometimes irreconcilable problems with faculty.

The committee may of course interview anyone they wish, but I take note that in the letter from Mr. Turk to President Patterson of October 22, 2003 it is stated that "to ensure fairness to persons potentially affected in a material adverse way by findings in the committee's report, the executive director [of CAUT] will send a fair summary of the information upon which such findings could be based, allowing a reasonable time for them to respond." Even though I have decided not to meet with the committee, I believe I am entitled to be advised of any statements made about me personally in the course of this investigation and to have the opportunity to respond.

Once again, I appreciate your efforts to ensure that I was afforded an opportunity to participate in this process, and I trust that you will present this letter to the committee on my behalf.

Sincerely,

Graham D. Taylor, Professor, History Department

Appendix L. Professor Taylor's reply to letter from CAUT (March 28, 2006)*

Dear Mr. Turk,

This is in response to your letter of March 23 with regard to the investigation of George Nader's reappointment as Principal of Peter Robinson College (which is — or was — part of Trent University, not an independent entity like the University of King's College at Dalhousie, for example; the word "college" does not appear in the Trent Act).

Despite the references to "fairness" in the CAUT document which you enclosed with your letter, I do not find the process described to be particularly open or fair. I am invited to respond to the "proposed finding," but I have no way of knowing what reasons the two-person ad hoc committee may have used in reaching its conclusion, nor do I know how the letters attributed to me may have been interpreted, or misinterpreted, by the committee in its deliberations. If the process is to be truly fair, I believe I ought to be allowed to see this report and make a response to the report before it is published; but I do not see any provision for that in the description of the process.

I will, however, make the following observations which reiterate points that I made to Professor Nader before and after his term as Principal ended. Professor Nader did indeed oppose the decision of the Board of Governors of Trent University with regard to the closing of Peter Robinson College, but his opposition went beyond "public criticism" of the policy. As the administrator responsible for Peter Robinson College he used his position to obstruct and delay the implementation of that decision, and provided assistance to those who were seeking to prevent the implementation of that decision. I have no doubt that Professor Nader was sincerely committed to the preservation of Peter Robinson College and regarded its closure as a mistake; but it was a decision the Board of Governors made in 1999 and reaffirmed in 2001, and the Board's authority in this area has been legally confirmed. The position of Principal of a College at Trent is not an elected office. It is an appointment made by the Board of Governors of Trent University on the recommendation of the President of the university.

At a meeting with me and Mr. David Mahy, Associate Vice President for Human Resources at Trent University in September 2000, Professor Nader made the statement that he, Professor Nader, as an academic holding an administrative position, could do things for which Mr. Mahy, if he were to do the same things, could be fired by the Board. I told Professor Nader at that time that I did not agree that academic administrators have a privileged position that enables them to oppose, in word and in deed, decisions of the Board without restraint. If he could not in good conscience accept a Board decision and as an administrator carry it out, his proper course should be to resign from the administrative position. I continue to hold that view. If the ad hoc committee chooses to conclude that academics holding administrative positions (which take them outside the faculty bargaining unit, as was the case with Professor Nader) have these special privileges which enable them, without consequence, to criticize and subvert Board policies with which they disagree, I trust the committee will make its position clear on that point so that everyone in the university community is aware of this perspective.

Professor Nader was never denied his right to express his views, and indeed he exercised that right continually throughout his term as Principal of Peter Robinson College. When the recommendation for his reappointment was not accepted, Professor Nader did not suffer any loss of employment, rank, tenure, related privileges or denial of the opportunity to continue to criticize the decisions of the Board. Your ad hoc committee may choose to ignore or deny the point that Professor Nader's opposition to the Board went beyond the exercise of freedom of speech and affected his role as an administrator at Trent University. But I doubt that the Board of Governors at Trent University will accept the view that it is obligated to reappoint a person as an administrator who has demonstrated his opposition to and intent to undermine a Board decision and its implementation on a continuing basis throughout his previous administrative term. Nor do I believe that any university Board of Governors would accept such an absurd restriction.

Sincerely,

Graham D. Taylor, Professor, History Department

cc: Prof. B.M. Patterson, President, Trent University; Mr. David Mahy, Associate Vice-President, Human Resources, Trent University

* The year-date of the letter shows as 2005, but was evidently written and sent in 2006. We here correct this typographical error.

Appendix M. President Patterson's reply on reading the report (April 24, 2006)

Dear Dr. Turk,

I am replying to your letter of March 23, 2006 with respect to CAUT's Ad Hoc Investigatory Committee. As I indicated in my letter of November 12, 2003, Trent considers such action to be inappropriate and in no way useful. Consequently, the university has no comment on CAUT's findings or report.

Yours sincerely,

Bonnie M. Patterson, President & Vice-Chancellor

cc: Ken Field, Acting President, Trent University Faculty Association