
Academic Freedom and Tenure Committee

Mount Allison University

Autumn 1970



Canadian Association of University Teachers
Association canadienne des professeures et professeurs d'université

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Mount Allison University¹

Mrs. Catherine Daniel was appointed to the Mount Allison Conservatory as a voice teacher in 1956. The Conservatory became the Department of Music of the University in 1962 and its teachers were given university ranks. Mrs. Daniel is considered to have tenure as an Instructor.

On 17 April 1969, Mrs. Daniel received a letter from Dr. Poole, Dean of Arts and Science, informing her that he had received a number of serious complaints about her teaching, that he would discuss these with the President, and that he would soon arrange a meeting with her.

The President of Mount Allison, Dr. Laurence Cragg, met with Dr. Elmer Tory, President of the Faculty Association, to discuss appropriate procedures and to consider appropriate preliminary steps. The University had not previously established formal procedures for dealing with cases of dismissal.

On 29 April, Mrs. Daniel met with President Cragg, Dean Poole, Dr. Proctor the Head of the Department of Music, Dr. Tory as her advisor, and Professor Greenslade as a disinterested observer. Dr. Cragg asked for Mrs. Daniel's resignation effective 30 June 1969; alternatively, on the basis of the reports by Dean Poole and Dr. Proctor on her unsatisfactory work he would recommend to the Board of Regents that she be dismissed on the grounds of incompetence and neglect of duty.² She was informed that she would receive a year's severance pay plus the University's contribution to her pension for one year following termination of her employment. It was agreed that Mrs. Daniel would meet informally with Dean Poole, Dr. Proctor,

Dr. Tory and Professor Greenslade to discuss the evidence in the statements which had been made.

The second meeting was delayed until 5 May, by which time Mrs. Daniel had submitted the marks for her students. At this meeting Dean Poole and Dr. Proctor reviewed their grounds for charging her with incompetence and neglect of duty and she was given a copy of the complaints made to the Dean. Dean Poole had been visited by 11 of Mrs. Daniel's 13 voice students, in groups of three and four, to complain of her teaching.³ He had made notes of their statements and had the students sign his record. (Annual evaluations of Mrs. Daniel by the Head of the Music Department resulted in comparatively small salary increases for 1966-67 and 1967-68, and no merit increase for 1968-69.)

At the conclusion of the meeting, Mrs. Daniel was asked to inform the President in writing whether or not she would resign or request formal dismissal hearings.

Meanwhile, the Faculty Association Executive met on 1 May and unanimously approved two motions:

- i. "It is essential that the members of the Arbitration Committee should be drawn from outside the University";
- ii. "All parties should accept the findings of such a Committee."

The Faculty Association Executive met again the following day to discuss President Cragg's proposed *Procedures in regard to Dismissal of a Tenured*

1. This report was provisionally approved by the A.F.&T. Committee in March 1970, subject to comments from President Cragg and the Mount Allison Faculty Association Executive. The report was sent to both on 1 April 1970 and comments received from Dr. Cragg on 6 and 7 May, and from the Faculty Association on about 28 April. Specific comments and corrections have been incorporated into the revised text and notes. A general commentary from Dr. Cragg and from Dr. Tory are attached as appendices.

2. The letter from Dr. Cragg to Mrs. Daniel of 8 May 1969 states, "that if you decided not to resign we would recommend that appropriate action be taken to terminate your appointment

immediately; (and it was agreed that 'appropriate action' would include if you requested it, a fair hearing in accordance with accepted practice)."

3. This statement is based on information received by the C.A.U.T. investigating committee on 17 February at its afternoon discussion with the President, Vice-President and Dean, and the Head of the Music Department. In his commentary of 4 May on the C.A.U.T. Report, Dr. Cragg writes: "Dean Poole had been visited by 27 of Mrs. Daniel's students (including 11 of the 13 voice majors and minors) in groups varying in size from one to six."

Faculty Member for Cause. Detailed comments were sent to the President arguing that:

- i. the Hearing Committee should be drawn from faculty members outside of Mount Allison who are acceptable to all parties in the dispute (so that the Committee would be impartial and be seen to be impartial);
- ii. that the Committee should be composed of fewer than seven, preferably three, so that unanimity might be achieved;
- iii. the Committee's recommendation be accepted beforehand as binding on all parties; and
- iv. that the written statement of the specific grounds for dismissal determine what evidence was pertinent.

The comments emphasized that the Faculty Association would not automatically defend any faculty member, but was concerned to ensure that proper procedures be established to ensure a fair hearing and objective judgment and that "dissension within the community should be minimized during and after any dispute so that the academic functions of the University would not be impaired."

President Cragg wrote in response to the Faculty Association Executive's comments. He expressed disappointment that the Executive had made firm statements of principle rather than continuing informal discussion. The principles of composing the Hearing Committee with outside people and of binding recommendations were rejected because to accept them would be to "declare that our faculty is incompetent to advise and our board incompetent to decide who does or does not meet the standards that

this University sets for itself." He expressed confidence that a hearing committee could be formed from tenured faculty members of the University which would make "objective, fair, and informed judgments" which would be sounder than those which could be made by persons from outside the University.

In conversation with Dr. Tory, President Cragg emphasized that the Board could not delegate its authority to dismiss. Should the Hearing Committee's recommendation be rejected by the Board, then an appeal to the C.A.U.T. could be made and, depending upon the results of its investigation, an arbitration committee established. The Board, since it had "the duty to be fair and just and to seem to be so would accept the recommendation unless there were compelling reasons not to do so."⁴

A special meeting of the Faculty Association was called on 8 May, Motions were unanimously passed:

- i. approving the Executive's "actions and tendencies";
- ii. insisting that recommendations of the Hearing Committee be morally binding on all parties;
- iii. urging that the composition of the tribunal be acceptable to all parties; and
- iv. urging that "attempts be made to achieve a tribunal in which all members are acceptable to all parties."

The same day, 8 May, President Cragg informed the Faculty Council, at a regular meeting, that a dismissal action was in progress, that in the absence of a set procedure for dismissal he desired to work with the Faculty Association to establish a mutually satisfactory

4. Dr. Cragg in his comments on the C.A.U.T. Report, states that he does not agree with this summary, and prefers the following: "In conversation with Dr. Tory, President Cragg emphasized that the Board could not delegate its authority to dismiss. He was convinced, however, that the Board would accept the recommendations of the Hearing Committee — as would the President — (unless there were very compelling reasons not to do so). In the very unlikely event that a Hearing Committee's recommendations were rejected, an appeal could be made to

the C.A.U.T. and, depending on the results of its investigation, it could then seek binding arbitration." The Executive of the Mount Allison Faculty Association comments: "On several occasions, President Cragg has mentioned the possibility of an appeal to CA.U.T. should the Hearing Committee's recommendation be rejected by the Board. No firm procedure was ever proposed."

procedure which would ensure a fair hearing and "in general be in line with the practice followed by other universities".

Dean Poole wrote Mrs. Daniel on 7 May reminding her of her agreement to inform the President soon of her intention. Mrs. Daniel telephoned President Cragg on 8 May and informed him that she would not resign but desired a hearing so that she could defend herself against the charges. President Cragg replied by letter in which he pointed out that "no formal charges in detail have yet been made." He reviewed the substance of the two informal meetings, and promised to inform her of the formal procedure for a dismissal hearing when he received a written statement of her decision not to resign; if she chose the option of having a formal hearing she would be given a formal statement of the basis for dismissal action.

Mrs. Daniel wrote to President Cragg on 12 May acknowledging his request for her decision regarding resignation. She requested information about the dismissal procedure and a statement of the charges against her, and she referred to the published C.A.U.T. procedures as being acceptable to her.

The Faculty Association Executive met on 13 May to consider its position in preparation for the Senate meeting on dismissal procedures. It was agreed to continue to press for (i) a Hearing Committee acceptable to all parties to the dispute, and (ii) morally binding recommendations.

The Senate met on 14 May with Dr. Tory in attendance as a representative of the Faculty Association. At that time the Mount Allison Senate consisted of the President, the Vice-President, the Dean, all Department Heads (20), several other ex officio members, six members of the Board and six elected faculty members, as well as two student observers. The President's draft procedure was

presented with his assurance that it was to apply specifically to this case and not to establish procedures for future application. President Cragg reported that he had considered the procedures recommended by the C.A.U.T. Policy Statement, the A.A.U.P. Policy Statement, and also those set forth in the Faculty Handbooks of eight Canadian universities. Most of the clauses of the President's draft procedures were adopted without much change. The President agreed that he would not make a formal recommendation to the Board contrary to that of the Hearing Committee but that he reserved the right to join in discussion and to express his opinions as a member of the Executive of the Board. The clause in the original draft concerning composition of the Hearing Committee was revised to specify:

- a) a membership of five faculty members with tenure, at least four of whom must be from Mount Allison; and
- b) procedures for forming the committee if mutual agreement could not be reached on five persons.

The procedure was adopted by Senate "for this case" with the minutes recording Dr. Tory's objection to the procedure.⁵

Subsequently, on 10 June 1969, the Executive Committee of the Board of Regents unanimously adopted the ad hoc procedures.

President Cragg sent a copy of the revised dismissal procedures to Mrs. Daniel on 16 May. He noted that he understood her letter of 12 May to mean that she was withholding her decision to resign until the dismissal procedure was established, and that she would receive a written statement of charges only after she had made a request for a formal hearing.

5. Both the proposed and revised procedures contain the following clause: "Should the Executive of the Board not accept the recommendation of the Hearing Committee, it shall refer the matter back to the Committee for reconsideration, with a statement of its objections. The Hearing Committee may, if it wishes, reconsider its

recommendations in the light of these objections and reframe its recommendations. Having considered these recommendations, the Executive of the Board will make its decision."

Mrs. Daniel replied on 22 May that the procedure for dismissal did not conform to the requirements of the Faculty Association, nor to those of the C.A.U.T., and that she could not give a definite answer until Dr. Tory had discussed the matter with the C.A.U.T. President Cragg replied (23 May) that her reasons for delay were unacceptable, that her choice was to resign or to commence dismissal procedures according to the procedures adopted.

Dr. Tory wrote on 27 May to President Cragg reaffirming his objections to the dismissal procedure and proposing that a more generous financial settlement might be negotiated.

Mrs. Daniel (28 May) replied to the President that she had a third alternative: refusal to "participate in a procedure which is so heavily biased toward the administration." President Cragg's reply of 11 June stated that a failure on her part to provide a written decision by Friday, 13 June, would be taken as a confirmation of her oral statement that she would not resign. He would then recommend dismissal and proceed with formal action - either a hearing according to the adopted procedures if she so requested, or direct conveyance of his recommendation to the Board.

Mrs. Daniel's reply on 12 June (a) confirmed her decision not to resign; (b) agreed that a fair hearing was essential but on the advice of the Faculty Association and of C.A.U.T. could not accept the proposed procedure as a fair one; (c) enclosed a proposal for a lump-sum settlement, without prejudice, for \$36,718 (on which there was no consultation with C.A.U.T.); and (d) announced that she was leaving for Indiana to continue her studies for an M.M. degree.

The Faculty Association Executive met on 13 June and agreed to present to the Chairman of the Executive of the Board of Regents a statement of the Association's position that the decision of the Hearing Committee be regarded as morally binding. The statement referred to the likelihood that a minority report would be presented to the Board and could be accepted; further that the Hearing Committee "having the power to hear all relevant evidence and interview all

interested persons, is the only body able to reach just decisions. Therefore, its decision should be binding on both parties to the dispute."

On 19 June, President Cragg reported at a meeting of the Senate that the Executive Committee of the Board of Regents had decided that the Hearing Committee should be internal and that its recommendation should not be binding on the Board.

Also on 19 June, President Cragg wrote to Mrs. Daniel acknowledging her confirmation of intention not to resign, and asking her to reply within seven days whether or not she desired a formal hearing; failing a reply from her it would be assumed that a formal hearing was not requested and he would make his recommendation for dismissal to the Board.

Mrs. Daniel replied, 25 June, that she requested a formal hearing which met the minimal criteria outlined in the C.A.U.T. Policy Statement and which would assure her of a greater degree of equity than the ad hoc Mount Allison procedures.

President Cragg replied to Mrs. Daniel on 5 July indicating that he interpreted her letter as a rejection of his offer of a hearing and that he would make his recommendation to the Board. Then on 13 August he wrote to Mrs. Daniel to inform her that the Executive Committee of the Board of Regents had decided

- a) to terminate her appointment effective 1 July, 1969, and
- b) pay her a sum equivalent to one year's salary plus the University's contribution to her pension fund.

Before receiving the President's notice of dismissal, on 13 August, Mrs. Daniel wrote him to ask for a year's leave of absence to permit her to continue studies at Indiana. She also reiterated her willingness to accept a formal hearing consistent with the C.A.U.T. requirements.

The Faculty Association, at its October meeting passed motions:

- a) reaffirming its insistence on morally binding recommendations of a mutually acceptable hearing committee; and
- b) directing its Executive to attempt to obtain an acceptable formal hearing for Mrs. Daniel.

Mrs. Daniel first appealed to the Executive Secretary of the C.A.U.T. in May 1969. Since then there has been considerable correspondence with President Cragg. The central issue concerns binding arbitration. President Cragg insists that the Board should retain the right to reject the Hearing Committee recommendation "in order to protect the University against the possibility of an unwise or unfair finding." He also regards the C.A.U.T. proposed procedures as "resorting immediately to arbitration" and thus a "threat to university autonomy and a public assertion that individual universities are incapable of deciding 'who shall teach'." President Cragg stated that to accept that a Hearing Committee's decision must be binding would imply that the "administrative officers are not to be trusted, that the Board of Regents will not be objective, that the findings of a hearing conducted with full and proper safeguards by an independent Hearing Committee will not carry tremendous weight with the Board of Regents."

Both the Faculty Association and the A.F. & T. Committee of the C.A.U.T. have taken the position that Mrs. Daniel did not refuse to accept a formal hearing, but rather had repeatedly requested a hearing which assured a judgment based upon a fair hearing.

Following lengthy correspondence with Dr. Cragg that resulted in no change in attitude or resolution of the Daniel grievance, the A.F. & T. Committee established a two-man committee of enquiry at its meetings on 24-25 January. The investigating committee visited Mount Allison on 17 February. The morning was spent in discussion with the Executive of the Faculty Association and the afternoon in discussion with President Cragg; Dr. Poole, Vice-President (Academic) and Dean; Dr. Proctor, Head of

the Music Department; and Dr. Crawford, Vice-President until the current academic year. The Faculty Association Executive reviewed the events of the Daniel case and cited a number of examples to illustrate the view that decisions about appointments usually did not involve faculty members other than Department Heads and senior administrators. In the discussion with the senior administrators the committee argued for a binding arbitration procedure and in response was given substantially the arguments presented above.

In summary, Mrs. Daniel was informed that her work was unsatisfactory, that if she did not resign, formal steps would be taken to dismiss her. She chose not to resign, whereupon the President drafted an ad hoc procedure for dismissal hearings, subsequently revised by the University Senate. The Mount Allison Faculty Association raised a number of objections to the proposed procedure: it did not provide for a Hearing Committee decision binding on all parties, it did not provide for a committee composed of faculty members from outside Mount Allison University, it permitted the President to serve both as one who decides that there are grounds for recommending dismissal and as a member of the Committee of the Board which decides whether to accept the Hearing Committee's recommendation.⁶ President Cragg took the position that the senior administrators and Board could be relied upon to be impartial and objective and that a Hearing Committee established according to the adopted procedures could be relied upon to be impartial. Mrs. Daniel protested that she wanted a formal hearing which satisfied the requirements advocated in the C.A.U.T. Policy Statement, but would not submit to a hearing according to the Mount Allison ad hoc procedure. President Cragg made his recommendation to the Board's Executive Committee and Mrs. Daniel was dismissed without a hearing. The current position of the Faculty Association is that Mrs. Daniel deserves a hearing by a committee acceptable to all parties in the dispute, and whose decision will be morally binding on all parties.

6. In an effort to reach agreement with the President, the Executive of the Faculty Association decided not to push for an outside committee, as they had originally requested, but to ask the Association to endorse its stand on an impartial

committee whose decision would be morally binding on all parties.

The C.A.U.T. takes the view that only the university president, as chief executive officer, should have the power to institute dismissal proceedings against a faculty member. Formal authority for such a critical measure ought not to reside at any other level. At the same time, the C.A.U.T. is committed to the principle of adjudication by an independent tribunal as the fairest of dismissal proceedings. This commitment implies no lack of trust in the ability or integrity of university presidents or other executive officers. It merely implies that there is an adjudicative as well as an executive decision to be made in determining that cause for dismissal exists and that these decisions ought not to be made by the same authority.

It is, of course, true that the division of executive and adjudicative functions provides against the possibility of an incompetent, a corrupt or a malicious administrator. But more important, it recognizes that a capable, benign and scrupulous executive may, in a particular case, be unable by reason of personal feelings to entertain any view other than his own which may, in the event, be mistaken. The probability of either of these circumstances arising may not be high, but the division of functions must be established by procedures of general application so that one need never be unduly concerned with the question of motive in a particular case. If the procedure is not uniformly resorted to, the position of any individual or organization seeking to invoke it in a particular case is completely invidious.

The reason the C.A.U.T. specifically objects to the use of an advisory hearing committee is that it fails to make this distinction between functions which we believe to be the only guarantee of academic freedom. When a university president institutes dismissal proceedings in good faith against a faculty member, it is because he has concluded that there are grounds for dismissal and that dismissal would be in the best interests of the university. He may be right but, by definition, he is no longer impartial. The cause may not be personal, but it is nevertheless his because of his belief in it and commitment to it. Consequently, if the final decision on dismissal rests with the president, or a body of which he is a member, he is a judge in his own cause.

The C.A.U.T. does not believe the wise and honourable chief executive would want the right as judge to pass on the validity of his own decision as chief executive. If the hearing committee recommended against dismissal and the president, or the body of which he was a member reversed that decision, either before or after referral for reconsideration, justice would not clearly be seen to be done.

There is more than one way to accomplish an independent adjudication. The C.A.U.T. believes binding arbitration is the best way.

May 1970

A. Berland
D. Hart

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Appendix I

Comments by Dr. E. M. Tory

(Para. 20) My letter of 27 May led to two informal discussions with President Cragg. At the first of these (5 June), President Cragg proposed a \$5,000 ex gratia payment (in addition to the year's salary already approved). On 6 June, I formulated a plan which combined a guaranteed annual income with an incentive for work. Dr. Cragg proposed a similar plan involving smaller amounts and stated that he would ask the Executive of the Board to approve it if Mrs. Daniel agreed to resign.

Mrs. Daniel discussed the offer with several advisors. They agreed that there was now a substantial incentive to resign if she believed that the charges of incompetence and neglect of duty were justified. She was firmly convinced that they were not and, with professional assistance, she formulated a proposal for a lump-sum settlement (last full paragraph) which more accurately reflected the real cost of giving up her position.

Though the Administration seeks to give the impression that our insistence [*sic*] on binding arbitration is purely a formality, there is, in my opinion, a good chance that Mrs. Daniel would win her case. In a recent dispute involving refusal of tenure to a man generally considered to be an outstanding teacher and poet, the Administration listed reasons which elicited the scorn of virtually the entire academic community.

I submit these comments separately because most members of the Executive of the Faculty Association did not have access to the "evidence" nor were they involved in talks concerning an ex gratia payment.

M. Tory, President
Mount Allison Faculty Association

Appendix 2

Comments by Dr. L. Cragg

We note with appreciation that the report makes it clear that throughout the University Community - and this includes the President and his senior administrative colleagues, the Faculty Association, the Senate, and the Executive Committee of the Board of Regents - there has been a genuine desire to ensure that justice be done and to develop and use fair and proper procedures. The report makes clear that there was achieved a very considerable degree of agreement on procedures, and that when it became evident that there was disagreement on the question of arbitration the President took the matter to the senior policy-making bodies of the University; that in the Senate, revisions of the procedures were adopted but that after full debate the Senate voted against binding arbitration (as proposed by the Faculty Association) and for the hearing committee principle, and approved the revised Procedure "for this case"; and that the Executive Committee of the Board of Regents adopted the revised ad hoc Procedure. The Report makes clear too that the Procedure was followed scrupulously throughout; that Mrs. Daniel was offered a hearing in accordance with the adopted Procedure and that she declined it; and that, when dismissal was decided upon by the Executive Committee, a generous severance provision was made.

The question at issue is not whether the grounds for dismissal were adequate. (The Committee of Enquiry did not even wish to examine these). It is not whether a fair, impartial hearing was offered. It is whether the procedure decided upon by the University is acceptable - or more precisely, whether a "hearing Committee" procedure is acceptable. Evidently it is not acceptable to the C.A.U.T. and the Mount Allison Faculty Association. But it is in accord with the procedures recommended by the C.A.U.T.'s sister organizations in the United States and Great Britain, namely, the American Association of University Professors and the Association of University Teachers. It is acceptable to the Association of Universities and Colleges of Canada. It is acceptable to many of the universities, and their Faculty Associations, in this country. Clearly, then, our Procedure is in accord with widely accepted practice.

We find the C.A.U.T.'s arguments for its preference for binding arbitration unconvincing. They appear to be based on a misconception of the roles of the President and the Board in a dismissal action. The President does not institute proceedings. They are instituted by others, in this case by the Dean and by the Head of the Department. The decision that the charges were sufficiently serious to justify action was made by the Dean and the Vice-President. The President agreed, after review, that a prima facie case had been made, and it then became his responsibility to set in motion the proper procedures. A president, therefore, does not make a dismissal his "cause". Hence he cannot fairly be said to act as "a judge in his own cause".

There is no disagreement about the desirability of an impartial hearing. But we believe that the dismissal decision should be made by the body to whom the constitution of the University entrusts the responsibility of making the final decisions. To take this authority from the Board and give it to an arbitration Committee is to assume that the Board cannot be trusted to make a partial, a just, a wise decision, and that an arbitration Committee can be so trusted. These are arbitrary assumptions for which we can find no justification.

May 4, 1970

Dr. L. Cragg
President
Mount Allison University