

**Report of the
Independent Committee of Inquiry**

**Into the Situation of
Dr. Denis Rancourt
at the University of Ottawa**

December 2017

Report of the Independent Committee of Inquiry into the Situation of Dr. Denis Rancourt at the University of Ottawa

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Background and Context

Dr. Denis Rancourt was a tenured professor at the University of Ottawa. Beginning in the early 2000s, he became involved with his employer in an escalating series of disputes over the pedagogy and grading of his assigned courses that culminated in his termination. The University argued that he was obligated to teach the content that was specified in the approved Senate course descriptions and to use the approved grading scheme that was stated in the Collective Agreement between the Association of Professors of the University of Ottawa (APUO) and the University of Ottawa. Dr. Rancourt used what he called a “student-centered evaluation” method. Rancourt was dissatisfied with the traditional methods of grading as he felt they created stress, which prevented students from engaging in critical inquiry with the course content. On the first day of his classes, starting in Fall 2005, he would tell students that they would all receive an A+; his method precluded objective grading. Students needed to form a contract with him regarding what they had to do to receive the A+; in essence, they had to attend classes and record what they had learned from the lectures they attended.

The dispute led to 24 grievances from then until Dr. Rancourt was dismissed in January 2009; four of these grievances were eventually heard at two arbitration hearings. Several of the grievances from Dr. Rancourt concerned his perceived harassment by the University over issues stemming from the dispute including his teaching assignments, allocated classrooms and laboratory. Over this period, Dr. Rancourt received many warnings from University officials to adhere to the course description when teaching his assigned courses and to issue student grades according to the scheme outlined in the Collective Agreement. These warnings eventually led to Letters of Reprimand, Suspension and Dismissal that were grieved by Dr. Rancourt and by the APUO.

The University based its decision to dismiss Dr. Rancourt on his insubordination in not following the clear direction of the Administration, and his issuing grades of A+ to all the students in his courses without “objective” evaluation of their performance on the grounds that this constituted academic fraud and injured the reputation of all Science graduates from the University. Dr. Rancourt argued in his defence that his actions were protected by academic freedom. Arbitrator Claude Foisy upheld Rancourt’s dismissal in January 2014. The APUO requested leave to appeal the decision, but that request was denied.

CAUT Involvement

Dr. Rancourt appealed to the Canadian Association of University Teachers (CAUT) in 2008 to intervene and CAUT initiated an Independent Committee of Inquiry to investigate the disputes and to determine if there were breaches or threats to Dr. Rancourt's academic freedom and other faculty rights. Unfortunately, the Independent Committee of Inquiry was not able to complete its work and resigned in 2017. CAUT then established a new, one person Independent Committee of Inquiry, with the following terms of reference: (**Appendix A**)

- To determine whether the University of Ottawa was justified in terminating Professor Rancourt; and,
- To make any appropriate recommendations.

The Independent Committee of Inquiry member was:

- Dr. Victor M. Catano, Professor of Psychology, Saint Mary's University

The operations of the Independent Committee of Inquiry were governed by CAUT's "*Procedures in Academic Freedom Cases*", which are available on the CAUT website [<http://www.caut.ca/about-us/caut-policy/lists/administrative-procedures-guidelines/caut-procedures-in-academic-freedom-cases>] and as **Appendix B**.

This report is based solely on documentary evidence submitted by the parties to the arbitration hearing and on more than 28 linear feet of documents submitted to the first Independent Committee of Inquiry by Dr. Rancourt. I am grateful to the first Independent Committee of Inquiry for accumulating and organizing the documentary evidence.

Dismissal for Just Cause

Dr. Rancourt was fired for fraud and insubordination, grounds upheld by the Arbitrator. It is useful to review briefly the legal definition of "just cause". The Supreme Court of Canada in *McKinley v. BC Tel* [2001, 2 S.C.R. 161] said that just cause exists where an employee violates an essential condition of the employment contract, breaches the faith inherent to the work relationship, or whose conduct is fundamentally inconsistent with the employee's obligations to his or her employer. The Ontario Court of Appeal in *R. v. Arthurs* [1967, 2 O.R. 49 (C.A.), p. 55] defined just cause as:

If an employee has been guilty of serious misconduct, habitual neglect of duty, incompetence, or conduct incompatible with his duties, or prejudicial to the employer's business, or if he has been guilty of willful disobedience to the employer's orders in a matter of substance, the law recognizes the employer's right summarily to dismiss the delinquent employee.

Fraud and insubordination are among the causes courts have recognized as grounds for a just cause dismissal. While cases of fraud (dishonesty) almost always lead to dismissal, the case of insubordination is not always clear. In the Rancourt case, the University raised both issues as justification for Dr. Rancourt's dismissal. The Arbitrator believed that Dr. Rancourt's actions in assigning A+ grades to all students in his classes constituted insubordination and a form of academic fraud.

To establish insubordination, the University of Ottawa had to establish that Dr. Rancourt:

1. had been given clear and specific orders to cease his actions of not objectively grading his students;
2. that the orders were reasonable and within its authority;
3. that the orders were within the scope of Dr. Rancourt's duties and responsibilities;
4. that Dr. Rancourt intentionally disobeyed the orders; and
5. that the orders were serious and important in nature.

Before the University could dismiss Dr. Rancourt, after establishing his insubordination, the University had to provide him with a warning that stated how he was insubordinate and the actions he needed to take to correct his behaviour. The warning(s) should also state that the failure to take corrective action could lead to discipline, including dismissal.

Brief History of Critical Events Leading to Dr. Rancourt's Dismissal

The following sections present information that is relevant to the University's case of insubordination in relation to grading. I have omitted many incidents involving students, colleagues and administrators that suggest a vexatious working environment, but have no evidentiary value with respect to insubordination. These incidents include actions by administrators that Dr. Rancourt considered harassment, and for which he filed grievances, which were not carried forward to arbitration. The critical events related to insubordination are presented chronologically.

2005-06 Academic Year - Prof. Rancourt informed prospective students, by posting on the department website, of his intent to change the theme and approach to PHY 1703 PHYSICS AND THE ENVIRONMENT to 'Activism: Power and its Contexts' and to substitute a satisfactory/not satisfactory grading scheme in place of the University's alphanumeric grading system. The Dean of Science intervened to suspend PHY 1703 until assured course content followed that approved by Senate. One week later, PHY 1703 resumed on agreement that fundamental science concepts as described in the official course description would be covered, using an agreed version of a textbook, with lectures in French. Dr. Rancourt also offered a graduate course PHY 8393-D Selected Topics in Physics. This course was offered concurrently with PHY 1703. Dr. Rancourt advertised the courses to an activist website as open to all. The Dean instructed him to split the courses and to offer the graduate course only to graduate students. The Dean requested an informal meeting under the Discipline Article of the Collective Agreement citing concern that the Senate-approved title, content, language and grading system of PHY 1703 had been unilaterally changed and that PHY 8391-D improperly taught in combination with PHY 1703. Afterward, the Dean issued a Letter of Reprimand to Dr. Rancourt. Dr. Rancourt grieved the Letter. At the subsequent arbitration in 2008, Arbitrator Picher partially upheld the Letter of Reprimand; he ruled that Dr. Rancourt had incorrectly represented the relationship of PHY 1703 and PHY 8391-D on alternativevoices.ca in 2005, but that he did not materially misrepresent the essence of the course and did not give the University cause for discipline, on that basis. Arbitrator Picher recognized the role of academic freedom in allowing a professor "some latitude for flexibility both as to the teaching methods and specific content of a course".

2006-07 Academic Year - Dr. Rancourt was scheduled to teach SCI 1101 Science and Society. The Acting Dean informed him of the approval of SCI 1101 and the attached conditions. He advised him that SCI 1101 was a course for credit and attendees must register and pay a fee as per University regulations. Dr. Rancourt publicized the course by email, media and websites as free to all. The Dean stated that this must be corrected by 8 September, and that his actions would be further investigated as provided in the Collective Agreement. The SCI 1101 course description listed on the "uofowatch" website differed from that on the University's official site. In November, the Dean stated his concern in writing about the description of the evaluation method for SCI 1101 posted on www.alternativevoices.ca. The Dean reminded Dr. Rancourt that Senate had required evidence of the nature of his Satisfactory/Not Satisfactory evaluation method at the beginning of the term, and asked for that documentation, as he had done in August, by 2 December. In June 2007, the Dean met with Dr. Rancourt under the Discipline article of the Collective Agreement concerning the content and grading of SCI 1101 and

afterward, on 20 November 2007 and 22 November 2007, issued Letters of Reprimand, respectively on both issues, and noted that any further incidents of this nature might lead to further discipline up to and including dismissal. Dr. Rancourt grieved both Letters. The grievances were heard by Arbitrator Foisy in 2011 who followed Arbitrator Picher's thinking in allowing the grievance regarding the course content. The course description was more general than that for PHY 1703 and Foisy accepted that the changes in course content were in accord with the calendar definition.

During this period, Dr. Rancourt also taught PHY 1722 (Previously called PHY 1702). In response to directives to grade the students objectively, Dr. Rancourt, with one exception, issued the numerical equivalents of A+ to all students in the course. The Dean reviewed the grades in April 2007 and directed Dr. Rancourt to attend a meeting under the Discipline article of the Collective Agreement. The Dean provided Dr. Rancourt with documents showing how he had graded students in the past in PHY 1722. The grades ranged between 4 and 5 on the 9-point scale. Dr. Rancourt refused to attend the meeting on the grounds that the meeting was an abuse of the Discipline article. On 22 November, the Dean issued a Letter of Reprimand and directed Dr. Rancourt to grade objectively as provided in the Collective Agreement, warning that any further incidents of such nature might lead to further discipline up to and including dismissal.

The relevant section of the Collective Agreement reads as follows:

21.1.2 Every faculty member shall have the right and responsibility:

(c) to evaluate students' performance objectively in a manner appropriate to the course, consistent with relevant academic standards and marking scales approved by Senate, it being understood that any procedural rules adopted by a faculty council and approved by Senate must also be observed.

Dr. Rancourt and the APUO grieved the Letter, which was also heard by Arbitrator Foisy in 2011. Arbitrator Foisy made the following statement in upholding the Letter of Reprimand:

Having considered the evidence in its entirety, I come to the conclusion that grading, whether in a conventional manner or not, was considered by Professor Rancourt an impediment to learning physics.... Convinced of the value of his pedagogical approach to teaching Physics he decided to apply it in his classes although he knew the University' administration was against it and that in their opinion it constituted a violation of the collective agreement and a form of academic fraud.

2007-2008 Academic Year - Dr. Rancourt became embroiled in a dispute concerning his 2007-08 workload, specifically the courses he was assigned to teach. He was given only 400- and 500- level courses. Regardless, Dr. Rancourt made it known through a 6 June 2007 press release that he intended to offer SCI 1101 at the University whether it was part of his course load or not. The Dean responded by directing Dr. Rancourt to an informal meeting under the Discipline article regarding potential insubordination stemming from the 6 June press release, as well as follow-up concerns about the subject matter of SCI 1101. On 16 November 2007, the Dean once more issued a Letter of Reprimand to Dr. Rancourt over his refusal to retract statements in the 6 June press release. Dr. Rancourt initiated several grievances over the actions

of the Dean. The grievances that were carried forward by the APUO were eventually heard by Arbitrator Foisy in 2011 with the course content grievance decided in Rancourt's favour and the grading issue in the University's.

Dr. Rancourt was also involved in a number of other disputes during this academic year: events surrounding his workload by not assigning him to teach the Ottawa Cinema Politica, a film and discussion series, and the use of University of Ottawa copyrighted material on the uofowatch.blogspot.com. Dr. Rancourt requested that he teach Cinema Politica as one of his assigned courses. The University refused as the lecture and movie series was a voluntary activity and not part of any course. Dr. Rancourt also wanted a sign language interpreter assigned to the series and wrote to the Human Rights Commission when the University did not provide that service. There was also a dispute over assigning a room to the series. Eventually, the University cancelled the series with Dr. Rancourt grieving these actions, but the APUO did not assume carriage of the grievance. With respect to the use of copyrighted material, which he refused to delete when requested to do so, Dr. Rancourt was summoned to another discipline meeting by the Dean and told that his failure to remove the material constituted insubordination. He was told that he was free to criticize the University but not to use the copyrighted material in doing so. The Dean issued a Letter of Reprimand on 5 February 2008 stating the copyrighted material must be removed from the blog site within two days, and was warned failure to do so might incur further discipline up to and including termination of employment. The material was still on the blog as of 21 February leading to the Dean recommending a 1 day suspension, which Dr. Rancourt served on 17 October 2008.

2008-2009 Academic Year - A dispute over Dr. Rancourt's teaching assignment for 2008-09 began in February 2008. His requested courses were denied, and he was informed by the Dean that his workload assignment for 2008-09 was on hold pending completion of an investigation into his grading practices in PHY4385/5100. Concerns had been raised by the Physics Department over his grading intentions in those courses, specifically that he had promised grades of A+, irrespective of performance and content and instruction in those classes. In April 2008, the Dean began an investigation into his grading practices in those courses; as of 12 August 2008, the investigation was ongoing and the Dean informed Dr. Rancourt that he would not assign any teaching to him until the investigation was completed. On June 2 and 3, the Dean requested copies of examination papers in the course. Dr. Rancourt refused until he could determine the legality and legitimacy of the request. Dr. Rancourt continued his refusal to show the exams to the Dean by 21 August, a deadline set by the Dean.

The Dean wrote to Dr. Rancourt on 20 November 2008 asking him to attend a discipline meeting on 28 November 2008 regarding the Dean's investigation into PHY 4385/5100. In the letter, the Dean reviewed his concerns and past exchanges on the matter, and again asked for copies of the examination papers. Dr. Rancourt replied that he could not attend the meeting. The Dean notified Dr. Rancourt that he intended to be available for the meeting as specified and to conclude his investigation following the scheduled meeting and to formulate his recommendation.

On 10 December, the Dean recommended to the Chair of the Board of Governors that Dr. Rancourt be dismissed. Dr. Rancourt was informed the same day by the Vice-President Academic that he was suspended and was required to give 24-hour advance notice to Security personnel if he was needed to be on campus. There followed responses by Dr. Rancourt and the

APUO to ensure that the steps outlined in the Collective Agreement were followed. On 1 April, 2009, Dr. Rancourt received notice from the Board of Governors that his employment was terminated as of 31 March 2009. A grievance was filed against the dismissal and was heard by Arbitrator Foisy in 2011-12. The Arbitrator upheld the dismissal.

Was Dr. Rancourt Insubordinate?

It is clear from this chronology that the actions of Dr. Rancourt met the definition of insubordination:

1. Dr. Rancourt had been given clear and specific written directives to cease his actions of not objectively grading students;
2. the directives were reasonable and within the Employer's authority to have Dr. Rancourt adhere to the Collective Agreement and Senate policies;
3. the directives were in scope of Dr. Rancourt's duties and responsibilities as the orders pertained to courses he was in charge of instructing;
4. Dr. Rancourt intentionally disobeyed the directives in persisting to carry on with his grading schemes and not teaching the course content after being warned about this; and
5. the directives were serious and important in nature in that the grading and content had an adverse impact on students and the reputation of the Science Faculty at U of Ottawa.

Arbitrator Foisy, without articulating these five points, came to a conclusion of insubordination on the part of Dr. Rancourt after 28 days of hearings. In addition to documentary evidence, he relied on testimony from both University witnesses and Dr. Rancourt.

Is Academic Freedom a Defence for Insubordination?

The Collective Agreement between the APUO and the University of Ottawa defines academic freedom in the following way:

9. Academic Freedom

The parties agree neither to infringe nor abridge the academic freedom of the Members. Academic freedom is the right of reasonable exercise of civil liberties and responsibilities in an academic setting. As such it protects each Member's freedom to disseminate her opinions both inside and outside the classroom, to practice her profession as teacher and scholar, Librarian, or Counsellor, to carry out such scholarly and teaching activities as she believes will contribute to and disseminate knowledge, and to express and disseminate the results of her scholarly activities in a reasonable manner, to select, acquire, disseminate and use documents in the exercise of her professional responsibilities, without interference from the Employer, its agents, or any outside bodies. All the above-mentioned activities are to be conducted with due and proper regard for the academic freedom of others and without contravening the provisions of this agreement. Academic freedom does not require neutrality on the part of the Member, but rather makes commitment possible. However, academic freedom does not confer legal immunity, nor does it diminish the obligations of Members to meet their duties and responsibilities

Both Arbitrator Picher and Arbitrator Foisy dealt with the defence of academic freedom in dealing with the discipline of Dr. Rancourt by the University of Ottawa. Arbitrator Picher dealt with the Letter of Reprimand issued over Dr. Rancourt's change in the content and title of PHY 1703. He recognized the relevance of academic freedom:

"Many university courses are subject to the evolution of both their content and format over the years, without necessarily requiring an amendment of the original course name or description. While it is clear that academic freedom does not extend to allowing a professor to introduce changes which effectively contradict or radically depart from the fundamental concept of the course as originally established, there must be some latitude for flexibility both as to the teaching methods and specific content of a course. ...the communications of Professor Rancourt, insofar as those communications deal with the science that the course is intended to address, did not materially misrepresent the essence of the course and did not give the University cause for discipline, on that basis.

... Professor Rancourt was involved in legitimate pedagogical innovation, in pursuance of his conviction that students achieve a better grasp of science by coming to it through social, economic and political issues that are of immediate concern to them. While the Dean or another academic may have preferred not to pursue that method, and to describe the course differently, it is difficult for this Arbitrator to conclude that it was inappropriate or

beyond the bounds of academic freedom for Professor Rancourt to have framed the description of the course in the terms he chose.

Arbitrator Foisy also considered an academic freedom defence in dealing with grievances stemming from a Letter of Reprimand issued over changes in the content of SCI 1101, a Letter of Reprimand over issuing all A+ in PHY 4385, and not following approved grading scheme, and Dr. Rancourt's dismissal. In dealing with the first grievance Arbitrator Foisy relied on the Picher decision.

[25] There is no dispute between the parties that a Professor must organize his course content and employ a methodology and a didactic material in a manner appropriate to the course and consistent with relevant academic standards and course description approved by the Senate, as specified in Article 21.1.2.

[26] In the present case, although the notion of academic freedom was argued and case law was tendered, this case does not turn so much on the question of law, i.e. the scope of academic freedom, but the factual analysis of whether Professor Rancourt followed the course description when he mixed elements that went to science and to society, using “activism” as a vehicle.

...

[28] In the present case the SCI course description is more general in scope and less restrictive than the one applying to PHY 1703: Physique et l'environnement” that applied in the case before Arbitrator Picher.

...

[30] The only direct evidence as to what took place during the classes stems from Professor Rancourt's testimony. That testimony corresponds to the written explanations given in his communication to Dean Lalonde on December 5, 2006, which I have reproduced earlier. I am also mindful of Dean Lalonde's acknowledgement that if Professor Rancourt had linked the topics of his speakers with science, he would have respected the course description. Having considered the evidence, I come to the conclusion that the University has not, on a preponderance of evidence, established that Professor Rancourt violated the provisions of Article 21.1.2 (b) in the Fall of 2006 in regards to course SCI 1101.

Article 21.1.2 (b) states the following:

Every faculty member shall have the right and responsibility (b) to organize course content and classroom or laboratory activities and employ methodology and didactic material, including textbooks, for the courses assigned to her, in a manner appropriate to the course and consistent with relevant academic standards and course descriptions approved by Senate, it being understood that in the case of multi-section courses the chair and the departmental assembly may jointly choose common didactic materials, including textbooks, where it can be shown that this choice is justified by valid academic reasons and does not impose ideological conformity on the members concerned.

Arbitrator Foisy came to a different conclusion when evaluating the Letter of Reprimand with respect to the grading scheme used by Dr. Rancourt.

[86] In short, in my opinion Article 21.1.2(c) does not support the Grievor's proposition that a self-centered student evaluation is an objective evaluation of the student's performance consistent with relevant academic standards and markings approved by the Senate. I therefore conclude that the Grievor's self-centered evaluation is not objective and violates his obligation set out in Article 21.1.2(c).

The Arbitrator in coming to this decision reviewed over 25 cases on Academic Freedom; however, none touched on the issue of grading. He stated that the Academic Freedom clause in the APUO Collective Agreement was a fair summary of the case law on Academic Freedom.

The definition clearly states that the academic freedom concept is not so wide as to shield a professor from actions or behavior that cannot be construed as a reasonable exercise of his responsibilities in an academic setting, nor does it protect him when exercising said academic freedom in contravention of the provisions of the Collective Agreement in general and in this case, those of Article 21.1.2(c).

The Arbitrator noted that the University was not disciplining Dr. Rancourt for his ideas or beliefs in regard to teaching methods based on self-centered motivation and evaluation. The University stated that he could openly promote his convictions about teaching in the “classroom, on campus, and elsewhere.” He could not implement them in contravention of Article 21.1.2(b) of the Collective Agreement. The Arbitrator saw Dr. Rancourt's failure to use the Senate approved grading system as a “very serious breach of his obligations as a university professor.”

Arbitrator Foisy then turned to the issue of dismissal for insubordination. Academic Freedom was not considered a defence in this matter.

[99] Even though Professor Rancourt was well aware of the University's opposition to his evaluating of students on a self-centered standard, he continued on his course of action. Although he had grieved the Letter of Suspension, he did not wait to find out whether he had infringed Article 21.1.2(c). He continued to defy the administration. He was warned on March 28, 2008 by Dean Lalonde that his actions violated the Collective Agreement and that if he continued he was placing himself in a position to be dismissed. Given the evidence, I find that Professor Rancourt did not objectively evaluate his students in his course 4385/5100, in breach of Article 21.1.2(c). Is the dismissal the appropriate remedy in the circumstances? The short answer is yes.

Arbitrator Foisy considered whether a lesser penalty than dismissal might be appropriate. However, he concluded based on the evidence that Dr. Rancourt would not change his ways regarding grading if reinstated. He never accepted that he had done anything wrong, which is an important consideration in determining if a lesser penalty is appropriate. Arbitrator Foisy concluded:

[102] Given the extreme seriousness of Professor Rancourt's breach of his duties to objectively evaluate his students, which I agree with Dean Lalonde is a form of academic fraud, and his insubordination in not following Dean Lalonde's repeated warnings, I find there is no reason for me to intervene in the University's decision to dismiss Professor Rancourt.

Conclusions

The University of Ottawa was justified in terminating Dr. Rancourt for insubordination. He was not fired for his ideas or beliefs, but rather for persisting in violating the Collective Agreement by not grading on an objective basis after being warned on several occasions to do so.

A well-known tenet of labour relations is that an employee who feels that their employer has given them an inappropriate order must submit to the order and grieve. In Dr. Rancourt's case he persisted in carrying out his activities before the matters were heard at arbitration. He persisted in ignoring direct warnings from the administration to change his grading practices.

What matters is what is in the Collective Agreement and collegially approved University policies. The Collective Agreement that applied to Dr. Rancourt had a very good definition of Academic Freedom, but also an article on how students were to be graded and evaluated. The Academic Freedom Clause was important in defending Dr. Rancourt's deviation, within limits, from approved course descriptions. Two different arbitrators agreed that he had the right to teach his courses as he saw fit as long as he covered in a general way content from the approved course descriptions. But, academic freedom could not shield him from his violation of other clauses in the Collective Agreement, particularly his requirement to adhere to the University's grading policy as stated in the Collective Agreement.

Appendices

Appendix A



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

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May 16, 2017

Professor Vic Catano
Department of Psychology
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923 Robie Street
Halifax, NS B3H 3C3

Dear Professor Catano:

Thank you for agreeing to serve as a one-person Independent Committee of Inquiry into the situation of Professor Denis Rancourt in the Department of Physics at the University of Ottawa.

The terms of reference for the Independent Committee are:

- To determine whether the University of Ottawa was justified in terminating Professor Rancourt; and,
- To make any appropriate recommendations.

You will operate completely independent from CAUT in all your deliberations, conclusions and drafting of your report. We will have no access to the contents of your report until you issue it publicly. The procedural details are spelled out in Section 5 of the attached CAUT Procedures in Academic Freedom Cases.

CAUT will cover all expenses associated with your investigation including travel, hotel, conference and other long-distance calls, per diems, interview room rentals, a recording device and any necessary secretarial, legal, administration or translation assistance. As well, CAUT will hold you harmless from any legal actions that arise from all reasonable activities that you undertake in the course of participating as a member of the Independent Committee of Inquiry.

I wish you the best in this important inquiry and want to express our appreciation once again for your willingness to undertake this task.

Sincerely,

A handwritten signature in blue ink, appearing to read 'David Robinson', with a long horizontal flourish extending to the right.

David Robinson
Executive Director

cc: James Compton, President, CAUT
Peter McInnis, Chair, CAUT Academic Freedom and Tenure Committee



Appendix B

CAUT Procedures in Academic Freedom Cases

1

CAUT will consider all cases of alleged violations of academic freedom brought to its attention. Concerns about violations of academic freedom should be brought to the attention of the executive director. In cases where attention by CAUT seems justified, the executive director will notify the president and the chair of the Academic Freedom and Tenure Committee and will expeditiously take steps to determine whether there is a prima facie basis for further action. The executive director will provide the president and the chair of the Academic Freedom and Tenure Committee a list of all other requests brought to his attention. All requests brought to the executive director, president and chair of the Academic Freedom and Tenure Committee that are not expeditiously dealt with will be referred to the Academic Freedom and Tenure Committee.

2

If it appears to be useful, the executive director may attempt to assist the affected parties and the institution in arriving at a satisfactory resolution of the situation.

3

If the alleged violation is serious and if a satisfactory resolution of the matter does not seem to be possible through informal negotiation, the executive director, in consultation with the president, the chair of the Academic Freedom and Tenure Committee, and others as appropriate, will undertake one or more of the following as is most suitable to help bring about the conditions for a fair resolution of the matter:

- a) cause the situation to be brought to public attention;
- b) request that the CAUT Executive authorize an independent committee of inquiry to investigate and issue a public report on the matter (see 5 below);
- c) establish an ad hoc investigatory committee that will look into the situation and report to CAUT through the Academic Freedom and Tenure Committee (see 6 below).

4

In all instances where a CAUT local association exists at the institution where the alleged violation of academic freedom occurred, the executive director will consult with the local association where there appears to be prima facie basis for further action, to determine whether remedies may be available under the collective agreement. If any of the follow-up actions under 3(b) or 3(c) are being considered, the assistance of the local association will be sought with reference to work of a committee of inquiry or an ad hoc investigatory committee.

5

Where an independent committee of inquiry is authorized by the CAUT Executive (see 3b), the following guidelines will apply:

- a) The members and a chairperson of the independent committee of inquiry will be appointed by the CAUT Executive upon the recommendation of the president, chair of the Academic Freedom and Tenure Committee and the executive director. Normally, independent committees of inquiry will consist of two or three members, with one designated as chair.
- b) Independent committee of inquiry members will serve without remuneration except for expenses.

- c) The committee will be provided with terms of reference that pose specific questions to be addressed. The terms of reference will be developed by the president, the chair of the Academic Freedom and Tenure Committee and the executive director.
- d) The committee will seek to review fully and fairly the matters it has been appointed to investigate and will prepare a report which will be published by CAUT in its entirety as delivered and in a timely manner, subject to the final report of the committee having been previously reviewed by the committee's legal counsel. CAUT will hold the committee members harmless from any legal actions that arise as a result of their work on the committee of inquiry.
- e) The committee has no statutory powers and no authority to compel individuals to participate in its inquiry. To ensure that it is fully informed with regard to the matters under review, the committee will rely on the cooperation of everyone concerned. Anyone who chooses to be interviewed by the committee may be accompanied by a colleague or an advisor.
- f) The committee will begin by reviewing the documentary record available to it upon its appointment, and will seek further information from individuals in a position to have relevant information by inviting them to meet with it and to submit documents.
- g) Persons interviewed by the committee will be provided with a statement of matters under investigation in advance of the interview. Persons interviewed will be permitted to make a statement to the committee and to raise issues that they consider relevant, subject to the right of the committee to decide, having been provided an opportunity for arguments to the contrary, that particular matters are not relevant to its terms of reference.
- h) Committee members will take notes during interviews and interviews may be recorded where the person being interviewed consents.
- i) To ensure fairness to persons potentially affected in a material adverse way by findings in the committee's report, a fair summary of the information upon which such findings could be based will be provided in confidence to such persons reasonably in advance of the publication of the committee's report.
- j) At any stage in its inquiry, the committee in its discretion may request further information or clarification from individuals who have been interviewed or made written submissions, from those mentioned by witnesses or in submissions, or from other persons, by way of either a written statement or an interview with the committee.
- k) All documents received by, or produced by, the independent committee of inquiry shall remain the property of the independent committee of inquiry and the chairperson shall be responsible for arranging the safe keeping of all such materials
- l) The CAUT Executive shall consider any recommendations made by the committee.

6

Where an ad hoc investigatory committee (see 3c) is constituted, the following guidelines apply:

- a) The members will be appointed by the executive director in consultation with the president and the chair of the Academic Freedom and Tenure Committee. Normally, ad hoc investigatory committees will consist of two or three members, with one designated as chair.
- b) Members will serve without remuneration except for expenses. CAUT will hold the committee members harmless from any legal actions that arise as a result of their work on the ad hoc investigatory committee.
- c) The committee will be provided with terms of reference that pose specific questions to be addressed. The terms of reference will be developed by the president, the chair of the Academic Freedom and Tenure Committee and the executive director.
- d) The committee will seek to review fully and fairly the matters it has been appointed to investigate and will prepare a report to CAUT in a timely manner.

- e) The committee has no statutory powers and no authority to compel individuals to participate in its inquiry. To ensure that it is fully informed with regard to the matters under review, the committee will rely on the cooperation of everyone concerned. Anyone who chooses to be interviewed by the committee may be accompanied by a colleague or an advisor.
- f) The committee will begin by reviewing the documentary record available to it upon its appointment. Further relevant information from individuals will be sought by inviting them to meet with the committee and to submit documents.
- g) Persons interviewed by the committee will be provided with a statement of matters under investigation in advance of the interview. Persons interviewed will be permitted to make a statement to the committee and to raise issues that they consider relevant, subject to the right of the committee to decide, having been provided an opportunity for arguments to the contrary, that particular matters are not relevant to its terms of reference.
- h) Committee members will take notes during interviews and interviews may be recorded where the person being interviewed consents.
- i) As soon as possible after receipt of the report of the ad hoc investigatory committee, the executive director will review it and communicate with the committee regarding any suggestions for revision.
- j) To ensure fairness to persons potentially affected in a material adverse way by findings in the committee's report, the executive director will send a fair summary of the information upon which such findings could be based to such persons, allowing a reasonable time for them to respond. The executive director will then invite the ad hoc investigatory committee to revise its report in light of the comments received.
- k) The committee's draft report will be transmitted to the Academic Freedom and Tenure Committee which may request further revisions. Following consideration of the Academic Freedom and Tenure Committee's request, the committee's final report will be submitted to the Academic Freedom and Tenure Committee for final review.
- l) All documents received by, or produced by, the ad hoc investigatory committee shall be and remain the property of CAUT, and CAUT shall be responsible for arranging the safe keeping of all such materials.
- m) Following the Academic Freedom and Tenure Committee's final review and authorization, CAUT will publish the report unless the nature of the case is one that could be resolved through discussions with the parties concerned.
- n) In such a situation, CAUT will actively explore resolution of the matter with the parties concerned. A report of discussions with the parties will be made to the Academic Freedom and Tenure Committee that will determine if the report is to be published.
- o) When a report is published, the members of the ad hoc investigatory committee will be listed as authors of the published report unless they withhold their names because of disagreement with changes requested by the Academic Freedom and Tenure Committee or as a result of comments from the parties potentially affected in a material adverse way.

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The president and executive director will report on the status of all outstanding academic freedom cases at each meeting of the Executive Committee and at each meeting of the Academic Freedom and Tenure Committee.

Approved by CAUT Council, May 2011.