
Academic Freedom and Tenure Committee

Simon Fraser University

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

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Simon Fraser University¹

At a meeting of the Executive and Finance Committee of the C.A.U.T. on Thursday, 18 June 1970, a committee of inquiry was established to report on the status of suspensions, dismissal procedures, and appeals of faculty members in the PSA Department at Simon Fraser University. The members appointed to the committee were A. E. Malloch (Chairman), L. F. Kristjanson, and I. D. Pal. Letters were sent at the end of June to the PSA faculty members involved, and to the president of the university, Kenneth Strand, asking them to submit any information or comment they might wish to make before the committee visited the campus toward the end of July. Difficulties in the postal service at that time made the delivery of this preliminary information uncertain, but very full documentation was received from the President of the University and more was prepared by the faculty members for delivery to the committee on its arrival in Burnaby.

The committee visited the Simon Fraser campus for three days, 20, 21 and 22 July, interviewing most of the principals in the dismissal cases, and a number of other persons. The committee met as a whole with the President on the first day, and the chairman of the committee met again with the President on the third day accompanied by Professor M. Mackauer, Acting President of the Simon Fraser Faculty Association. Of the eight professors against whom dismissal charges have been brought, the committee met Professors K. Aberle, M. Briemberg, J. Leggett, N. Popkin, and P. Wheeldon. The three remaining, S. Ahmad, L. Feldhammer, and D. Potter, were out of the country and therefore unavailable. The committee met also with Professors T. Brose, and G. Sperling, who were appealing decisions made in August 1969 concerning their academic appointments. The committee met also with Professor Mackauer and the executive of the Simon Fraser Faculty Association; with Professor D. H. Sullivan, the Dean of the Faculty of Arts; with a group of undergraduate students registered in the PSA department who had requested a meeting with the

committee; with Professor H. Sharma of the PSA department who had requested a meeting; and the chairman met Professor H. Hickerson of the PSA department who had also requested a meeting. The committee was not able to meet with Professor A. Mitzman, who had requested a meeting but who was at the last moment unable to meet the committee.

The eight faculty members who were suspended 3 October 1969 received letters of 17 October 1969 from President Strand informing them officially that he was initiating dismissal procedures against them, asking them if they wished hearing committees set up (as provided in Section 4 of the *Simon Fraser Statement on Academic Freedom and Tenure*), and requesting them, if they wished committees, to nominate their members within fourteen days. Professors Ahmad, Briemberg, Feldhammer, Leggett, Potter and Wheeldon each named the same person, Professor W. Livant. Professor Aberle named Professor J. Jorgensen. Professor Popkin named Professor J. Zaslove. As a consequence, there were to be three separate dismissal hearings, one for the group of six faculty members, one for Professor Popkin, and one for Professor Aberle. This report will trace the activities of each committee (though Professor Aberle's committee was to disappear and her case to be assimilated to the hearings for Ahmad et al). Following the sections on the three dismissal hearings will be a section on the appeals of Professors Brose and Sperling who were away from Simon Fraser University on leave during the strike in the PSA department in September and October 1969, and who began appeals before the University Tenure Committee when they returned to the University.

Ahmad, Briemberg, Feldhammer, Leggett, Potter, Wheeldon

On 3 October 1969, President Strand suspended eight members of the PSA department, invoking the authority of Section 58(1) of the British Columbia Universities Act, and explicitly suspending them not only from their teaching assignments, but also from

1. This report was written by the committee of inquiry appointed 18 June 1970 and submitted to the A.F.&T. Committee at its 17-18 September meeting.

their committee assignments and their voting rights in decision-making bodies of the university. He pointed out at the same time that the Universities Act provided them with the right to appeal suspensions to the Board of Governors. President Strand might have suspended them under the authority of the local Academic Freedom and Tenure Statement (S.4.1.g), but that document would have enabled him to suspend them from teaching only. Subsequent events suggest that the President's decision to invoke the Universities Act led to considerable delay in the hearing of the dismissal charges against seven of the eight faculty members. Several of the suspended members did in fact appeal the suspension to the Board of Governors. The appeals were denied, but in the course of the hearings before the Board the question of the status and force of the local A.F. & T. Statement was raised by counsel for the faculty members, and in the opinion of the faculty members and their counsel was not satisfactorily answered by the university lawyers or by members of the Board of Governors. In consequence, one of the faculty members who had appealed the suspension, Professor Prudence Wheeldon, filed a Statement of Claim on 5 December 1969 in the Supreme Court of British Columbia, asking the Court to rule (inter alia) that the local A.F. & T. Statement was part of Professor Wheeldon's contract of employment, and therefore binding on the university. That Professor Wheeldon was not alone in her concern about the status of the A.F. & T. Statement is clear from a memo sent 5 January 1970 by Professor Lionel Kenner (chairman of the University Affairs Committee of the Simon Fraser Faculty Association) to President Strand, and a memo dated 28 January 1970 from Professor Kenner to Professor Walkley (the president of the faculty association). Following the issuance of the writ on 5 December 1969, the customary legal ritual unfolded, complete with Demands for Discovery of Documents, Affidavits of Documents, Examination for Discovery, Adjournment of Trial, etc., and finally the judgment on 18 June 1970, which found that the local A.F. & T. Statement formed no part of the contract of employment of a faculty member at Simon Fraser, and that the Board of Governors in approving the Statement essentially adopted a resolution of policy which was not intended to create legal obligations.

Though the case of Wheeldon versus Simon Fraser University was to delay the hearing committee for the six faculty members, the attempts to complete the membership of the committee proceeded during the time that Professor Wheeldon's claim was being filed in the Supreme Court. Professor J. S. Dupre, President Strand's nominee, and Professor W. Livant, the nominee of the faculty members, attempted to agree on the third member to be the chairman. They were unable to agree, and according to the provisions of the A.F. & T. Statement the matter went for resolution to the Chief Justice of the Supreme Court of British Columbia who on 10 February 1970 named Professor E. E. Palmer to be the third member and chairman.

By the middle of March, Professor Palmer had been invited to serve and had agreed, and the faculty members had in turn been advised of who the chairman of their committee would be. The first hearings were scheduled for the third and fourth of April. The start of the hearings was twice delayed, first for two weeks on the request of one of the other members of the committee, and then for a month because of the illness of the chairman. The first meeting of the committee took place on 15 May 1970 and was adjourned on the same day until judgment had been rendered in the case of Wheeldon versus SFU, though a hearing was tentatively scheduled for 22 June. Though the judgment was handed down on 18 June, the hearings were again delayed by illness and did not resume until 21 July, the second day of the visit to the SFU campus by the C.A.U.T. committee of inquiry. Professor Aberle's case had been added by this time to those of the original six faculty members.

This hearing committee handed down its decision on 24 July 1970, finding that there was no cause for dismissal of the seven faculty members. President Strand challenged the decision almost immediately, but asked the committee to reconsider its report (as the Simon Fraser A.F. & T. Statement provides). On 20 July 1970, President Strand had explained to the C.A.U.T. committee of inquiry, by means of a blackboard diagram, that the A.F. & T. Statement did not permit him to recommend dismissal to the Board of Governors unless the hearing committee so found, and then assured us that he considered himself bound

by a finding of "no cause" from a hearing committee. In a telegram of 26 July, Professor Malloch reminded President Strand of his undertaking, but after the Palmer committee reaffirmed its decision on 29 July, President Strand declared the findings invalid and confronted six of the faculty members with the choice of a second hearing or outright dismissal, and in the event recommended the dismissal of Professors Aberle and Potter. He withdrew the charges against Professor Leggett, whose appointment lapsed 31 August 1970. (The dispute concerning the Palmer committee decision is documented more fully in Professor Berland's report of 26 August 1970.)²

Popkin

The membership of the hearing committee for Professor Popkin was completed on 29 January 1970 when Professor Nelson (President Strand's nominee) and Professor Zaslove (Professor Popkin's nominee) agreed on the name of Professor Gideon Rosenbluth, who consented to serve. The first formal hearings took place on 13 March, and hearings were held regularly from that time on. At the time this committee of inquiry visited the campus, approximately twenty days of hearings had been logged, and the hearings have continued since.

Aberle

In early December 1969, Professor Kreisel (President Strand's nominee) and Professor Jorgensen (Professor Aberle's nominee) agreed to invite Professor P. C. Gutkind to act as chairman of the hearing committee. Professor Gutkind replied that before he could accept the chairmanship of the hearing committee, he felt that there should be some agreement about the relation of the hearing to the investigation being undertaken by the American Anthropological Association. This and other questions raised by Professor Gutkind led Professor Kreisel to reconsider his decision about naming Professor Gutkind as chairman. On 9 February, Professor Willard Allen, the President of C.A.U.T., released a statement expressing his views concerning qualifications for membership in hearing committees, and touching in general terms on several of the points raised by

Professor Kreisel. In a letter of 5 March 1970, Professor Kreisel wrote to President Strand saying that on reflection he was prepared to reaffirm his original decision to accept Professor Gutkind as the chairman of the committee. However, on 13 March, Professor Kreisel wrote to Professor Gutkind to announce that he was himself withdrawing from the committee as a consequence of having been appointed Academic Vice-President at the University of Alberta. Professor Kreisel's "final act prior to resigning from the Committee" was to withdraw his request of 11 December that Professor Gutkind serve as chairman, in order to leave his successor completely free to participate in the selection of a chairman. Professor Jorgensen in a letter of 25 March to Professor Gutkind objected to Professor Kreisel's withdrawing of his agreement on the chairman, but Professor Gutkind in a reply of 2 April announced that he would not in any case be able to serve as chairman as he was preparing to leave for a year of sabbatical study. Meanwhile, President Strand, on 1 April 1970, informed Professor Aberle and her nominee that he was nominating Professor W. R. Gordon to replace Professor Kreisel. Professor Jorgensen and Professor Gordon were unable to agree on a chairman and the three-week period after which an approach could be made to the Chief Justice of the Supreme Court of British Columbia began 12 May 1970. No approach, however, was made to the Chief Justice after the lapse of three weeks, and in mid-June Professor Aberle wrote to a member of the hearing committee for her six colleagues and asked if her case could be assimilated to theirs. The chairman of that committee, Professor Palmer, approached President Strand to see if he would be willing to have the charges against Professor Aberle brought within the context of that committee. After some delay and negotiation the matter was finally agreed to in the middle of July, and when the Palmer committee resumed its hearings on 21 July, Professor Aberle's case was taken up with those of her six colleagues.

2. See Simon Fraser Dispute (II), pp. 65-84 of this issue.

Appeal of Professors Brose and Sperling

The recommendation of the Departmental Tenure Committee appointed for the PSA department in the summer of 1969 by Dean Sullivan was that Professors Brose and Sperling should have no renewal of their appointments unless they completed the requirements for their Ph.D. degrees before 30 April 1970. Dean Sullivan concurred with this recommendation. As Professors Brose and Sperling were away from the Simon Fraser campus in the late summer of 1969 and were to be on leave during the autumn semester of 1969, there was both delay and confusion about informing them of the decisions concerning their appointments. Both indicated early in the autumn of 1969 that they wished to appeal the decisions by the route provided in the local A.F. & T. Statement - that is to the Dean of their Faculty, and then to the University Tenure Committee. A resolution of the Board of Governors of Simon Fraser had made provision for appeal procedures to take place after the 31 August deadline, but required that they be completed before the meeting of the Board of Governors in October 1969.

The deadline for completing the appeals was waived, however, and the appeal procedures did not actually begin until early in January 1970, by which time Professors Brose and Sperling had both returned to the campus and taken up their teaching again. The account of the appeals themselves must be summarized radically because the procedures of appeal led to an exchange of literally scores of exasperated memoranda, filled with questions and replies, proposals and counterproposals, admonishments and recriminations. Both Professors Brose and Sperling met in January with Dean Sullivan, who recommended to the President of the University that the deadline for completion of the Ph.D. degree be put back in the case of both professors to 15 August 1970. After much negotiation about the time, place, and format of the meetings, Professors Brose and Sperling each met with the University Tenure Committee in the Spring of 1970. At the time the C.A.U.T. committee of inquiry visited the Simon Fraser campus in late July, negotiations were under way for a meeting with the President of the University that the deadline for

completion of further appearances by both professors before the University Tenure Committee. Both did appear again before the committee, which finally rejected their appeals in August. In the Spring of 1970, Professor Brose received an appointment for the 1970-71 year at Fairhaven College in Washington State, and Professor Sperling received an appointment for the 1970-71 session at the Regina Campus of the University of Saskatchewan.

Summary

To speak of "delays" in these dismissal and appeal cases is to beg the question. Canadian universities do not have extensive experience with the kinds of dismissal procedures that are recommended in the C.A.U.T. guidelines, and approximated in the Simon Fraser A.F. & T. Statement. It must be obvious that the careful procedures that C.A.U.T. considers important as safeguards for academic freedom are not likely to be completed in a matter of days or even weeks. The committee hearing charges against Mr. Stanley Gray at McGill in 1969 sat from March until August. There was no reason to expect that the time required at Simon Fraser would be less, and since there were charges brought against eight different faculty members, it might have been expected that the proceedings would take considerably longer - even if, as proved the case, a number of the faculty members elected to have their cases considered together.

We can identify no extraordinary delay in the hearings of charges against Professor Popkin. The selection of a chairman for the committee hearing the charges against six other members of the PSA department took somewhat longer, but that delay was foreseen in the local A.F. & T. Statement. We have noted that the hearing of charges against the six faculty members was delayed by the suit instituted by Professor Wheeldon, but we have also noted that the issue she wished clarified was a matter of concern to other faculty members than those under suspension, and we find no evidence that the suit was undertaken in order to delay the dismissal hearings themselves. The selection of a chairman for Professor Aberle's committee appears to have been delayed somewhat by the misgivings that President Strand and his nominee came to have about the choice of Professor Gutkind,

but the method of selecting a chairman that is incorporated in the Simon Fraser Academic Freedom and Tenure Statement opens the way to these misgivings and second thoughts. When the selection of a committee chairman is left to the nominees of the two opposing parties, it is almost certain that these nominees will not be left to their own counsel, and they evidently were not in the case of this committee. In any case, Professor Gutkind himself wished the hearings delayed until the report from the American Anthropological Association had come in, so that ultimately the disagreement about the chairman did not delay proceedings.³

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This report has been redesigned.

But having pointed out the inherent likelihood of extended hearings in these dismissal cases, we must add that the deep suspicion the opposing parties feel for each other at Simon Fraser has probably somewhat prolonged every step in the dismissal hearings (and very obviously prolonged the appeals of Professors Brose and Sperling). The C.A.U.T. Guidelines propose dismissal procedures that can, if they are accepted as such, be a resolution of apparently irresolvable differences. When the differences gather as much bitterness as they have gathered over the past year and a half at Simon Fraser, the dismissal procedures can themselves become a means of further pursuing the conflict. In Clausewitzian terms, the dismissal procedures become, for the opposing parties, extensions of policy by other means. And when this situation arises, the delays inherent in the procedures are bound to be aggravated.

15 September 1970

A.E. Malloch (Chairman)

L.F. Kristjanson

I.D. Pal

3. The history of Professor Aberle's committee raises the question of the relation of professional associations to dismissal hearing committees. In our view it would have constituted an improper delay if Professor Aberle's committee had waited for the report from the American Anthropological Association. The issues in a dismissal hearing are bound to go beyond those within the purview of professional associations, and though it seems perfectly conceivable that a hearing

committee might wish to approach a professional association for help in assessing professional competence, we do not think that a properly constituted hearing committee should postpone its work to allow professional associations to complete parallel dismissal hearings.